

**Republic of Albania  
The Competition Authority**

**Annual Report 2009 and Main  
Objectives for 2010**

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## **Opening Statement**

Head of the Competition Authority  
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The clear statement in almost all current economic policies in developed countries is that a clear and stable competition-supporting policy will make possible the necessary economic revival as the key to productivity and growth.

The Competition Authority has carefully followed developments in the country's main markets; has drawn lessons from developments in other countries and taken a more active role in promoting competition through direct interference to punish anti-competition phenomena, through strengthening the law and advocating a national competition policy, and improving cultural growth of the business community, of public institutions, of the print and electronic media and of the general public.

The Competition Authority has consolidated its own profile as an institution that works to not only meet standards by improving institutional capacity to increase the efficiency of interventions in the affected markets, but also to provide real collaboration with market operators, central institutions and regulatory bodies, who are considered very important factors in enabling a functioning market.

This fact indicates the variety of markets monitored and investigated, which often commences from business complaints, from the perfection of investigative techniques, or by estimates of national and international partners. The European Commission Progress Report for Albania notes that the Competition Authority has experienced good progress.

Our experience over the last five years shows that the efficiency of the implementation of Competition Law and Policy is closely related to the harmonization of legal framework, and to the direct or indirect impact on the functioning of markets under the philosophy of promoting competition. The growth of economic welfare for both market operators and end consumers requires a proactive cooperation of the business community, regulatory authorities of specific markets, the Competition Authority and policymakers. Such cooperation is a factor that enables real economic growth.

Future challenges must increase advocacy through increased transparency, and expand consultative and cooperative sessions with all stakeholders and market factors, always aiming at creating a common structure that prevents and forbids trade practices that hinder competition. Therefore, the competition institution aims to reduce risks and costs of economic phenomena before they materialize and become subject to law enforcement issues under the "Law on protection of competition" (i.e. avoid anti-competition phenomena at the source).

Our international partners often consider the Albanian Competition Authority as an interesting experience given our growth pace. This consideration requires that we

promote increased levels of accountability and professionalism in meeting the standards of integration and implementation of the Law and of the National Competition Policy.

The Competition Authority is a public good of the Albanian state, which should effectively protect competition in the market, finally aiming at enhancing consumer welfare.

## **I. Basic principles of operation of the Competition Authority and main developments**

Competition Authority operates pursuant to Law 9121 dated 28.07.2003 "On protection of competition" (as amended by Law No. 9499 dated 3.04.2006) and the National Competition Policy. Norms and principles of operation of the Authority arise from the mandate given by the Constitution of the Republic of Albania, by the European competition law, by the best administrative traditions gained through the years, as well as best practices experienced by counterpart authorities in other countries with which the Authority cooperates and share their respective experiences.

### **I.1. Mission, vision and objectives**

The Competition Authority exercises its activity as an independent public institution, with a mission to protect free and effective competition in as functional a market as possible, with the final goal of maximizing consumer benefits.

The realization of this mission is made possible through action by the Competition Commission's vision, which consists in objectively evaluating the behavior of operators in the market and the effects of normative acts on the functioning of that market. Also, the realization of this mission is based on best practices of wider European experience, adjusted and adapted to welcome the specific qualities of the Albanian economy, such as market size, volume of market informality, etc.

This vision has been substantiated by setting goals that are realized through a comprehensive discussion regarding the structure that the Competition Authority should have. These objectives are: creation of a skilled team with deep knowledge in the field of economics and law, that is able to apply the methodology to conduct studies and carry out investigations in the field of law enforcement, ensuring full transparency of the decision-making procedures and the implementation of its functional tasks, by promoting close collaboration with regulatory bodies, central and local institutions and judicial authorities, driven by a leadership based on principles of justice, equality and impartiality in the implementation of its functional duties.

### **I.2. New activities**

The Progress Report of the European Commission for 2009 clearly asserts that "good progress has been achieved in the field of competition", having made a quality leap in assessing the activity of the Competition Authority throughout its 6 year tenure. The Competition Authority considers this assessment as an incentive for increasing market interventions in defense of competition.

The year 2009 has seen an increase in cases investigated by the Competition Authority under the Law "On protection of competition." During this year, the CA has applied a more attractive platform to enhance the sensitivity of the business community for tangible cooperation with the Authority in order to respect the rules of a free market economy by

all economic operators. This tactic has led to an increased number of complaints from market operators and consumers in the communications markets (2 cases), the pharmaceutical market, the energy sector, the insurance market, and the market for freelance professionals.

Key issues reviewed in 2009 by the Competition Authority are related to coordinated practices for price fixing and market sharing agreements; entrance of companies that held dominant market position and of those that abuse this position in particular; market concentration control and evaluation of the legal framework applicable to markets that are monitored or under investigation; as well as the evaluation of legal drafts addressed to our institution for opinion. In its entirety, the multifaceted activities of the competition institution can be summarized in the 36 decisions made by the Competition Commission last year.

In 2009, the Competition Authority has completed the following monitoring and investigative actions carried out from 2008: in the transit and interconnection market for electronic communications, in the market for the import and wholesale of fuel; the market for the import of wheat flour for bread production; and the internal mandatory insurance market (TPL). Monitoring and investigations are carried out in other markets as well: the pharmaceutical market, the market of freelance professionals, the copyright management market; the market for deposits and loans; the domestic market of hydrocarbon production; and, finally, the market for new car procurements. The experience gained last year helped in improving professionalism and realization schedule for inspections and investigations.

An innovation for 2009 was the collaboration with the NRC, which allows the Competition Authority to investigate market concentration efforts directly. Due to this cooperation, the Authority could evaluate the transactions that fell under the umbrella of the law “On protection of competition” (the case of market concentration made between Advanced Construction Group LLC and Albanian Airlines Mak Ltd.). During 2009, the Competition Commission has authorized seven stock exchange transactions, which include mainly the financial sector (banks and insurance companies), electricity (DSO-CEZ), construction, and internet service providers. Concentrations have been realized in the form of control change, and have not given signs of aiming to strengthen a dominant position. These actions were, therefore, authorized.

Realizing law advocacy and enforcing the national competition policy is considered an equally important part for ensuring that the market activity of the Competition Authority has a real effect. Since the level of law enforcement in this regard has a direct effect on the degree of freedom with which markets operate, it is necessary for other regulatory entities and public institutions to closely cooperate with the Competition Authority. In this context, the Competition Authority has had a mutually beneficial cooperation with the Authority of the Electronic Communications and Postal Service (TRE), enabling the provision of recommendations based on the market analysis of the regulatory entity for mobile and landline phone services. Another similar collaboration is realized with the Energy Regulating Entity (ERE) in response to the invitation to participate in the

roundtable organized by stakeholders before ERE made the decision to apply new tariffs of electricity for 2010 by KESH Sh.a., OST Sh.a. and OSSH sh.a. Regarding this aspect of law enforcement, the Competition Commission has taken 10 decisions that contain direct recommendations that are judged to be taken into account by regulatory bodies or other public institutions because they directly affect market functionality. However, it is noted that the implementation of legal obligation by regulatory authorities and public institutions has not reached the needed extent to maximize the significant impact on the well-functioning of markets. Evaluations of the legal and regulatory framework, as well as the provision of relevant recommendations in cases of restricted free and effective competition in the market, are mainly initiated by the Competition Authority itself.

This year marks the confirmation by the District Court of Tirana of the commission's decisions to penalize two mobile phone companies for abusing the dominant position in the market, thus creating the first Albanian court case in defense of free competition.

Another aspect of the activity of the Competition Authority is the perfection of legal instruments and relevant legislation reflecting the experience gained in law enforcement, which should not be considered as an end within itself, but as part of a strengthening communication system and culture that promotes awareness and advocates competition among all market agents. More specifically in this regard, there has been made considerable progress in the way penalties and fines are calculated and paid, the way horizontal and non-horizontal concentrations are evaluated, the way the Authority handles complaints under its own internal structure. Furthermore, a competition culture is enhanced through greater attention to transparency and promoting diversity of opinions when making specific decisions about relevant issues presented. These and other measures express the degree of institutional consolidation of the competition in Albania.

Advocating the values of free competition can not be undertaken without a clear plan of action that aims at enhancing a competition culture not only for the business community, but also for the community of lawyers or judges, and the staff in public administration institutions. These ideas have been nourished through several seminars and workshops organized by TAIEX, OECD and the Regional Centre of Competition in Hungary, as well as the many round tables funded by the GTZ or the government budget to evaluate legal acts proposed. In this context, last year the Competition Authority hosted the international conference on Competition Day, and the Competition Commission urged the government to make March 3rd the "National Day of Competition" to promote competition in Albania.

## **II. Organizational structure and strengthening administrative capacity**

The Competition Authority carries out its activity through the operation of 34 employees, of whom 20 are technical staff made up of economists and lawyers (11 economists and 9 lawyers). The philosophy of human resource management is based on increasing the level of expertise of our staff by investing in employee training. This is a determinant factor in the degree of functional independence of the institution. Currently, 10 members of the technical staff have completed graduate-level coursework, while 3 others are currently attending different programs.

### **II.1. Organizational Structure**

The structure of the Competition Authority has not changed during 2009, and preserves the form presented by the Albanian Parliament Decision Nr. 182 dated 12/05/2008.

Aiming at protecting and motivating employees that are directly involved in market investigation, and in accordance with Article 27 paragraph 3 of the Law "On protection of competition", as well as based on decision of the Council of Ministers Nr.442 dated 27.4.2009, has changed the title of 8 employees from "specialists in the Department of Market Supervision and the Sector of Investigation and Legal Affairs" to "inspector." This change was made at the request of the Competition Authority.

The decision-making body for the Competition Authority is the Competition Commission, while the Secretariat is the administrative and investigative body.

The organizational chart of the Competition Authority is located in Appendix 2.

#### **II.1.1 The Competition Commission**

The Competition Commission, as a collective body, has exercised its functions to investigate trading practices that limit free and effective competition in the market.

During 2009, two changes have occurred in the Competition Commission: first, the mandate of one member of the Committee had expired, and, second, a new proposition was made by the President of the Republic and approved by the Parliament. The Competition Commission currently consists of four members, out of the normal five that are required by Law Nr.9121, date 28.07.2003 "On protection of competition" (as amended by Law 9499, dated 03/04/2006).

During 2009, which could be considered a debate year, the Competition Commission organized its work and based its decision making procedures on the values of independence, objectivity and accountability.

#### **II.1.2 The Secretariat**

The Secretariat of the Competition Authority is the administrative body mandated by law to carry out monitoring and investigation activities to ensure free and effective competition in the market. The Secretariat consists of three divisions and one sector – the analysis sector. This body monitors market conditions, conducts investigations and



prepares administrative reports on those investigations, which are later made available to the Competition Commission for easing decision-making.

#### **II.1.2.1 Market Surveillance Directorate**

The Market Surveillance Directorate oversees enterprise conduct under the limitations imposed on them by the Law "On protection of competition" and the National Competition Policy. This department consists of three sectors, each of them covering one of the three main pillars of competition law in Albania: market abuse with a dominant position, anti-trust, and market concentration.

#### **II.1.2.2 The Legal Procedures Department**

The Legal Procedures Department works on supporting the results and decisions of the Secretariat, as well as drafts regulatory acts pursuant to the Law "On protection of competition," and represents the Authority in litigations where affected parties have raised claims against Commission's decisions. This department oversees two distinct sectors: the sector for Legislation and Procedures Approximation – which works to approximate domestic law with the European Union, as well as pursuit the Competition Authority's obligations arising under the SAA, as defined in the National Implementation Plan of the Stabilization and Association Agreement (NIPSAA) – and the sector for Legal Affairs and Investigation – which prepares and represents the Competition Commission in litigation proceedings.

#### **II.1.2.3 Internal Services Department**

The Department of Internal Services is the structure supporting the operation of the Competition Authority in accomplishing its mission to preserve free and effective competition in the market. This department manages human resources in accordance with the requirements and procedures laid out in law no. 8549, dated 11.11.1999, and titled "The status of civil servants". This department also schedules capacity enhancement training programs using all available resources such as OECD, ICN, RCC, ITAP, the University of Tirana, etc.

There were three new hires that joined the Authority in 2009 under the title of "Inspector" and under the provisions of law no. 8549 "For the status of civil servants", two of which were hired to replace two leaves for other institutions to fulfill their respective needs for staff.

Another duty of this department is to cover the Authority's financial operations and maintain full responsibility for all drafting and administering procedures of budget funds, all done in accordance with the legislation regarding management of the Albanian state budget.

#### **II.1.2.4 The Research and Analysis Sector**

Based on decision nr.96 dated 30.04.2007, which approved the organizational structure of the Competition Authority, this sector has the mission to monitor the conditions and conduct economic analysis in different market structures. Its main task - pursuant to law no. 9121, dated 28.7.2003, titled "On protection of competition" – is to identify spots of

potential anti-competitive activity in the markets. Through periodic collection of information, data evaluation and analysis performed in the form of market research, this sector aims at performing a general assessment of market conditions, and monitor market activity as closely as is necessary for other sectors in the Competition Authority to make informed and rational decisions.

Despite the deployment of workers in specific sectors or departments, the main job feature in the Competition Authority is group work. Therefore, in any investigative case, teams are composed of representatives from different sectors and departments.

## **II.2 Strengthening administrative capacity**

During 2009 the employees of the Competition Authority were trained in various programs at home and abroad in the field of competition, especially in those areas that aim directly at strengthening administrative capacity in law enforcement. Thus the training programs held by the OECD, TAIEX (EU), and the International Competition Network (ICN) were attended by 25 employees, all of which are officers in charge of operational duties in the context of enforcing the law "On the protection of competition." Training programs were selected and organized to fulfill the capacity needs of specific sectors of the Secretariat, giving considerable weight to new staff additions. Members of the Competition Authority have interacted among them through presentations of case studies and debate sessions revolved around the major issues of interest for Competition Authorities in developing countries.

The European Commission, through the TAIEX training agency (Technical Assistance and Information Exchange Instrument) held a training session for the staff of the Competition Authority in March 2009 in Tirana. This session aimed at improving the staff knowledge on competition law enforcement in small economies, such as Albania. The chair of the Albanian Competition Authority presented the challenges that face the Authority in enforcing the law on competition and the National Competition Policy in countries with small and relatively informal economies, as is the case for Albania.

During 2009, the OECD Regional Centre for Competition in Hungary chose Albania as the workshop venue to hold the first international workshop outside Budapest. This workshop was held in June in Durrës with the participation of representatives from more than 15 countries, and focused entirely on cases investigated by the Competition Authority during its 5 years of activity.

Also, all civil servants have attended required and selective courses organized by the Training Institute of Public Administration to fulfill capacity needs in different departments of the Competition Authority.

### **III. The work of the Competition Authority in enforcing the three pillars of the competition law**

#### **III.1 Prohibited Agreements**

Agreements, which aim at preventing, limiting, or distorting free competition in the market – particularly agreements that: directly or indirectly fix buy/sell prices, or any other trading condition, limit or control production, market behavior, technical development or investment, share markets or sources of supply – are always prohibited. Price fixing and restriction of production cause customers to pay higher prices or not receive the desired quantities. Prohibited agreements undermine social welfare, create inefficiencies, and consumer welfare is ultimately channeled to the parties that participate in the agreement.

The Competition Authority has been monitoring, analyzing and investigating several market agreements or practices, aiming to spot welfare-reducing behavior through coordinated exchange between market operators. Some of these cases include the following:

##### **III.1.1. Thorough investigation of the mandatory insurance product, known as the Internal TPL**

As it was reported last year, after the appeal trial, the Competition Authority continued to deepen the investigation procedures in the insurance market for a mandatory insurance product – interior TPL. At the conclusion of the investigation, the Competition Commission decided by majority of votes – through decision No. 105 dated 24.03.2009 – to recommend the Financial Supervisory Authority to report to the Competition Authority about any normative acts that might affect market competition, or otherwise send similar materials that possess high importance in terms of restricting competition or altering the market structure for mandatory insurance.

##### **III.1.2 Thorough investigation in the fuel market**

As shown in the 2008 annual report, the Competition Authority had initiated its thorough market investigation process on the import and wholesale of oil (fuel) in those companies that have significant market power. This investigation was intended to reveal possible anti-competition practices in the market. After the appropriate investigation procedures took place, the Competition Authority Secretariat presented its findings in an investigation report in line with the requirements of Article 39 of the Law "On protection of competition". The Competition Commission organized several hearings with interested parties to review their respective files, as well as give rise to their claims in written or verbal form.

During the investigation of the fuels market, and to arrive at a more objective analysis regarding all factors that make the market functional, the Competition Authority has taken into consideration not only the behavior of companies operating in the wholesale sector, but has also considered the market effects of normative acts and practices followed by tax and customs authorities. These stakeholders raised their concerns during

hearings with the import and wholesale traders of fuels. The proceedings concluded with the Competition Commission majority voting for decisions number 117 and 118 dated 29/05/2009.

The Competition Commission, in decision No. 117 dated 29.05.2009, stated that during the period under investigation, the import and wholesale market of fuels did not provide enough evidence to prove that coordinated behavior between import and wholesale companies was taking place. Given these results, the Secretariat decided to expand the scope of its monitoring to include domestic oil production and distribution companies at the wholesale and retail level.

Decision No. 118 dated 29.05.2009 focused on some recommendations for laws and legislation that affect the level of competition in the market of import and wholesale of petroleum and considered a number of specific legal and sub-legal acts that have an impact on free and effective market competition, providing relevant recommendations to the Albanian Parliament for amending Article 40 of the Customs Code, as well as parts of the Law on Hydrofuels No. 8450 dated 24.02.1999, and titled "On the processing, transportation and marketing of oil, gas and their derivatives." Additional amendments were made to point 9.4 of Directive No. 17 dated 13.05.2008 of the Ministry of Finance regarding the "Value Added Tax." This amendment included the set of a deadline, which will enable better price transparency.

### **III.1.3 Thorough investigation of the import market of wheat and flour production**

As previously reported in October 2008, a thorough investigation procedure initiated to cover the wheat import market and the production and sale of flour for making bread, covering a period from January 2005 to August 31<sup>st</sup>, 2008. The thorough investigation process was followed through by the Secretariat of the Competition Authority in 2009. During the inspection phase, records were provided to prove the existence of an illegal horizontal agreement between two operators that had integrated vertically and fixed prices for a certain period of time. Under Article 4 paragraph 1, letter "a" and "c" of Law No. 9121 "On protection of competition," this agreement is forbidden, because it prevents, restricts, or otherwise distorts free competition in the market.

Following the proceedings, the Competition Commission Decision Nr.113 dated 19.05.2009, decided to ban the agreement between the following two companies "Bloja" sha and "Atlas" Sha, as it is inconsistent with Article 4 of the law on competition. The Competition Commission, after reviewing the report of the Secretariat and after reviewing the claims of both companies in hearings organized by the Competition Commission as well as claims in written format dated 27/07/2009 and sent to the Competition Authority, declared, under decision No. 125 dated 08.10.2009, that "Bloja" sha would receive a fine of 38,548,251LEK, while "Atlas" sha would be fined 27,848,563LEK for violating Law No. 9121 "On protection of competition."

Under decision No. 126, dated 08/10/2009, and in assessing the behavior of these two companies in the market, the Competition Commission decided to pursue public interest action in support of consumers' interest, and therefore decided to make several

recommendations to the interested public institutions: the commission's recommendations for the Ministry of Finance and the General Customs Directorate asked them to review reference practices in the market for importing and processing wheat, while giving high considerations to those practices that might cause limitations to free market competition; another recommendation went exclusively to the General Customs Directorate to extend their due diligence in considering competition effects when evaluating companies in this market; the Institute of Authorized Public Accountants was recommended to step up their assurance process of financial statements accuracy for both these two companies, considering their size and market power.

#### **III.1.4 Thorough investigation in the public procurement market**

The public procurement market is important for two reasons: its volume reaches almost 15% of GDP and thus makes it an essential factor when discussing about market competition; and second, public procurement is done with taxpayers' money, therefore bidder transparency and efficiency is impertinent. Consequently, the Market Surveillance Directorate, under Article 28, Law Nr. 9121, dated 28.7.2003 and titled "On protection of competition", monitored and analyzed the market conditions associated with restriction of market competition in the procurement of new vehicles. It then proposed opening the preliminary investigation process of the procurement market for new vehicles. The global goal of this action was to assess whether or not there are companies that operate under anti-competition rules that violate Law no. 9121, dated 28.07.2003, titled "On protection of competition."

The methodology used in this investigation spurs from OECD-supported best practices. Agreements between participating parties in public procurements are prohibited in all OECD countries, and could, therefore, be sanctioned under the appropriate legal acts. The preliminary results of the investigation in the market for new cars procurement showed that there exists potential evidence to prove that there has been coordination of efforts among several companies when bidding for contracts.

Following the results of the preliminary investigation, the Competition Commission decided to open a thorough investigation procedure, as laid out in Decision No. 135 dated 21.12.2009. The object of this investigation was to assess in detail if there are competition restricting agreements that took place between companies when bidding to supply new cars. A preliminary assessment of a specific contract between two companies has commenced, and the Authority is currently pushing forward its investigation.

#### **III.1.5 Exceptions of prohibited agreements**

For the sake of economic efficiency, the Competition Authority, under the mandate received by Law No. 9121 dated 28.07.2003 and titled "On protection of competition," can give exceptions to companies regarding the scope of prohibited agreements. The agreement must contribute to improving production, product distribution or promoting technical or economic progress, and must also ensure that consumers receive equal parts of the benefits derived. So, the restriction must be necessary for achieving these objectives. But the agreement should not give the parties an opportunity to eliminate competition as it related to the core part of a respective product.

In 2009, the Competition Authority received a request for exemption by Tirana International Airport Shpk and AIR BP Albania, Sha, and allow these two companies to enter into an agreement for supplying fuel to landing aircrafts in Mother Teresa International Airport. The report prepared by the Secretariat of the Competition Authority concluded that this agreement positively affects the quality and delivery of service, it lowers service costs, it allows a more equal participation rate by consumers, it gives incentives for improving professional knowledge and research, it improves safety of the products and services it offers, and it covers all financial responsibilities that might arise from its operations.

Before the decision to exempt these companies from the ramifications of the prohibitive agreements clause was taken, the Authority published the request and justification so that affected third parties could voice their objections. Based on the report submitted by the Secretariat, and in absence of any claims raised by third parties, the Competition Commission decided to halt the application of Article 4 of Law no. 9121, dated 28.7.2003 "On protection of competition", as stated in the Decision No. 116 dated 29.05.2009.

### **III.2. Abuse of dominant position**

The behavior of companies that enjoy a dominant position in the market has been one of the main pillars of work for the Competition Authority in 2009. These firms can abuse with their dominant position in two ways: first, they can make other firms exit the market involuntarily, and, second, impose unfair restrictions on competition through different price schemes and trading practices that harm their clients. The Commission has proposed concrete steps to regulate market behavior for those firms that have a dominant position in the market. These firms include small competitors as well as competition practices among those companies that already have considerable market share.

#### **III.2.1 Thorough investigation of the market for T-bills**

In 2009, the Secretariat of the Competition Authority finalized the thorough investigation process for Raiffeisen Bank in Albania regarding the trade of t-bills in the secondary and primary market. This investigation had started on December 2008. Based on the investigation report derived by the investigation process and prepared by the Secretariat, the Competition Commission organized consultation sessions with representatives from the Ministry of Finance, Bank of Albania and the Financial Supervision Authority to get their input on several proposed draft-recommendations for potential changes in the normative and operative acts that affect the sale of t-bills in the primary and secondary market. Also, during January 2010, the Competition Authority held hearing sessions with legal representatives from the bank under investigation. Currently, the party has submitted additional written information and raised other claims regarding its position in the market. These will be subject to the ongoing decision-making process of the Commission.

#### **III.2.2 The investigation process in the market for D2 Diesel**

During 2009, the Competition Authority decided to start monitoring the market behavior of ARMO Sha after 85% of its stock was sold to Anika Mercuria Associated OIL, Sha.

Above all, the D2 Diesel fuel was of special interest. During this monitoring phase, the Competition Authority has asked ARMO to submit the necessary information regarding the production and trade of fuel. However, despite repeated requests by the Authority to make information available, the company has generally sent incomplete and late information. In these conditions, the Secretary General, through decision Nr.262 dated 27.07.2009, decided to open the preliminary investigation process on ARMO regarding its production and trading practices of D2 diesel fuel.

Based on the findings of the preliminary investigation, the Competition Commission, through decision Nr.129 dated 19.11.2009, decided to deepen the investigation in the market for D2 diesel fuel, which aims at proving ARMO's abuse of dominant position. This process is estimated to be completed in the first quarter of 2010.

### **III.3 Controlling Market Concentrations**

In competition policy, generally speaking, concentrations of companies are considered processes that lead to increased efficiency and reduced costs. However, during any assessment process, we should not bypass the potential of concentrations being turned into dominant position structures within a respective industry. In this context, the analysis of the change in market structure may have severe consequences on trade characteristics in other markets, and it is therefore one of the main tasks of the Competition Authority as mandated by the Law "On protection of competition."

During 2009 the Competition Commission has authorized 8 concentrations and has justified several other transactions, which did not alter control power in the market, or that did not meet the minimum legal requirements to be considered a concentration that hinders competition (such an indicator is based on the volume of sales to be achieved after the concentration happens) and that must, therefore, seek authorization from the Competition Authority.

#### **III.3.1 The Financial Market**

Through decision nr.106, dated 23.04.2009, the Competition Authority allowed the company *Vienna Insurance Group* to buy 87% of company *Sigma Sha*, as it was justified that this transaction did not materially alter the general structure of the Albanian insurance and private pensions market. Moreover, the involvement and experience of a foreign investor should positively affect the development of innovations in the Albanian insurance market.

The Competition Commission, through decision nr.119, date 26.06.2009 authorized the obtainment of full control of the company *Credit Bank of Albania* by *Anika Enterprises SA*.

In addition, through decision nr.128 dated 05.11.2009, the Competition Commission authorized the majority shareholder *Calik Financial Hizmetler A.S.* to purchase stock held by EBRD and the IFC in the company *National Commercial Bank, Sha*.

#### **III.3.2 Civil aviation market**

Article 49 of the law on competition gives the option to the Competition Commission to start checking for instances of market concentration on its own accord, which was done in 2009 for the first time. A concentration transaction between Advanced Construction Group LLC and Albanian Airlines Mak LLC was completed without prior notification of the Competition Authority and in violation of the provisions of the law On Protection of Competition." "Consequently, the Commission decided to control the concentration of ownership of Albanian Airlines Mak LLC to Advanced Construction Group LLC in its entirety. During the assessment procedure of this specific transaction, Advanced Construction Group LLC did not respond to repeated requests for information, including the ones that sourced from the Competition Commission directly, an obligation for companies under article 73 of the law on competition. Therefore, sanctions were given to this company under decision nr. 123 dated 18. 09. 2009.

Under decision nr.108 dated 23.04.2009, the Commission authorized Deutsche Lufthansa AG to take control of 75% stake in Austrian Airlines AG. This transaction was allowed as no material changes in the market structure could be observed.

### **III.3.3 The energy sector**

Through decision nr.111 dated 15.05.2009, the Commission authorized CEZ AS to obtain control over 76% of the Albanian OSSH, Sha., stakes which were owned by the government. OSSH Sh.a. is the only public operator in the domestic market of electric energy distribution. Their main objectives are to (i) supply and sell electricity to subscribers, excluding qualified customers, (ii) to maintain and operate the electricity distribution network as well as the machinery and equipment under that structure, (iii) to manage the distribution network of electricity, and (iv) to improve the distribution network of electricity. Becoming a stockholder of 76% of company's ownership is expected to have positive effects on consumption increase of electricity by 5% each year, as well as to diminish losses in the system, thereby improving net cashier revenues and the overall supply chain. It has to be noted however that although the transaction of power concentration on CEZ AS of OSSH Sha did not materially alter the market structure, the Competition Authority is actively monitoring the company's behavior in the market.

Through decision nr.127 dated 15. 10. 2009, the Commission authorized the concentration of ownership in BP Greece Limited by Hellenic Petroleum SA through the purchase of a 100% stake in the trading activity of BP Hellas SA. Hellenic Petroleum conducts its activity in Albania in both the wholesale and retail market, through Global Petroleum Albania Sha, which has 10% of the market, and through Elda Petroleum Albania, Shpk, which has 5% of the market, respectively.

### **Other concentration cases**

*Sigal SHA*: This transaction brings a reduction in the number of shareholders as well as changes in share capital and voting rights within the society Sigal ShA, without changing the form of control. It is not, therefore, considered a case of market concentration according to the interpretation that was made to article 10 of the Law. The Authority sent



a notification letter to the company that, given our analysis, this case is not considered market concentration and therefore does not need to be authorized.

*Cosmofon / Telecom Slovenia*: this case was closed with a notification letter that stated that the case is not one of market concentration (the transaction is subject to obtaining control of a company outside the relevant product market and the geographic operation of AOL, of which *Telecom Slovenia* has major ownership).

*Bindi Integrated Services (BIS), Sha / AlbaniaOnline, Shpk (AOL)*: Clarification letter was sent to state that the transaction is not subject to concentration control procedure, since realized sales turnover in the domestic market by the companies participating in the transaction does not exceed the legal threshold provided. Market concentration is therefore not an issue and is not subject to authorization by the Competition Authority.

*CEZ AS / Lumius spol srl*; and *CEZ AS / Jadrova a vyradovacia spolocnost, AS*: There are two transactions that according to Article 10 paragraph 1 letters a) and c) of Law no. 9121, date 28.07.2003 and titled "On Protection of Competition" are considered as market concentration transactions. However, being that the participating parties operate outside the relevant product and geographic market of *OSSH, Sh.a.*, these transactions are not subject to authorization by the Competition Authority.

#### **Various transactions carried out within the group:**

*Mak-Albania LLC / Mohammed Abdulmohsin Al Kharafi & Sons W.LL*. The transaction occurs within the Al Karafi group and it is regarded as an internal restructuring of the group itself, and it does not cause material changes in the control structure to be considered a case of market concentration in the meaning of Article 10 of Law Nr.9121, date 28.07.2003 "On Protection of Competition", as amended.

The transaction realized within the stockholders of the company aimed to change the stock capital for *Calik-Seker Konsorsium Yatirim AS*. This transaction is not considered a case of market concentration as it happens within the consortium, where *Calik Holding* gains control of 76% of the capital. Therefore, this is an action that changes stockholders, and has no relevant consequences on the quotas of *Calik Holding* at the National Commercial Bank.

Moving on to the transaction that involved Intesa San Paolo Bank, the Competition Authority issued a clarifying statement considering the transaction as a subject that is not covered by the provisions of Article 10 of the law on competition. The transfer of ownership was not considered a case of market concentration.

Another transaction, that between *Cosmote* and *AMC Sh.a.*, was not considered a case of market concentration, because the purchase of 12.5% of ownership stock by the former from the Albanian government did not change the influential control in *AMC Sh.a.*

### **III.4 Monitoring**

#### **III.4.1 Monitoring Freelance Professions**

Pursuant to Article 28, letter (a) of the law no. 9121, dated 28.7.2003 and titled "On protection of competition", the Secretariat monitored and analyzed the market conditions on the restriction of competition in relevant markets for freelance professions such as notary services, lawyers, pharmacists, dentists, auditors and licensed public accountants.

Monitoring was conducted because there is substantial information asymmetry in these services between buyers and suppliers: consumers might not have enough knowledge to judge on the quality of a certain service and hence their purchasing decisions become more difficult; the services offered affect not only the direct parties involved in the transaction, but third parties as well; lastly, these services are considered as public welfare enhancing services, and they benefit society at large.

Monitoring in this market consisted in reviewing the regulatory and legal packets that apply to this market, so that the necessary adjustments could be made, and the needless regulations be removed. This market is considered as one with heavy regulation. There are a total of 5 regulative categories that apply to freelance professions: fixed prices, recommended prices, advertising rules, entry demands, and reserved rights. These practices, together with other rules of business administration, can limit or eliminate competition among suppliers.

From the information gathered, which included both reviews of the legal basis as well as review of other freelance profession markets, it could be observed that the Albanian market for these free professions approximates that of the EU.

#### **III.4.2. Monitoring and reviewing claims of open network drugstores against ISKSH**

The Competition Authority monitored the possible restrictions of competition based on a complaint from the union of independent drugstores Open Network regarding the ISKSH's administrative Council decision No. 50, dated 12.12.2008 and titled "On the approval of contract templates between ISKSH, drugstores and pharmaceutical agencies, gross importers, drugs distributor, and the tripartite agreement between ISKSH-QSUT-Drugs Warehouses in 2009". The Competition Commission, after reviewing the complaint dated 23.01.2009 of the independent trade union of Open Network drugstores, the Secretary-General report, and the ISKSH's consultative sessions with the Competition Commission on April 23<sup>rd</sup>, 2009, decided, through decision no. 109 dated 04.05.2009, to recommend to the Administrative Council of the Institute of Healthcare Insurance to review point 1 of its decision no. 50, dated 12.12.2008 regarding "the approval of contracts between ISKSH, drugstores and pharmaceutical agencies, warehouse importer, distributor of drugs and the tripartite agreement between ISKSH-QSUT-Drug Warehouses in 2009".

The sector of research and analysis has continued to monitor this market and is in the process of drafting the report on the pharmaceutical market.

### **III.4.3. Monitoring and reviewing the claim of the Service for Personal Safety and Security (SPSS)**

The Competition Authority examined the companies' complaints, in where they claim that the drafting of bidding documents and requests for qualification had violated the provisions of the law on public procurement practices.

The Competition Commission, through Decision No. 114 dated 26.05.2009 recommended to the General Directorate of Concentrated Procurements near the Ministry of the Interior to increase the number of lots available for public bidders regarding personal safety and security in public institutions such as the Prime Ministry, the ministries and the other subsidiaries under their command. The recommendation specifically asked that, "in order to facilitate the submission of applications, they should be grouped according to match the size of the contracting authority with the individual economic operators. This way it is possible to increase competition among operators that meet the respective levels of demand, Another recommendation went for the Public Procurement Agency that depending on the nature of the procured contract, contracting authorities should divide contracts into lots (i.e. categories) in such a way as to enable a much broader participation of economic operators, so that public procurement procedures can make better use of public funds, encourage the participation of small and medium economic operators, and promote competition among them.

### **III.4.4 Monitoring the phone communication market**

During 2009 the Competition Authority has considered the complaint against the company *AMC Sh.a.* made by *Abissnet Sh.a.* This complaint concerned the termination of interconnection services by *AMC Sh.a.* to *Abissnet Sh.a.* and for not subscribing to the new interconnection agreement directly. The Competition Authority, after examining the complaint of *Abissnet Sh.a.*, concluded that the request of *Abissnet Sh.a.* on the lack of subscription to a new interconnection agreement with *AMC Sh.a.*, the Authority has no mandate to decide over the issue, as the mandatory legal procedures that should precede action by the CA had not been followed, as mandated in the law "On electronic communication."

### **III.4.5 Copyright**

During September 2009 the Competition Authority has monitored the copyright market. It was noted during this monitoring that the market of copyright and other rights associated with it is in its initial stages. The main problem that exists in this market is the high level of piracy, which brings the deformation of market due to its not operating according to market rules. The exchange of copyrighted work through pirated websites and Internet in general makes it difficult for the respective authorities (such as the Albanian Bureau of Copyright) and their infrastructures to control market rules.

For reasons mentioned above it was decided to organize a workshop with the Albanian Bureau of Copyright aiming at enhancing the culture of competition in this market. The Competition Authority may also intervene ex-ante in the market for intellectual property, helping groups such as the Association of Authors' Rights understand the rules and elements of competition in this market.

### **III.4.6 Monitoring the banking market**

#### **- The market for deposits and loans from June to September 2009**

The monitoring process in this case aimed at assessing the seasonal behavior of second level banks during campaigns of increasing deposits interest rates. Information was gathered by the Bank of Albania on several deposit terms, including deposits and loans volume according to specific currencies used, information on the maturity of deposits and loans, information on the type of borrowers, as well as interest rates. It was concluded from this study that there has not been any attempt by banks of the second level to use predatory pricing or dominant position in the market. The rise of deposit interest rates was used to gather the liquidity in the market, seasonally created by the entrance of immigrants in Albania. Therefore, the rise in interest rates was not a result of anticompetitive actions by banks. This aggressive behavior by banks during this period has been done to prepare for the lack of liquidity due to the global financial crisis that had spread to almost the entire world in 2009, and that was estimated to affect Albania as well.

#### **- Monitoring banking retail services**

During 2009, the Competition Authority started monitoring the market for banking services, the goal of which was to evaluate the level of transparency and tariffs for services offered by second level banks. To make this monitoring possible, the task force worked in two directions: (i) bank transparency in regards to information given to clients, and (ii) tariff levels applied for servicing checking accounts, check clearings, loans, overdrafts, and plastic cards.

The completion of monitoring activities will be based on the methodology used by the European Commission and OECD regarding the market for banking services. This methodology is expected to be complete by the first quarter of 2010.

### **IV. Advocating Competition**

Advocacy is one of the main aspects of the Competition Authority's work, and is clearly stated in the law of the protection of competition and in the national policy for competition. The competition commission during 2009, has approved more than ten decisions related to recommendations for review of legal and sub-legal acts, which have directly or indirectly affected market functioning based on the philosophy of free competition.

Last year this function has been accomplished in two main directions: evaluating legal drafts by public institutions and regulatory entities or market analysis realized by the latter; evaluation of normative acts that have been analyzed during monitoring or investigation processes conducted by the Competition Authority in the markets mentioned in the preceding chapter.

#### **IV.I Recommendation on project normative acts**

The Competition Commission has given its opinion through decision no. 102, dated 17.2.2009, regarding the draft law for the legal audit of registered public accountants and licensed auditors. In addition to the Ministry of Finance, the Authority received an evaluated request from the national Institute of Auditors in which it was requested to review if the auditors' market is distorted or not. The Competition Commission stated that the law under review does not limit or reduce competition in regards to free lance professionals. This decision was confirmed by the Constitutional Court as well.

On a different case - the draft law on the public supply of titles - the Competition Commission, through decision no. 110 dated 15.05.2009 has decided to apply the provisions of the law on the protection of competition and make it mandatory for subjects to notify market concentration that are due to gain of control.

#### **IV.II Recommendations on normative acts based on market monitoring, investigation and claims**

After the investigation process of the mandatory internal insurance product called TPL, and the well functioning of the related market the competition commission, through decision no. 105 dated 24.03.2009, voted through a majority that the Financial Supervision Authority needs to review the normative acts and all subsequent changes in market structure. This case was carried over from 2007 as it was suspended by a Tirana Court order.

Based on the complaint of the independent union of open network drugstores the Competition Commission re-evaluated the decision no 50 dated 12.02.2008, of the ISKSH's Administrative Council. The Commission decided, through voting majority in decision no. 109, dated 4.5.2009, to revisit point 1, of decision no. 50 which stated that the reimbursement fund ought to be shared equally among drugstores, thus putting conditions on the selections of the end customers.

Based on the complaints of the personal safety and security services, the Commission evaluated the legal possibilities of improving competition in the public procurement of such services. The Competition Commission through decision no. 26.05.2009 recommended to match size of demand with the size of supply so that a higher level of competition can be achieved and different size operators can enter the bid for comparable size of service demand, as well as to allow the participation of small and medium enterprises.

As it was made clear in the chapter that preceded regarding the import and wholesale of fuel, the Competition Commission through decision no. 118, dated 29.05.2009 recommended some necessary changes of several legal acts that affect higher competition in this market.

Also, during the evaluation phase of the factors that have affected the well functioning of the market for wheat, import, and flower and bread production, the Competition Commission has recommended to the Ministry of Finance, to the General Directorate of Customs and to the General Directorate of Taxes, through decision no.126, dated

08.10.2009, to consider the effects of the re-evaluation practices and the reference prices in respective markets as they relate to competition. The Commission also recommended to the Institute of Public Accountants to certify that the financial statements of those subjects that are under investigation present a true and fair view of the subjects' financial position.

The Competition Commission, through decision no. 124, dated 23.09.2009, evaluated the report of the Electronic and Postal Communications Authority, titled "Mobile Phone Market Analysis: Gross Termination Market and the Retail Market of mobile public services". The Commission made some recommendations regarding the methodology through which fees are regulated for contract subscribers and electronic text messages, as well as regarding further liberalization of the market through the entry of the fourth operator.

The Competition Commission, through decision no. 130, dated 23.11.2009, evaluated the report of the Electronic and Postal Communications Authority, titled "Ground Line Market Analysis: The retail market for ground line access and phone calls from fix locations; and the gross termination market, particularly the origination and transit in fixed networks-public consultation". The Commission recommended that the way tariffs are evaluated and applied be comparable with the practices used by the European Union Countries as well as have tariffs that are based on service costs.

Based on the round table organized by the Energy Regulating Entity for getting opinions of interested third parties on the new tariffs applied by KESH Sh.a, OST Sh.a, and OSSH Sh.a, the Competition Commission decided through decision no.133 dated 14.12.2009, to recommend a cost based approach to tariffs and a capital return ratio. These recommendations found support in the Energy Market Model and in the Regulatory Declaration.

Despite the recommendations given we can observe that public institutions do not fully apply the recommendations given by the Competition Authority which is in violation of article 69 of the law for the protection of competition. In addition the recommendations made by the Competition Commission have not been taken in consideration by the regulatory institutions despite being drafted after relevant round tables with these institutions had been organized.

The Competition Authority has relentlessly stated that the protection of competition cannot be achieved by one institution but it requires that a free market mentality be nurtured by all those public and regulatory institutions which through their legal and normative acts directly or indirectly affect the well functioning of the markets based on free and efficient competition.

#### **IV.III The draft and approval of the sub-legal framework**

After the Stability and Association Agreement between the European Community and the Republic of Albania was signed it was important to complete a full approximation of Competition Law with *acquis* of the EU. Under the National Plan for the Enforcement of the Stability and Association Agreement, the Competition Commission has a duty to

continue a legal alignment with the European Union body of law and such an activity will continue to be a priority for this institution.

The secondary legislation has also been important and is completed with codes, guidelines and rules which match the reference guidelines, decision and recommendations of the European Commission as adapted locally and clearly define in detail the provisions of the foundation treaty of the EU regarding competition. The sub-legal acts that are drafted and approved in accordance with the law on the protection of competition aim at facilitating procedures during investigating and controlling market concentration. Consequently in the last year the Competition Authority has drafted and approved the following codes and guidelines:

The Competition Commission, through decision nr. 120 date 10.09.2009, has approved the regulation on “Fines and easing from them”. This regulation aims at approximating two acts of the European Community: Notifying the European Community “on fines and the downgrading of them in cartel cases” (2006/C 210/02), as well as the European Community “Guidelines on the way fines are executed according to article 23/2/a of regulation nr. 1/2003” (2006/C 210/02). The goal of these two regulations is to facilitate the way fines are given and executed by applying the practices of European standards, as well as define when a subject has immunity against these fines. It is also important to stress cooperation with other market agents. By defining prohibited agreements as one of the ways to hinder and restrict competition in the market, these guidelines provide useful clues for companies that enter into these agreements to cooperate with the Authority so that their penalties and burden can be eased further. In cases where these companies decide to cooperate, the regulation as well as Article 77 of the Law on the protection of competition, guarantee immunity for these companies.

The Competition Commission, through decision nr. 121, date 10.09.2009, approved the regulation titled “Low importance agreements” (de minimis). This regulation has aimed at approximating the European Commission Notification “on those activities that are small enough not to hinder and restrict competition, as laid out in Article 81/1 of the Founding Treaty of the European Union as it concerns competition. This regulation aims at defining which activities are considered of low important to hindering competition, and thus makes them not eligible to the application of Article 4 of the law on the protection of competition. In this regulation, we can find the following items: the goal of the activity, ventures classification system based on the structures approved by law regarding small and medium enterprises, the part of market that these activities should operate in to be deemed of low importance, and so forth. This regulation puts a regulatory framework around Article 4 of the law, and it tells of the cases where activities of companies are of such low importance to hindering competition that they should be allowed for them to have a chance to survive under competition as well as bring positive prospects to the end consumers.

The Competition Commission, through decisions nr. 131 and 132, date 07.12.2009 has approved the guidelines “on the evaluation of horizontal concentrations” and the guidelines “on the evaluation of vertical concentrations.” These guidelines, in general, are

explanatory in nature and aim at presenting concise information for third parties to see how the Authority evaluates cases of market concentration between two parties that operate either in the same or in different market segments. These guidelines also support the work of the Competition Authority during its work of evaluating concentrations under the mandate given by Article 10 of the law on protection of competition nr. 9121, date 28.07.2003. Also, these guidelines give information on the tools and ways to analyze possible anti-competition effects and other factors of market behavior such as purchasing power, barriers to entry, and efficiency gains by parties, among other things. During the drafting of the guidelines, it has been taken under consideration that no overlap should happen in the authorities given under law, as well as make sure that these practices match and are approximated with the guidelines of the European Commission “on the evaluation of horizontal concentrations” and the guidelines “on the evaluation of non-horizontal and conglomerate concentrations.”

The decision nr.155, date 15.05.2009 of the Competition Commission approved some addendums and changes to the current regulation “on the functioning of the CA.” These amendments aim at improving group work during investigation processes of the Competition Authority, at providing clear guidelines when presenting the final investigative report, at clearing up the methods to be used when evaluating complaints based on the experience of other member countries of the ICN, at approving a template form for filing complaints by third parties and at saving their anonymity. A copy of this form can be found on the website of the Competition Authority.

During this year, there have been approved a considerable number of legal and sublegal acts that had been previously drafted, but more initiatives have to be finalized next year. We note here the guidelines “on the evaluation of horizontal agreements” and the guidelines “on vertical agreements.” These two packets are under discussion at the Competition Authority and the implementation process has taken into consideration the respective guidelines of the EU.

#### **IV. 4 The legal review of cases from the Competition Authority**

During 2009, the Competition Authority has relentlessly followed suit on all review procedures for the decisions taken by the Competition Commission in the three circles of the judiciary system in Albania. Generally speaking, courts have moved from just review of the administrative procedure to actually analyze each case of competition restriction according to European Law on competition. The first cases decided by the Competition Commission and reviewed by the courts pose the first time that the competition right is enforced in the Albanian legal system.

##### **IV.4.1 The District Court of Tirana**

The company AMC Sha brought before the District Court of Tirana the Competition Commission’s decision nr. 7 date 09.11.2008 to start investigation on abusive dominant position for Vodafone Albania Sha, Albtelekom Sha, and AMC Sha. The court decided, through decision nr.784, date 05.02.2009 to dismiss the case.



Again, AMC Sha has brought before the District Court of Tirana the Competition Commission's decision nr. 59. Through decision nr. 172, date 19.01.2009, the District Court of Tirana decided to refute the request of the plaintiff, and therefore gave validity to the decision taken by the Competition Commission. Currently, AMC Sha has appealed the decision of the district court into the appellate court in Tirana. The jury is still out on this one.

Vodafone Albania Sha has also brought before the District Court of Tirana the Competition Commission's decision nr.59, date 06.07.2009. Through decision nr.6026, date 06.07.2009, the court decided to through the case out and therefore gave validity to the decision taken by the Competition Commission. Currently, Vodafone Albania Sha has appealed the case near the appellate court of Tirana on December 2009 and a verdict is yet to be reached.

Currently, the companies Bloja Shpk and Atlas Shpk have filed complaints against the Competition Commission's decision nr. 125, which penalized these two companies for entering into a prohibited agreement in violation of Article 4 of the law on protection of competition. The court started to review this case on December 2009, and the trial is still in progress.

#### **IV.4.2 The appellate court of Tirana**

As it is also stated in the annual report for 2008, three companies have filed appeals against the Competition Commission's decision nr.66, date 18.12.2007, asking for its annulment. For two of the companies, the court had decided to refute their complaints, and for the third company it decided to through the case out entirely. Two of these companies, Alban Tirana Co Shpk and Shkodra Beton Sha, decided to appeal these decisions at the appellate court of Tirana. This court decided, through decision nr. 237, date 24.02.2009, that for the company Shkodra Beton Sha would oblige to the decision taken by the District Court of Tirana; while for the company Alban Tirana Co Shpk, the appellate court decided to close the case at the appellate level. These two decisions indicate that the appellate court supported the decisions taken by the Competition Commission, and thus considered them valid and legal.

ProCredit Holding also appealed a decision taken by the District Court of Tirana. The Tirana Appellate Court, through decision nr. 1278, dated 20.10.2009; decided to validate the decision taken by the District Court of Tirana, and thus legally obligating the plaintiff to adhere to the Competition Commission's decision nr.63, date 03.12.2007 on fining the company ProCredit Holding AG.

Another case against the Competition Commission moved to the appellate court of Tirana in an effort to undo the Competition Commission's decision nr. 50, date 21.03.2007. This decision stated that the mandatory border insurance companies would be penalized through a fine. The appellate court decided to support the request of the plaintiffs, by undoing the decision of the District Court of Tirana and accepting the complaint. The Competition Authority has decided to take this case one step further, and review the

validity of the Appellate Court decision onto the Supreme Court of the Republic of Albania.

During 2009, the Competition Authority has evaluated normative acts that result from the execution of law nr. 9121 date 28.07.2003 “for the protection of competition”. In this framework, the Authority has given its input on evaluating the level of competition distortion or restriction that derives from the application of legal and sublegal acts. The review requests have come from other institutions that have asked for an opinion on these acts, as well as from the Authority’s own initiative to review those cases where competition seemed distorted or limited through different regulatory acts.

#### **IV.4.3 The Supreme Court**

There have been three recourses filed at the Supreme Court for three decision of the Competition Commission, and until the end of 2009 none of these cases had appeared before a judge.

More information on the decisions taken by the Competition Commission and that have appeared before any court is included in Appendix 2 attached to this report.

#### **V. A Culture of Competition**

During 2009, the Authority has thrived to implement an active policy for improving a culture of competition, which still remains low and is thus one of the main challenges for the Competition Authority. This fact has been clearly noted in the progress report of the European Commission.

Improving the awareness of businesses, consumers, public institutions, the judicial system, and the public in general has taken a series of active debate and round table sessions. An example of this open cooperation are the many draft and amendments of the law for the protection of competition, which has involved many interested third parties not only in drafting the provisions of the laws and regulations, but also to create a general awareness regarding competition as an institution.

Public relations and active communication, improved transparency, and an increased level of comprehension for competition remain among the top priorities for the CA in an active effort to implement the legal provisions of the law regarding a free and efficient competition in the market. Through publications and public briefing made by the Authority, through interviews and press releases, newspaper articles and interactive web communication, it has been made possible to keep an update information database regarding the activity of the Competition Authority. We can now attest to an increased interest by the media in the works of the Authority.

During 2009, the activity of the Competition Authority to improve awareness on a culture of competition through advocacy for competition was focused almost entirely on the procedures followed by the Authority, as well as on the organization of public hearings including not only the parties under investigation, but all other interested third parties that

had a stake in the market exchange processes or the cases of market concentration within the framework of the law.

This kind of transparency is also accomplished by making all Commission's decisions public and in real time, and through dedication of hearing time to other state institutions before any recommendations were given. Also, the public media appearances have improved this transparency factor even further, which served to better the culture of competition in Albania. The Authority considers all third parties as its cooperators, and has always sought their input in every activity organized.

In addition to the web site, the Competition Authority has practiced other forms of communication through which it holds constant channels of information exchange with businesses. We use fliers, which include relevant information regarding the applicable laws on competition as well as information on the activities that affect competition. One such example is the mini booklet called "The competition right and consumer protection."

Different publications have been published during 2009, and they were covering all aspects of CA's work, such as the annual report for 2008 and objectives for 2009, the Official Decisions Bulletin nr.4, and so forth.

We also organized an activity in the framework of the National Competition Day, which attracted both national and international interest of public institutions as well as regulatory entities, legal agencies, and universities which were active participants in this activity through their studies, theoretical approaches, and practical views of competition in small nation economies.

## **VI. Cooperation with institutions, regulatory entities, and international organizations**

The Competition Authority gives tremendous weight to the level of cooperation between public institutions and regulatory entities because, in their entirety, these institutions affect the development or restriction or competition and market activity. From this standpoint, the competition institution has closely cooperated with regulatory entities and other public institutions regarding the regulation and well functioning of specific markets. The Competition Authority has, almost always, initiated any amending efforts on laws and other regulatory frameworks that have or would affect market functioning in some way.

### **IV.1 Cooperation with regulatory entities and other public institutions**

The Competition Authority, while exercising its own duties, actively seeks cooperation with different public institutions regarding the protection of free and effective competition in the market. Based on law nr 9121, date 28.07.2003 for the protection of competition; the organs of the central administration are required to make any relevant information available upon request.

Most attention has been given to the cooperation with those institutions that are regulatory in nature, and that regulate different sectors of the economy (which are often called *regulatory sectors*). The CA has cooperated with the Bank of Albania, the Energy Regulatory Entity, the Postal and Electronic Communications Authority, the Financial Supervision Authority, etc., which have made all requested information available regarding the cases under investigation by the CA.

Considering the cooperation with central institutions, local governments, and business representatives as vital to the advance of competition in Albania, the Competition Authority has signed several memorandums, such as between the Albanian CA and the Hungarian Competition Authority, between the Albanian CA and the European University of Tirana, with the National Registration Center, with Kosovo's Competition Authority, and so forth. Regarding the cooperation memorandum between the Albanian Ca and the National Registration Center, the agreeing parties pledged to exchange information in the field of the protection of competition with the final goal of improving consumers' welfare in the market due to free competition.

Regarding the memorandum signed with Kosovo's Competition Authority, the two institutions have pledged to cooperate in the field of competition, respective legislation and competition policy, thus aiming at creating the appropriate conditions of growing mutual work and understanding in this field. This memorandum aims at not only strengthening cooperation in the field and policy of competition, but also in regards to specific market cases as well; the parties pledge to cooperate and exchange information during investigative processes of those companies that behave anti competitively and violate relevant competition laws; the parties also pledge to make publications available to each other (such as annual reports, case descriptions, studies on competition policy and other appropriate competition materials on the law of competition).

In the framework of the National Plan for the Enforcement of the Stability and Association Agreement and the fulfillment of the obligations that occur under this pact regarding the approximation of legislation, the Competition Authority has closely cooperated with the Ministry of Integration as well. The secondary regulatory framework in the field of competition approved during 2009 reflects, in great part, the adaptations of European Directives in the field of competition.

## **VI.2 Cooperation with the European Union (and TAIEX)**

The Competition Authority has respected all legal timelines regarding the reporting and progress made on the review of legal initiatives, enforcing acts in the framework of protecting free and efficient competition in the market, as well as in improving administrative capacities that aim at increasing the level of professionalism of the working staff. To improve these lines of reporting, the Competition Authority has participated in the working group for Issues in Internal Markets and Competition, thus assuring CA's commitment to achieve full execution of the Stability and Association Agreement and strengthening ties between the European Union and the Republic of Albania. The European Commission has observed in its report that Albania has made

good progress in the field of competition, stressing, among other things, the role of the Competition Authority in the process.

The field of competition is also included in the questionnaire of the European Union (chapter 8 “Competition Policy”) and competition is an important factor in the creation and well functioning of a common market within the European Community. The Competition Authority has dedicated marginal efforts to complete the chapter on competition, by filling out truly and on time each question directed to this institution. Moreover, holding the role of the coordinator of chapter 8 of the EU questionnaire, an inter-institutional link was established with line ministries that had given exclusive rights of responsibilities on the questionnaire, thus enforcing the idea that cooperation is very necessary if we aim to have efficient markets in the future.

Additionally, international cooperation has also been on the focus for the Competition Authority, especially the cooperation links established in the framework of European integration with such institutions as the regional OECD center in Hungary, TAIEX Program, and other homologue institutions in other countries.

The TAIEX Program has helped immensely in improving the professional qualifications of the staff of the Competition Authority, especially in updating their skills and awareness of the European practices in the field of competition. Through expert visa applications and international workshops, the Authority has been able to get the input of international experts on relevant topics. The staff members of the CA have extensively participated in training seminars and workshops regarding the advancement of competition.

On March 25, 2009, the Competition Authority, supported by TAIEX, organized a workshop in Tirana called “The Enforcement of Competition Law and Policy in Countries with Small Economies such as Albania.” In this workshop, participants brought competition regulating experiences from Albania, Malta, Lithuania, Romania, and Estonia. Members of public institutions also participated, including representatives from the Ministry of Finance, the Ministry of the Economy, Trade, and Energy, as well as other line ministries. Regulatory entities were also present, including the Financial Supervision Authority, the Postal and Electronic Communication Authority, the Consumer Protection Association, as well as representatives from various legal bureaus. The workshop helped in exchanging relevant experiences with homologue institutions that work in advancing competition in their own societies.

From the application of this program, another workshop, titled “Statistical and Econometric Analysis,” is approved to be organized in the spring of 2010, where EU experts will tackle different aspects of issues on competition. We expect the participation of representatives and specialists from the central administration and local governments, in addition to the staff of the Competition Authority.

### **VI. 3 The regional competition network**

As a member of the ICN, members of the Competition Authority have participated in working groups of the ICN all throughout 2009, be it conferences or teleconferences, regarding the advancement of competition. Member of the CA have also participated in workshops and seminars organized by homologue institutions outside Albania, bringing the Albanian competition experience with them. The cooperation and membership in this network is organized exactly for that reason, to exchange information among member countries on issues that concern competition, as well as to establish a standardized set of rules and regulations on competition.

Relations with donors continue to be important for the Competition Authority's achievement of its own strategic goals of institutional growth. One such cooperation is with GTZ, where several workshops, seminars, different projects, and publications were sponsored. GTZ also helped in financing an international expert throughout the drafting of relevant laws, or the financial support for the organization of the international conference on the fifth anniversary of the Competition Authority. These followed financing previously acquired to support the organization of a seminar in June 2009 on the draft-laws to be amended, as well as of 2 other new regulations initiated by the CA.

### **VI.4 Cooperation with the regional OECD Center**

The regional OECD center in Budapest, Hungary, has organized seminars and training sessions, where members of the staff of the Competition Authority have actively participated. The trainings have covered different topics on the field of competition as well as on the implementation of laws regarding the protection of competition. On July 15 to 17, 2009, the Competition Authority and the regional OECD center in Hungary organized a joint regional seminar on competition focused on vertical agreements. Participants in this seminar included representatives from other similar authorities from Southeastern Europe and the former soviet republics. International experts contracted by the regional OECD center also participated. Throughout this seminar, relevant exchanges of experiences and perspectives were exchanged regarding the practices used when assessing vertical agreements.

Members of the Competition Authority have additionally participated in several training sessions organized in Budapest, which covered different topics relevant to the protection of competition, such as the control of market concentration, abuse with dominant position, cartels, and price fixing. Members of the CA have shared their Albanian experiences in these activities.

### **VII. Budget realization of the Competition Authority**

The Competition Authority has closely followed the provisions of law nr. 10025, date 27.11.2008, titled "for the state budget of 2009" regarding the use and management of funds, and has also prepared a pro forma budget for the medium term 2010-2012 as it concerns the financials of the Competition Authority.

Budgetary Indicators for 2009 (in '000s of LEK)

Nr.	Name	Plan	Realization	Difference	%
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					realization
1	Wages and Social Security Contributions	46085	43157	2900	93
2	Materials and general services	14000	13565	434	96
3	Investments	3000	1579	1420	52
Total		63625	58662	4782	92

The financial data show a realization of 93.2%. The realization is not achieved 100% mainly due to the following reasons:

1. Item 1 in the table above does not include wages and social security expenses for one member of the Competition Commission, which was vacant for 6 months, and the payment for hours worked in December 2009 were carried over to January 2010.
2. item 3 in the table above is half realized due to the lack of offers under the procurement titled "Purchases of IT Equipments."

### **Revenues generated by the Competition Authority**

In line with Article 31/2 of the Law for the Protection of Competition, the revenues generated by the Competition Authority through fines and penalties go directly to the state budget. During 2009, the Authority has contributed 3.6 million LEK into the budget, meanwhile, the total of fines and penalties given amount to 790,576,410 LEK (for more details, please refer to Appendix 2).

## **VIII. Main objectives for 2010**

The Competition Authority, taking into account the experience acquired by law enforcement and further institutional consolidation in accordance with standards and best practices of the international network of competition, in 2010 will focus primarily on: increasing competition by strengthening its advocacy through inter-institutional cooperation; growing a culture of awareness for the national law and policy of promoting competition, which is mainly to be achieved through partnerships and cooperation with the business community; and lastly, perfecting investigative techniques by increasing the professionalism and expertise of the technical staff of the Authority. These orientations significantly affect the further consolidation of the Albanian Competition Authority.

### **VIII.1 Strengthening the advocacy and culture of competition**

Competition advocacy is not only one of the pillars of the law, but is a vital necessity for a real effect on the activity of the Competition Authority for achieving a functional market. In view of increasing the advocacy on the law for the protection of competition, several workshops and training seminars are scheduled to be held with international experts financed by TAIEX, with participants including not only the Competition Authority's staff, but also representatives from various administrative bodies, regulatory authorities, legal studios, and the judiciary system.

The effective achievements of the Competition Authority, pursuant to the Competition Policy and Law, are influenced by the perception and reaction of all market actors who are affected by such achievements. For this reason, the promotion of culture and advocacy of competition will remain a key priority of the work of the Authority. In this context, the Competition Authority will continue to cooperate with the business community both at the central and local level. The Competition Authority will also increase cooperation with chambers of commerce that group local and foreign businesses, such as the American Chamber of Commerce, German Chamber of Commerce, the English Chamber of Commerce, and so forth.

In 2010 we will continue our consultation series with the relevant market agents, such as the public institutions and regulatory entities, the legal studios and representatives of the justice system, the business community and representatives of central and local governments, all aiming to improve the legal framework in the field of competition, especially as amendments to the laws or new regulations are adopted.

The Competition Authority will aim to increase cooperation with the media, both in terms of coverage of the activity of the Authority, as well as in terms of media partnerships and involvement in the discussion of issues of particular relevance for competition policy and law, so that appropriate public awareness can be achieved for consumers and journalists alike.

Cooperation with institutions of higher education will be further promoted in order to encourage the study of competition both in terms of the economic and legal aspect of the field. Student involvement in the work of the Competition Authority will be achieved through internships and / or teaching practices, particularly when drafting and applying the various market analysis questionnaires.

## **VIII. 2 Strengthening Administrative Capacities**

Undoubtedly, the establishment of a culture of competition is a long and difficult process, but is necessary for an improved enforcement of law and competition policy. In that regard, the Competition Authority is contemplating the establishment of a structure within its institutional boundaries in the medium-term, which focuses exclusively on issues that concern the culture and advocacy of competition. This model has been followed by many competition authorities in both developed countries as well as developing countries in the region. Such a structure is particularly necessary in countries



such as Albania, where a culture of competition in particular and a legal culture in general are not properly developed.

In 2010, the Competition Authority will aim to strengthen institutional capacities in terms of consolidation and improvement of investigative techniques, as well as increasing the level of expertise in order to reduce the time of completion of each investigation process. To make this happen, IPA 2008 funds will be used to finance the achievement of this objective, which is expected to start off at a technical assistance level through a twinning project that considers the organization of internships for the technical staff of the Authority in working environments of similar institutions abroad.

For the first time since the conception of the Authority, its 2010 budget is clearly divided to direct funding in two distinct areas: (i) monitoring the market and ensuring competition and (ii) planning, management and administration. These areas will be divided into subprojects that will ensure an efficient use of resources detailed by cost centers for any investigative procedure that will be initiated by the Competition Authority. This system will enable more direct measurement of performance and increase employee accountability.

### **VIII.3 Market monitoring and investigation of potentially anticompetitive practices**

By the start of 2010, the institution of competition was monitoring and investigating anticompetitive practices in some specific sectors and markets, and some of these processes had begun since last year. For example, monitoring the market of retail banking services had started in late 2009 and will continue in the first quarter of 2010. This process was based on the concerns expressed by Parliament, the public in general, and the media, regarding commissions applied on banking services. This market is monitored by using the methodology of the European Commission applied to similar cases in the banking sector. Also, the thorough investigation of the procurement market for new cars will be completed in the first half of 2010. Based on best practices of OECD, the Competition Authority will host a series of training sessions for that part of the administration that is in charge of the investigative procedures. These sessions will aim at increasing their understanding on what constitutes a "prohibited agreement" among competitors in public procurement processes, as well as establishing early warning signs for the Competition Authority for such agreements.

Currently, the preliminary investigation is ongoing in the gas market due to the structural changes in the gas removal and storage market segment, which have given a dominant position to some operators. Therefore, the investigation will show if there is any breach of Article 9 of the law "For the protection of competition," which prohibits companies to abuse with their dominant position.

Dominant position in markets will continue to be monitored, as is the case for the electricity sector, the fuels market (D2 Diesel and the company ARMO), and the electronic communications market. Also, in addition to the ongoing monitoring processes, transport and airport services of TIA (public transport and air transport) will be

continuously monitored, together with other markets, to assess the business operating conditions and evaluate if breaches of the law on the protection of competition are occurring.

#### **VIII.4 Further consolidation of the cooperative arm of the Competition Authority with international partners**

During 2010, the Competition Authority was invited to partner in managing the international activities of competition organized by the OECD in its Global Forum of Competition (Paris, February 2010) and by the Regional OECD Center on Competition (Budapest, 2010). This international cooperation represents a new achievement for the Albanian Competition Authority as it legitimates and validates the institution's work throughout all these years to build a modern organization comparable to its international partners. It will be the responsibility of this institution to further consolidating the cooperative profile during the next time period.

Another aspect of cooperation with European partners is the efficient deployment of funding, which will be realized through the IPA 2008 funds dedicated to finance the technical assistance through a twinning program with the Italian and Hungarian Competition Authorities (the winners of the bid realized by the EU delegation in Tirana).

*Appendix 1. Statistical Data on the decisions of the Competition Committee during the years*

<b>Year</b>	<b>Decisions in Total</b>	<b>Focus decisions</b>	<b>Decisions on market dominance</b>	<b>Decisions on banned agreements</b>	<b>Decision on Agreement Exclusions</b>	<b>Decisions on Regulatory Guidelines</b>	<b>Decisions in Recommendations for public institutions</b>	<b>Decision on penalty fees</b>	<b>Other Decisions</b>
<b>2004</b>	13	2				6	1	-	4
<b>2005</b>	17	-				2	3	1	11
<b>2006</b>	14	4				-	1	1	8
<b>2007</b>	25	9	1	3		4	2	5	2
<b>2008</b>	29	11	1		1	4	5	-	7
<b>2009</b>	36	8	1	2	1	2	10	2	10
<b>Total</b>	135	35	3	5	2	18	22	9	42

*Appendix 2: Administrative decisions (penalties) of the Competition's Committees*

<b>Penalty Decisions of the Competition's Commission</b>							
No.	Date	Enterprise	Percentage of Revenue	Amount in ALL	Confirmed/Rejected	Court Level	Execution from Tax Authorities
27	12.12.2005	AMC	1	160.000.000	Conf in Lev 1, new trial in Appellate Court	High Level Court	Not executed
38	16.05.2006	ÇALIK,HOLD(BKT)		6.549.476	Conf. in lev 1,conf. in lev.2	High Level Court	Not executed
50	21.03.2007	SIGMA	2	15.170.870	Confirmed, in lev 1,rejected in lev.2	High Level Court	Not executed
		SIGAL	2	21.768.394	Confirmed,in lev 1,rejected in lev.2	High Level Court	Not executed
		INSIG	2	28.151.049	Confirmed,in lev 1,rejected in lev.2	High Level Court	Not executed
		EUROSIG	2	1.654.026	Confirmed,in lev 1,rejected in lev.2	High Level Court	Not executed
		ATLANTIK	2	8.207.318	Confirmed,in lev 1,rejected in lev.2	High Level Court	Not executed
		INTERSIG	2	6.969.233	Confirmed,in lev 1,rejected in lev.2	High Level Court	Not executed
		INTERALBANIAN	2	5.008.708	Confirmed,in lev 1,rejected in lev.2	High Level Court	Not executed
		ALBSIG	2	3.900.773	Confirmed,in lev 1,rejected in lev.2	High Level Court	Not executed
59	09.11.2007	AMC	2	211.552.000	Won the case,level 1	Appellate Court	Not executed
		VODAFONE	2	242.633.000	Won the case,level 1	Appellate Court	Not executed
63	3.12.2007	PROCREDIT		7.237.464	Won the case,level 1	Appellate Court	Not executed
66	18.12.2007	ALBAN,TIRANA		447.915	Confirmed,lev 1	Appellate Court	Not executed
		BEST,CONSTRUCT		235.367	Suspended by court order	Final form	Not executed
		BETON,EXPRESS		178.534	Unappealed	Final form	Not executed
		FERRO,BETON		436.959	Unappealed	Final form	Not executed
		HALILI,		172.519	Unappealed	Final form	Not executed
		ITAL-BETON		201.086	Unappealed	Final form	Not executed
		KIRCHBEGER		508.279	Unappealed	Final form	Not executed
		QARRI-02		169.652	Unappealed	Final form	Not executed
		SHKODRA,BETON		396.974	Confirmed,level 1, level 2	Final form	Not executed
67	24.12.2007	KAJO,HALLKA		30.000	Unappealed	Final form	Not executed
123	18.09.2009	Albania,Airlines,MAK,shpk		2.600.000	Unappealed		
125	08.10.2009	Bloja,sha,		38.548.251		First Level Court	
		Bloja,sha,		27.848.563		First Level Court	
		<b>Total Amount of Penalties</b>		<b>790.576.410</b>			

**Appendix 3: The matrix of the Competition Authority’s Evaluations and Recommendations**

Nr.	Objective:	Competition Authority’s Evaluation	Consideration Level
<u>1</u>	Evaluation of the draft – law “For the legal audit of the registered and authorized public accountants”. The National Institute of Public Accountants has requested from the Authority the evaluation of this draft law through form no. 35/1 dated 03.02.2009	The Competition Authority, through decision no. 102, dated 17.02.2009 “ For the legal audit of the registered and authorized public accountants” decided: The draft-law: “For the legal audit of the registered and authorized public accountants” does not uphold or interfere with competition related to free lance professions. The decision is based on the interpretation of law no. 9121 dated 28.07.2003 “For the Protection of Competition”.	No recommendation.
2.	In depth investigation report of the Insurance Market for the mandatory insurance product, Internal TPL	The Competition Authority through decision no.105, dated 24.03.2009 “ For recommendations and normative acts to re-establish competition in the mandatory insurance market, internal TPL” decided with a majority of voters: -To Recommend the Financial Supervisory Board to: 1. Notify the Competition Authority for any drafted normative act that might influence competition in the market. 2. Request the Authority’s opinion for any changes in the insurance market structure that might influence competition.	
<u>3</u>	Evaluation of the ISKSH’s Administrative Council’s decision no. 50, dated 12.12.2008 “ For the approval of agreements among ISKSH, drugstores, drugstore agencies, import depots, distributors of medicines and the three part agreement among ISKSH,QSUT and Medicine Depots for 2009”. Initiated with: Complaint no. 23/01, dated 23.01.2009 by the Independent Syndicate of the Open Network of Drug –store holders.	Through the Council Of Ministers Decision (VKK) no.109 dated 04.05.2009 “For recommendation on the review of point no. 1 of the ISKSH’s Administrative Council’s decision no. 50 dated 12.12.2008” the Competition’s Authority majority of voters decided: - To recommend to the Administrative Council of the Institute of Medical Insurance and Treatment (ISKSH) the review of point 1 in decision no. 50 dated 12.12.2009 “ For the approval of agreements among ISKSH, drugstores, drugstore agencies, import depots, distributors of medicines and the three part agreement among ISKSH,QSUT and Medicine Depots for 2009”.	With decision no.112, dated 15.12.2009The Administrative Council of the ISKSH has considered the recommendation of the Competition Authority:” For the approval of agreements among ISKSH, drugstores, drugstore agencies, import depots, distributors of medicines and the three part agreement among ISKSH,QSUT and Medicine Depots for 2009”.

<p><b>4</b></p>	<p>Evaluation of the draft-law “For public offerings of titles”. Initiated with form no.3387 Prot. dated 10.04.2009 through which the Ministry of Economy, Trade and Energy requested the Authority’s evaluation.</p>	<p>The competition Authority through decision no. 110, dated 15.05.2009 “For a recommendation on the draft law –for the public offering of titles”, decided: -To recommend METE to add after point 3, of article 7 of the draft law for the “Public Offering of Title”; “The offer document” containing the following: “When the gain of control due to the publication of the offer document might create a concentration as that stated in article 12, point 1 of the law “For the protection of competition”, this concentration needs to be reported to the Competition Authority which has the competence to give authorization according to the proper disposition of this law.</p>	
<p><b>5.</b></p>	<p>“Evaluation of the Complaints from the Entities for Physical Safety (SHRSF)”. In their complaints SHRSFs pretend that the compilation of tender documents and qualification requests has broken the law on public procurement.</p>	<p>The Competition Authority, through decision no. 114 dated 26.05.2009 “For some recommendations for the enhancement of competition in the public procurement of the “Services for Physical Safety and Security”, decided:</p> <ol style="list-style-type: none"> <li>1. To recommend to the contractual authority “The General Directorate of Concentrated Procurement” in the Ministry of Interior Affairs to increase the no. of lots in the public contracts concerning the “ Service for Physical Safety and Security” provided from private entities toward objects of the Prime Ministry, Ministries and their subordinate institutions with the goal of presenting and comparing grouped requirements as per size of the contractual authorities to the size of individual offers from other economic operators. This would enhance competition among operators that satisfy all the requirements.</li> <li>2. To recommend the Public Procurement Agency, depending on the nature of the procurement contract, to propose the contractual parties the classification of the contracts in lots and sub-lots allowing for greater participation of the economic operators in the public procurement procedures and ensuring better usage of public funds, greater participation and a more competitive environment.</li> </ol>	<p>Through form no. 6889/12 prot. dated 18.06.2009 , APP has requested the review of the</p>
<p><b>6.</b></p>	<p>Evaluation of the legal and sub-legal acts that influence competition in the fuel market.</p>	<p>The Competition Authority through decision no.118 dated 29.05.2009 “For some recommendation on the legal and sub-legal acts that influence the competition level in the fuel market” decided:</p> <ol style="list-style-type: none"> <li>1. To Recommend the Albanian Parliament: -Change in article 14, point 3 of Law no. 8450 dated 24.02.1999 “ For the processing, transporting and trading of fuel, gas and their sub-products” by reformulating as below: “The wholesale trading entities have the right to have their own fuel stations. In such cases, these entities are not allowed to establish favorable prices or conditions toward the white stations” -In article 15, point 2 of the Law. No.8450 dated 24.02.1999 the following sentence needs to be added: The re-order contracts need to contain clauses that define retail prices, floor prices and other conditions that might directly or indirectly influence the established price. Copies of these</li> </ol>	<p>Not taken in consideration.</p>

		<p>contracts should be provided to the Competition Authority once requested.</p> <p><i>-Change of Article 40, of the Customs Code of the Republic of Albania, reformulating as below:</i></p> <p>“Customs always takes in consideration the official exchange rate published by the Central Bank, one day prior to customs clearance procedures”</p> <p>2. To recommend the Ministry of Finance in the Republic of Albania to change point 9.4 of Guideline no. 17 dated 13.05.2008 “For the value added tax”, by putting a time limit which would enhance price transparency.</p>	
<u>7.</u>	<p>Observation of the AKEP document and recommendation on the “Mobile Phone Market Analysis: Termination Wholesale markets and the retail markets of the public mobile phone services”</p>	<p>The Competition Authority through decision no. 124 dated 23.09.2009 “For some recommendations on the AKEP document: “Mobile Phone Market Analysis: Termination Wholesale markets and the retail markets of the public mobile phone services”, decided:</p> <ol style="list-style-type: none"> <li>1. To recommend AKEP: <ol style="list-style-type: none"> <li>I. The application of the tariff regulation methodology not only for prepaid services but for contractual services, SMS and other.</li> <li>II. The application of the “Regulation of Tariff Termination Methodology” until the mobile phone tariffs become comparable to tariffs applied in the European Union Countries.</li> <li>III. Grant of new license in the Mobile Phone Market accompanied by all measures needed to make the fourth operator effective as soon as possible in order to increase competition in the market.</li> <li>IV. Regarding the AKEP’s concern that there are signals of competition absence in the mobile phone market, the Competition Authority requires that after the approval of the final report from AKEP’s Board of Directors all elements, proofs and facts need to be transmitted to the Competition Authority for monitoring and investigating of the respective markets based on article 61, point 2 of the law “For electronic communication”,</li> </ol> </li> </ol>	<p>The Competition Authority is a member in the work team for compiling the law for electronic communication.</p>

<p><b>8</b></p>	<p>Report on the in depth investigation of the wheat market and the production and sale of flour for bread.</p>	<p>The Competition Authority through decision no. 126 dated 08.10.2009 “ Foreclosure of the in depth investigation toward entities operating in the wheat import market and the production and sale of flour for bread”, decided:</p> <ol style="list-style-type: none"> <li>1. To recommend to the Ministry of Fianance and to the General Directorate of Customs to review the reference price practices in the wheat import market and the potential limitations those bring to competition.</li> <li>2. To recommend to the General Directorate of Taxes to keep in mind the effect that re-evaluation practices might have on competition.</li> <li>3. To recommend to the Institute of Authorized Public Accountants to certify that the financial statements of Atlas Sh.a and Bloja Sh.a present a true and fair view of these two market leaders’ financial position.</li> </ol>	
<p><b>9.</b></p>	<p>Observation of the AKEP document:”Analysis of the ground line phone market: Retail Markets of access and phone call from fixed locations and wholesale markets of termination, origination and transition to fixed networks: Public Consultancy”.</p>	<p>The Competition Authority through decision no.130, dated 23.11.2009 ” For some recommendation on the AKEP’s document: Analysis of the ground line phone market: Retail Markets of access and phone calls from fixed locations and the wholesale markets of termination, origination and transition to fixed networks”, decided:</p> <ol style="list-style-type: none"> <li>I. To recommend to the Authority for Postal and Electronic Communication (AKEP), <ol style="list-style-type: none"> <li>1. To continue the application of the “ Methodology for Tariff Regulation” until the tariff for international calls becomes comparable to the average tariff applicable in the region and European Union countries.</li> <li>2. The full regulation of tariffs applied from Albtelecom by increasing tariffs under cost as well as by increasing tariffs above the region’s average and instead orienting those toward cost, ensuring this way more effective competition among the operators.</li> <li>3. After the evaluation of Albtelekom’s cost using the BULRAIC model, AKEP needs to balance Albtelekom’s tariffs and orient those toward cost. This would put an end to the offer of those services under cost which eliminate competition and it would fairly price some tariffs which are exaggerated and several times higher than the analogues in the region or the EU.</li> </ol> </li> <li>II. To require from AKEP, in conformity with article 70 of the law “For the support of competition” and article 38 of the law “For electronic communication”, to provide the Competition Authority with all the documents it posseses in regards to potential abuses of the dominant position of Albtelecom in the market of ground line phone services.This information will be a step ahead in respecting the competition legislation.</li> </ol>	



<p><b>10.</b></p>	<p>Recommendation to the Energy Regulatory Entity relating to:</p> <ul style="list-style-type: none"> <li>-The application of KESH sh.a energy selling price for the wholesale public supplier for the year 2010 and the KESH-Gen (KESH sh.a)</li> <li>-The application of OST sh.a for the energy transmission tariff for 2010.</li> <li>-The application of OSSH sh.a selling price for retail sale of energy for 2010 through the usage of the distribution network.</li> </ul>	<p>The Competition Authority through decision no. 133 dated 14.12.2009 “ For some recommendation to the Energy Regulating Entity regarding the application of new energy tariffs for the year 2010 from KESH Sh.a, OST Sh.a and OSSH Sh.a”, decided:</p> <p>I. To recommend ERE ensuring the necessary transparency level to the Competition Authority regarding complete, accurate and timely information that would allow for an objective judgment concerning the introduction of the dominant operators in the proper markets.</p> <p>II. Recommend to the Energy Regulatory Entity:</p> <p>1.Regarding the application of KESH Sh.a</p> <ul style="list-style-type: none"> <li>-The 2010 tariff should be based on the return on capital</li> <li>-Based on point 5.7, last paragraph of the Energy Market Model, net income forecasted for 2010 from exports of KESH Sh.a should be translated to the advantage of clients.</li> </ul> <p>2. Regarding the application of OST Sh.a:</p> <p>The expected increase in the transmission tariff should be led toward the weighted average cost of transmission of each KW/hour of energy. Also, based on the OST’s Tariff Methodology, tariffs of this operator should be oriented toward the average long term cost of the transmission system.</p> <p>3.Regarding the application of OSSH Sh.a:</p> <p>Regarding the proposal for the application of the new operator, the Authority recommends a review based on the principle that tariffs should motivate the efficient consumption of energy from the end users.</p> <p>Regarding the OSSH’s proposal for the weighted Average tariffs the Authority proposed ERE to approve the minimal allowed tariff from the Regulatory Declaration.</p>	<p>.</p>
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**Appendix 4: The European Commission Progress Report for Albania in 2009  
(includes only the section on competition)**

“Good progress was made in the area of antitrust. The system of public hearings in antitrust proceedings has improved and a unit for fines has been established. Investigations and public hearings were held on anticompetitive agreements in the field of wheat imports and flour production, as well as in the fuel and insurance markets. The Albanian Competition Authority (ACA) continued analyzing cases of mergers and acquisitions. It carried out an enquiry into the energy and banking sectors and in November 2008 issued recommendations on the energy market. The ACA lodged an appeal with the High Court as a consequence of diverging decisions of the courts of first and second instance on the fines imposed on two mobile telephony companies for abuse of dominant position. ACA staff received training on issues related to economic markets, energy sector, vertical restraints and competition law. The ACA was also active in competition advocacy in cooperation with the chambers of commerce and industry. Seven complaints were registered in the first four months of 2009 in the fields of telecommunications, pharmaceuticals and procurement.

The Law on Competition is being revised to further approximate it to EU standards. The ACA is drafting the regulatory framework on issues relating to fines and leniency, de minimis agreements, horizontal and vertical agreements and mergers, as well as on its internal investigation procedures. However, no new legislation has yet been adopted. There has been further progress towards meeting the SAA state aid obligations. The State Aid legislation was amended in June 2009, introducing rules on state aid for risk capital and for environmental protection. The State Aid Department (SAD) and the State Aid Commission (SAC) continued reviewing and assessing new and existing aid schemes. This has resulted in the alignment of legislation related to tourism concessions, free zones and aid to employment. The process of reviewing existing aid schemes and their compliance with state aid legislation is reaching completion. The government approved the 2008 state aid report in June 2009. A regional state aid map has been drafted. Albania confirmed its intention not to provide any state aid for the restructuring of the iron and steel industry. The SAD staff received training on state aid issues.

Overall, preparations in the area of competition are advanced. However, further efforts are required to strengthen the institutional capacities for the enforcement of competition rules.”