



**AUTORITETI I  
KONKURRENCËS**

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# **2012** ANNUAL REPORT

AND

# MAIN GOALS FOR **2013**

**COMPETITION AUTHORITY**

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## **COMMISSION CHAIR’S GREETING REMARKS**

Recently politicians and economists have often talked about structural reforms as the path toward sustainable economic growth. The implementation of the Competition Policy and Law is the most effective and less costly reform because its daily consistent implementation leads to direct benefits for businesses and citizens. The direct outcome of the implementation of this reform is increased market awareness, which, in turn, leads to increased efficiency in resource use by the society.

From that perspective, the role and contribution of the Competition Authority, as a game referee, is quite vital to effective market competition protection and promotion. It is the effective competition on the market which makes an economy efficient. Under competitive pressure companies tend to innovate in order to increase their dynamic efficiency by adopting technological enhancements, competing with new products or services keeping an eye to cost competitive edge, and thus becoming an engine of economic development.

Good functioning of the market and free and effective competition are among the important conditions for Albania to become a full European Union Member State. In order to fulfil this mission the Competition Institution has made efforts for progressively enhancing its institutional performance and strengthening the implementation of the Competition Protection Law through close partnership with the business community and consumers.

The increasingly large number of contacts between businesses and consumers and the Competition Institution in relation to market concerns or failure indications is a direct indicator of the achievement of objectives under that mission; this is at the same time the main challenge of our Institution. The improvement and sophistication of investigation tools and the reduction of investigation time characterized our activity in 2012, leading to an increased number of market interventions by the Competition Institution.

The enhancement of market intervention tools and the increased efficiency of those interventions continues to be a constant requirement in an economy that has less experience than the longer history of the free market economy. The main feature of the Competition Authority activity was a more optimal combination of penalties against undertakings involved in anticompetitive practices in the form of prohibited agreements or abuse of a dominant position, with competition advocacy and culture efforts in the context of competition promotion.

An important factor for competition promotion is the cooperation between market players and public institutions. It is important to understand that competition is a value to the market and the society in general. This has been the spirit not only in the cooperation between the Competition Authority and other regulators and central government institutions but also in the recommendations that the Competition Commission has issued in the context of competition promotion.

Consolidation of the rule of law is among the challenges our society faces. It is certain that the Competition Institution, which protects and guarantees the enforcement of market freedom as one of the fundamental freedoms underlying the Albanian society and economy, will not be able to fulfil its mission in the absence of the rule of law. Therefore both positive and negative characteristics of the legal system directly affect the effectiveness of market interventions by the Competition Institution, which is a public body protecting the public interest against the vested interests of those businesses that seek to gain profits through anticompetitive practices.

It is vital to the good functioning of the markets—which, in simpler words, means increased consumer wellbeing—that the justice system absorbs and conveys the philosophy of competition protection in the fairest manner possible. Not only is the reasoning of decisions in the light of the protection of public interest a legal obligation under the Law, but also, and above all, it is a moral duty since it affects the wellbeing of the citizens.

## **I. MAIN DEVELOPMENTS IN COMPETITION LAW AND POLICY IMPLEMENTATION**

The economic system in Albania is enshrined in Article 11 (1) of the Constitution, which specifies that the economic system of the Republic of Albania is based on private and public property, as well as on a market economy and on the freedom of economic activity. This constitutional principle is also ensured through the implementation of Law No. 9121 of 28 July 2003 “On Competition Protection,” as amended, and the National Competition Policy. The responsible institution for its implementation is the Competition Authority. It operates pursuant to the Competition Law and Policy, in addition to public administration norms and best practices of European competition law.

### **I.1 Competition Authority Activity Features**

The Competition Authority mission is in line with the purpose of the Competition Protection Law. It is the protection of free and effective competition in the market by setting behaviour rules for the undertakings.

In order to fulfil its mission for free and effective market competition, Competition Authority implements legal powers and instruments such as investigative proceedings to help detect and penalize such anticompetitive practices as prohibited agreements for fixing prices, sharing markets, and restricting or controlling production; abuse of a dominant position in the form of setting unfair prices, limiting production or services, treating customers in an unequal manner or setting additional conditions and obligations in contracts with third parties; and control of concentrations in order to prevent the establishment or strengthening of a dominant position. These aspects comprise the three pillars of the Albanian Competition Law, which is approximated to an extensive degree with the *Acquis Commaunitaire*, not only in terms of substantial provisions but also in terms of its implementation instruments.

Part of the Competition Institution mission is the promotion of free operation of market players, which is achieved through advocacy and efforts for increasing competition culture. Competition advocacy does not merely aim at stating the Competition Authority position on laws and regulations, but rather the implementation of the constitutional principle aiming at promoting competition by limiting and eliminating competition distortion and restriction by laws and regulations in the form of exclusive/special rights or quota limitations in the market.

The Competition Authority is an independent public institution the purpose of which is to protect free and effective competition in the market. The good functioning of markets benefits consumers by giving them more choice, lower prices and higher

quality products and services. Thus, the Competition Authority Mission is to make markets competitive and ensure that the market economy is functioning, in the context of consumers' wellbeing and overall national economic prosperity.

## **I.2 Summary of Main Developments**

In 2012 the Competition Authority operated pursuant to the National Competition Policy, the Competition Protection Law and the Albanian Parliament Resolution on the evaluation of the Competition Authority activity in 2012. The constant support and encouragement from the Albanian Parliament and the European Commission have been important factors for the increase in the performance and fair assessment of the challenges in relation to a more competitive economy.

One of the aspects of the Competition Authority work was the consolidation of the **secondary legislation** implementing the amendments to Law No. 9121 of 18 July 2003 "On Competition Protection", as amended, and the approximation of the Albanian legislation with the European competition law. In 2012 the Competition Commission adopted four regulations, mainly in relation to technical rules on block exemptions, and a guideline on the control of undertaking concentration. The process of adopting those bylaws was transparent and was based on public consultations and round tables with stakeholders. The efforts for completing and updating the secondary legislation framework were made in compliance with the National Action Plan for the Implementation of the Stabilization and Association Agreement and the approximation of the secondary legislation.

As already noted in the last year's Report, the Competition Institution is consolidating its public profile as an institution that protects business interests and seeks to enforce the game rules on the market. The number of **complaints** is a direct indicator of this institutional feature. Last year 20 complaints were filed, of which 14 complaints fell in the scope of the Law, while six such complaints had been filed in 2011. With reference to the complaint subject-matter, seven complaints were on prohibited agreements or concerted behaviour, five complaints were on the abuse of a dominant position by one or several undertakings, two complaints were on the revision of regulations of other regulators or institution, and six complaints did not fall in the scope of the Competition Protection Law. The markets in the focus of the complaints included public procurement of private security services, telecommunications, insurance, public urban transport, and wholesale of vegetable oil.

In 2012 the number of complaints was nearly twice as big as in the previous year. Of the 29 complaints filed with the Competition Authority in 2012, six ones were on abuse of a dominant position by one or several undertakings, six were on

prohibited agreements, nine requests were related to the revision of bylaws issued by the Competition Authority and other institutions, and seven complaints did not fall in the scope of the Competition Protection Law. The markets in the focus of the complaints included public procurement of private security services, telecommunications, insurance, public urban transport, and wholesale of vegetable oil.

Based on the complaints and various indications on the media or concerns raised by Albanian MPs, the Competition Authority carried out market **monitoring and investigation** in both regulated and fully liberalized markets. More specifically:

The investigation proceedings ongoing from the previous year were completed in the maritime loading-unloading of the liquefied petroleum gas market; the personal and physical security procurement market; fixed telephony by prepaid cards market; and maritime transport of passengers in the Port of Vlora.

Investigation proceedings started and completed in the insurance market.

The in-depth investigations are towards completion in the markets of importing and wholesaling of sunflower oil; passenger transport service in the City of Tirana; importing, production and wholesale of bulk cement; public procurement of private security services in the city of Korca.

In addition, the following were monitored last year: the financial market, focusing on agreements between banks and insurance companies; the seed and seedling market; the pesticide and fertilizer market; air transport market; foodstuff import and wholesale market; sugar, rice, cooking oil and wheat market; urban waste management at Bushat Landfill; in addition to monitoring the changes to the market of importers of liquefied gas and fuel. One of the main objectives for the Competition Authority last year was to increase its real independence relying on increased professionalism, expeditious procedures and enhanced **investigation and inquiry instruments**. Parallel inspections at various undertakings were carried out for the first time in 2012. The inspection technique was improved by employing information technology. In this respect, a major challenge is the increased level of clarity of reports and the legal reasoning accompanied with more contemporary detailed economic analysis in relation to the case review.

In 2012, the Competition Authority took a proactive approach to fulfilling its legal obligation of controlling concentrations as a tool to prevent increased concentration in markets affected by ownership changes. This approach was enabled thanks to the cooperation with the National Registration Centre, under which, based on the information on the effected transactions and their assessment from the perspective of the Competition Protection Law, concentration control procedures were initiated

in four cases by the Competition Institution in relation to transactions that had not been reported by the parties. Last year, nine concentration cases were reviewed in relation to acquisition of control, mergers or establishment of a new undertaking, mainly abroad.

In order to fulfil its mission for free and effective competition in the market, the Competition Authority considers it as crucial to cooperate with other regulators and public institutions, in the context of which it does **advocacy**, which is the fourth pillar of the Law. To that end, the Authority further improved its communication instruments not only in the form of organizing joint round tables at expert level and decision-making board level but also meetings to share concerns or views with heads of institutions. This cooperation has led to a series of recommendations issued by the Competition Commission in relation to the markets of electricity, gas, electronic communications, public procurement, insurance, etc. Compared with the previous year, the number of regulations submitted for comments to the Competition Institution by public institutions increased in 2012. More specifically, from ten draft regulations submitted for comments in 2011, 18 such acts were submitted last year, which is an indicator of increased advocacy as an instrument to promote and protect competition against interventions in the market. It should be noted that a very important role in this respect was played by the Parliament Resolution addressed to government bodies requiring them to cooperate with the Competition Authority in order to avoid adoption of acts that introduce quotas restricting access to a market or other restrictions covered in Article 69 of the Law.

Last year a cooperation agreement with the Civil Aviation Authority was signed. The agreement provides for close cooperation between both institutions in order to enable monitoring of those factors that positively affect the functioning of that market. A similar agreement was signed with the Supreme State Audit Institution envisaging cooperation to identify prohibited agreements in procurement. In addition, over five round tables were organized with regulators and central agencies, including the Electronic and Postal Communications Authority (AKEP), the Financial Supervisory Authority (AMF), the Energy Regulatory Authority (ERE), the Water Regulatory Authority (ERU), and the Public Procurement Agency (APP), on issues identified during the monitoring and investigation carried out in the respective markets. The cooperation with the APP, the Training Institute of the Public Administration and the IPA-2008 Project experts enabled the training of a significant number of officers in public institutions dealing with public procurement procedures in relation to understanding and using the Guidelines on the identification and elimination of bid rigging in public procurement.

Advocacy aspects are always considered in close relation to the aspects of increasing **competition culture**. For the first time last year all regulations and



instructions were adopted only after going through the process of public consultation and publication on the official website of the Authority, and informing stakeholders through media releases in coherence with all final decisions taken by the Competition Commission. Participants in the round tables included not only business representatives but also law firms in an effort to ensure correct implementation of the Competition Protection Law. In addition, the competition institution used the funding under the IPA-2008 twinning project to strengthen its relations with the academic circles in the Universities of Shkodra and Elbasan, and the relevant local government representatives.

During the period, the Competition Commission took 48 decisions: seven decisions on fines, of which three decisions imposing heavy fines for anticompetitive practices and four decisions imposing light fines for refusal to cooperate in investigation and inquiries and for failure to give notification of concentration; nine decisions granting authorisation for concentration; five decisions issuing recommendations to public institutions and regulators in the framework of competition advocacy (excluding Competition Commission opinions not issued as decisions); five decisions on secondary legislation. The rest of the decisions were of a procedural nature (including decisions to initiate inquiries and in-depth investigations).

The efficiency and real impact of the Competition Commission decision-makers is closely related to the process of judicial review of Competition Commission decisions, because almost all decisions that have found violations of the Law and have imposed penalties on undertakings have been appealed against in courts. With reference to statistics, which are given in more detail in the Annexes of this Report, a total of 26 Competition Commission decisions were appealed in first-instance courts, of which 15 were won, six cases were lost and five cases are still pending. With regard to the Court of Appeals, 21 cases were lodged, of which 18 were reviewed. Eleven cases were won, five were lost and two are still pending. However, even those cases that have been won by the Authority in the Court of Appeals, the process continues in the Supreme Court (12 cases), most of which are still pending, and two have been won and one case was lost.<sup>1</sup>

Nevertheless, beyond these statistics, a major concern for the Competition Authority is the dissemination of the competition philosophy within the judiciary because it is very important for the judiciary to make judgement reasoning on the basis of public interest. Therefore, the key challenge for the competition institution

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<sup>1</sup> CA v. Insurance Companies - CC Decision No. 50 of 21 March 2007 "On imposing a fine on companies operating in the compulsory insurance market in relation to the border insurance policy product". The Court Chamber decided against deferring the case to the Civil Chamber.

has always been the establishment and consolidation of tools that contribute to imparting the competition philosophy to the members of the judiciary at all levels. To this end, several training events were organized with judges in 2012 in cooperation with the School of Magistrates and the European Union twinning project experts. This cooperation is ongoing because the School of Magistrates has already included the Albanian and European competition law in its curricula.

Capacity strengthening has been regarded as a tool to increase the independence of the competition institution. The methods of achieving this objective include both the increase in number but also investment with State Budget funds and European Union funds. The institutional structure that was approved by the Parliament in February 2012 increased the number of staff by two members, which satisfied not only the needs of the institution but also a requirement on competition laid down in the EU Progress Report, which underlined the need for administrative capacity building. Last year, the entire Authority staff was trained under the twinning project in compliance with a training programme approved by our partners (for a total of 118 training days). In addition, training events focusing on the use of econometric analysis in dealing with anticompetitive practices were organized.

A detailed picture of all the aspects mentioned in the paragraph above is given below in this Annual Report. The second part focuses on key points of the procedures that the Competition Authority implements in handling complaints and cases under the main pillars of the Law: prohibited agreements, abuse of a dominant position, control of concentrations, market monitoring, and judicial review of decisions. The third part gives information on the Competition Authority efforts for increasing competition advocacy and culture, and the positive and not very positive experience with other institutions and the stakeholders. The cooperation with the European Commission and other homologue institutions, and the participation in international competition networks are described in the fourth part. The activity of the auxiliary services in the context of meeting the Competition Authority objectives is presented in the fifth part. The last part identifies the future challenges and activities of the Competition Institution.

## **II. COMPETITION LAW IMPLEMENTATION**

This part begins with a statistical description of complaints as a consolidating phenomenon which indicates the degree of knowledge and confidence that market operators and consumers have in relation to the Competition Authority. Following that, the Report gives a detailed presentation of the Competition Authority activity pursuant to the Competition Protection Law to detect and punish anticompetitive practices in the form of prohibited agreements or concerted actions among

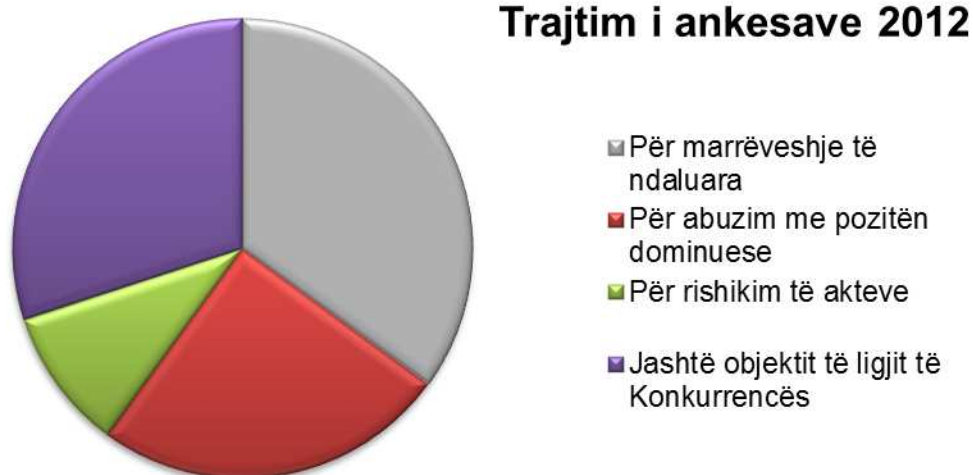
undertakings and abuse of a dominant position. The control of concentrations is the third pillar of the Law. Its implementation is presented in the fourth section. This part also describes the experience of the Competition Authority so far in relation to the judicial review of Competition Commission decisions, which is a significant factor for the Competition Institution intervention efficiency.

## II.1 Complaint handling

The increased number of market interventions by the Competition Authority has led to increased business community confidence in the Competition Authority and enhanced public profile of the latter. A direct measure of this performance is the significant rise in the number of complaints filed in 2012: about the double of the complaints filed in the previous year. Last year 20 complaints were filed, of which 14 fell in the scope of the Law (compared with six such complaints in 2011).

The classification of complaints in 2012 was by subject-matter, according to which seven complaints were on prohibited agreements or concerted behaviour, five complaints were on the abuse of a dominant position by one or several undertakings, two complaints were on the revision of regulations of other regulators or institution, and six complaints did not fall in the scope of Law No. 9121 of 28 July 2003 “On Competition Protection,” as amended.

The complaints are presented below under the pillars of the Law. A graphical view of the subject-matter classification of the complaints filed in 2012 is also given below:



### ***II.1.1 Complaints included in the scope of the Law:***

The complaints on anticompetitive practices are presented under groups along the main pillars of the Competition Protection Law: prohibited agreements or concerted behaviour, abuse of a dominant position and complaints addressing issues related to the functioning of the market affected by other relevant laws and regulations.

#### ***Prohibited agreements***

The complaints submitted to the Competition Authority mainly had to do with alleged prohibited agreements in various markets and industries. In 2012 the Competition Authority handled many complaints on potential cartels. More specifically:

##### ***The personal and physical security market***

1. A complaint filed by the security company Trezhnjeva Sh.p.k. in which it stated its concern in relation to the behaviour of Eurogjici Security Sh.p.k., Toni Security Sh.p.k., Eurogjici Security 1 Sh.p.k., Nazëri – 2000 Sh.p.k., and Dea Security Sh.p.k. in public procurement procedures. After reviewing the complaint, the Authority decided to conduct an inquiry in that market and look into the behaviour of those undertakings.
2. A complaints filed by the security company Eurogjici Security sh.p.k. in relation to the behaviour of Trezhnjeva sh.p.k. during its participation in the public procurement organized in the Region of Kukës. At the end of the assessment and review of the complaint, the Authority did not find any reasonable facts to warrant an inquiry.
3. A complaint on the dismissal of a criminal case by the Prosecution Office in the Judicial District of Korca claiming that the case was deemed to fall in the scope of the Competition Protection Law. The information from the Prosecution Office led to the initiation of the case of collecting and evaluating information, and, later, to an inquiry in the procurement of private security services in the city of Korca.
4. A complaint filed by the security company Korca-Security Sh.p.k. on bid rigging in public procurement in the city of Korca by Vaso-Security sh.p.k., Security-Vaso sh.p.k., Alben 2 Security sh.p.k. and E-Security sh.p.k. The subject-matter of the complaint was consistent with the information received from the Prosecution Office of Korca.

##### ***In the area of public transport***

5. A complaint filed by Alba-Trans sh.p.k., in the form of a completed complaint form, on competition violation in the urban passenger public transport system

in the city of Tirana. Following an assessment of the facts and a monitoring of the relevant market the Authority decided to initiate an inquiry.

6. A complaint filed by GERARD-A sh.p.k. with the same concern as the complaint above. Therefore, it was addressed by the same inquiry.

#### Food industry (sunflower oil)

7. A complaint on the increasing and fixing of vegetable cooking oil by several trading undertakings was submitted to the Competition Authority electronically. After reviewing it and monitoring the market, the Authority initiated an inquiry.

#### **Abuse of a dominant position**

Complaints of abuse of a dominant market position are mainly related to regulated sectors or sectors where one or more undertakings have an individual or shared dominant position. The following are the complaints related to abuse of a dominant position in 2012:

#### Electronic communication market

1. Following two complaints of potential abuse of a dominant position in the mobile telephony market, the Competition Commission decided to initiate an inquiry in the mobile telephony retail market.
2. A complaint filed by Abissnet sh.a. in relation to the unilateral setting of the new termination fee of incoming international calls by Vodafone Albania sh.a. and Albtelecom sh.a. Based on the raised concerns, a joint table was organized where the new market developments and the actions to be taken by the National Agency of Postal and Electronic Communications were discussed.
3. A complaint was filed by Premium-Albania sh.p.k. against undertakings Albtelecom, Eagle Mobile, Vodafone and AMC, which are landline and mobile telephony operators. The complaint review found that no evidence or facts had been submitted that would enable the Competition Authority to make a judgment whether competition had been restricted; therefore, the complainant was asked to have a meeting with the Authority in order to provide information in relation to the complaint. The complaining operator did not, however, respond.
4. A complaint was submitted to the Competition Authority by Albtelecom sh.a. against Interpost sh.p.k. in relation to the issue of wholesale and retail internet

access fees. Following a review of the complaint and the information on the respective market, the Authority found that Interpost sh.p.k. had not yet starting operating and, thus, could not have a dominant position in the market which it could abuse of.

#### *Paid television broadcasting market*

1. A complaint was filed by TV Kabllor Xhaci against TVM Devolli claiming that the latter was abusing with its cable service prices. The Authority carried out a monitoring in order to see whether there were any signs of competition restriction, distortion or obstruction in the market of providing cable broadcasting services in the geographical area of the District of Devoll in the Region of Korca. The monitoring did not find any abuse of a dominant position.

#### ***Complaints against laws or regulations***

1. A complaint from IMPERIAL Claims Service – Albania in relation to Regulation No. 129 of 28 July 2012 On the procedure of approving correspondents in Albania adopted by the Albanian Insurance Bureau Members' Assembly, which, the complainant claimed, restricted and provided for artificial barriers for other operators intending to operate in the market of Green Card claims market. The complainant claimed that by virtue of the Regulation the Albanian Insurance Bureau assumed the functions of a supervisory and regulatory body with respect to that segment in the insurance market, while the Law assigns such a role only to the Albanian Financial Supervisory Authority. After reviewing the complaint, the Competition Commission decided to submit a recommendation to the Albanian Insurance Bureau to amend Article 3 of the Regulation on the procedure of approving correspondents in Albania.
2. A complaint from Sigal UG Austria sh.a. against Decisions No. 142 and 151 of 29 October 2012 adopted by the Albanian Financial Supervisory Authority Board. After reviewing the complaint, the Competition Commission took Decision no. 254 of 6 December 2012 whereby it decided to recommend the Financial Supervisory Authority to make amendments to the Regulation on setting the level of technical provisions for compulsory motor insurance, as amended, and Decision No. 151 of 29 October 2012 of the Financial Supervisory Authority Board approving the risk premium table used for the calculation of the level of technical provisions for compulsory motor third party liability insurance.

### ***II.1.2 Complaints outside the Scope of the Competition Protection Law***

The Competition Authority received complaints that did not fall in the scope of the Competition Protection Law; however, they were taken into consideration in order to identify any real issues and the responsible institutions where to forward those complaints. This proactive approach taken by the Competition Institution is considered as a business community-confidence increasing tool. The complaints that were submitted to the Authority in 2012 and were not included in the scope of the Competition Protection Law are shown in a summarized form below.

1. Elka S.A Sh.A. submitted Application No. 357 of 14 May 2012, whereby it stated its concern in relation to the illegal copying of its protected trademark by Olimbia Gaz. The review of the petition found that the raised issue consisted of a violation of industrial property rights, the protection of which falls in the scope of Law No. 9947 of 7 July 2008 “On Industrial Property Rights”; therefore, it was referred to the Directorate General of Marks and Patents.
2. A complaint from OILM sh.a. in relation to the constant marketing by undertaking Crystal of goods that did not meet quality and quantity standards and other requirements. The review of the complaint found that the issue that Olim raised vis-à-vis undertaking Crystal was not an anticompetitive behaviour under the Competition Protection Law, and did not, therefore, lie in the jurisdiction of the Competition Authority.
3. Complaints from undertaking Marketing & Distribution; a group of operators (Mond Office; Interas Group; Marketing & Distribution; Cartoshop; Sinteza; BNT; New Office Albania); in relation to requirements that are not considered as necessary for qualifying in public procurement procedures. After reviewing the complaint, the Authority found that it was subject of administrative review by the responsible body—the Public Procurement Commission—based on the public procurement legislation and was going through all the administrative steps laid down in the specific Procurement Law.
4. Publishing House Alb-Juris filed a complaint against the Official Publication Centre (QPZ), claiming that the QPZ publication prices did not reflect the real cost of legal publications. The cost is specified in a Ministry of Finance instruction which provides for a price of ALL 2 per page. The complaint also claimed that the QPZ publication price did not include the cover cost and the preparation process cost, which deprives the Centre of economic efficiency. As a result, bookkeepers (mainly dealing in university textbooks) purchased the entire circulation of the publication at a low price to later resell at higher prices.

The review of the complaint found that it was not the case of potential abuse of a dominant position and, therefore, the complaint was not in the scope of the Law.

5. A citizen from Korca filed a complaint whereby it raised his concern in relation to the business carried out by a street vendor in the city of Korca in noncompliance with the tax legislation. The issues raised in the complaint were not found to be related to violations of the Law, and it was not in the scope of the Competition Protection Law. The concern was, however, referred to the National Food Authority in relation to the compliance with marketing standards.
6. AMC sh.a. filed a complaint against Vodafone Albania sh.a. in relation to its advertisement of 3G internet service provision. After reviewing it, the Authority concluded that it was not in the scope of Law No. 9121 of 28 July 2003 “On Competition Protection”.
7. Comments on the Rules on allocating interconnection capacities, submitted for opinion by the Albanian Association of Electricity Providers. In relation to this, the Authority found the comments of a technical nature only and not being in violation of the scope of the Law.

As noted in this section, five new inquiries were started based on complaints filed last year, in addition to monitoring, and several recommendations were issued to other regulators or central and local government institutions.

The sections below give a more detailed presentation of the inquiries and investigations carried out in 2012, grouped under the two main pillars of the law: prohibited agreements and abuse of a dominant position.

## **II.2. Prohibited Agreements (Cartels)**

Identification and prevention of prohibited agreements aiming at, or leading to, serious competition restriction was one of the main priorities for the Competition Authority in 2012. It is broadly recognized that cartels carry higher prices than market-set prices and, therefore, damage social welfare, generate economic inefficiencies and transfer wellbeing from consumers to the parties to the agreements.

The Competition Authority carried out several investigations with the aim to discover agreements or concerted practices among operators in several markets:



### ***II.2.1 Inquiry into the compulsory motor third party liability (MTPL) insurance market***

Following the information on the printed and televised media early last February, on the simultaneous increase of motor insurance prices, the Competition Authority carried out a monitoring of those prices on the market. The monitoring found that the insurance companies had concurrently and immediately increased compulsory motor third party liability insurance premiums as of 1 February 2012. Based on the monitoring data, the Competition Commission adopted Decision No. 215 of 10 February 2012, whereby it decided to initiate an inquiry into the compulsory motor third party liability (MTPL) insurance market in order to determine whether there were any indications of competition restriction, distortion or prevention. Based on the inquiry findings in relation to the indications of competition restriction in the form of MTPL price fixing, the Competition Commission adopted Decision No. 222 of 11 April 2012 On initiating the investigation into the compulsory motor third party liability (MTPL) insurance market.

Based on the evidence collected during the investigation and stated in the in-depth investigation report by the Secretariat, and after having heard the parties, the Competition Commission took decision No. 246 of 9 October 2012. In the Decision the Commission argued that the undertakings operating in the insurance market had restricted competition through MTPL insurance premium fixing, and imposed an aggregate fine of ALL 88.9 million on the eight insurance undertakings.

In addition, based on the in-depth investigation report findings, the Competition Commission organized a round table with representatives from the Albanian Financial Supervisory Authority to discuss the issues identified by the MTPL insurance market investigation. At the end of the procedure, the Competition Commission took Decision No. 247 of 9 October 2012 On issuing recommendations to the Financial Supervisory Authority in relation to the compulsory motor third party liability (MTPL) insurance market. In the Decision the Commission recommended (i) amending Article 9(3) of Regulation No. 110 of 28 July 2011 "On setting the level of technical provisions for compulsory motor insurance", reducing the minimum period allowed for changing insurance premiums; (ii) implementing the Bonus-Malus system in the near future, which would provide opportunities of diversifying and applying differentiated premiums to individual compulsory motor insurance policies, which would thus increase competition among market operators; and (iii) avoiding joint work among actuaries from insurance companies in the process of calculating risk premiums, which should be carried out by the Financial Supervisory Authority based on the data submitted by insurance companies independently.

During the inquiry, one of the undertakings under investigation did not allow the unannounced inspection that is provided for in the Competition Protection Law. On that occasion the Competition Authority cooperated with the State Police. Pursuant to the Competition Protection Law, the Competition Commission adopted Decision No. 216 of 1 March 2012, whereby it imposed a fine on Intersig sh.a. for obstructing the inspection to be carried out by the Authority inspectors. In the case of that administrative contravention, the decision was taken by the Competition Commission after a hearing with Intersig sh.a., which was organized pursuant to Article 39 of Law 9121 of 28 July 2003 “On Competition Protection”, as amended. That Competition Commission Decision was also upheld by Tirana District Court.

### ***II.2.2 Investigation into Personal and Physical Security Market***

As it was reported last year, following a complaint the Competition Commission decided in late December 2011 to initiate an inquiry into the market of private security procurement.

The inquiry found that the documents that the undertakings had submitted under tenders showed signs of collusion, which could amount to competition restriction under the Competition Protection Law. The Competition Commission took into consideration the risk of serious and irreparable damage to competition, since there could be a violation of Article 4 of the Law, and adopted Decision No. 220 of 16 March 2012, whereby it decided to take interim measures against the undertakings instructing them to end any collusion in public procurement procedures in the private security market and submit independent bids under public procurement tenders in terms of offers and/or market sharing. It also decided to initiate an in-depth investigation into that market.

Based on the preliminary inquiry report findings, the Competition Commission adopted Decision No. 219 of 16 March 2012 On initiating the investigation into the market of private security procurement against undertakings Eurogjici Security Sh.p.k, Eurogjici Security 1 Sh.p.k, Toni Security Sh.p.k, Sajmiri AL Sh.p.k, Nazeri 2000 Sh.p.k and Dea Security Sh.p.k. The evidence collected during the down raids showed that documents the undertakings under investigation had submitted in various procurement cases had indications of collusion, i.e. the bids intended to be submitted in public procurement procedures were prepared by a number of joint staff who worked closely with each other. The methodology that was used in the investigation was based on the OECD Guidelines for Fighting Bid Rigging in Public Procurement. The guidelines specify the types of bid rigging and the methods how bidders collude to eliminate competition, and they provide for the methods of how

to reduce behaviour coordination in procurement and the risk of bid rigging, and how to raise procurement staff awareness of bid rigging, etc.

After the completion of the in-depth investigation report, the Competition Commission organized a hearing with the entities under investigation giving them access to the in-depth investigation report and the investigation file. The Commission also gave them the possibility to submit their written and oral arguments to the Commission.

Based on the findings in the investigation report by the Secretariat, which demonstrated the existence of bid rigging in private security services public procurement committed by undertakings Eurogjici Security, Toni Security, Eurogjici Security 1, Nazeri – 2000 and Dea Security, which is a behaviour that violates Article 4 (1) (a) of Law No. 9121 of 28 July 2003 “On Competition Protection,” as amended, and after hearing the parties, the Competition Commission decided to impose a total fine of ALL 2.5 million on those undertakings, under Decision No. 240 of 26 July 2012.

The Commission also recommended the Public Procurement Agency not to allow any subcontracting between bidders in the same tender, because that restricts independent bidding. Due to their specific nature, the contracts should be fulfilled by the direct contractors. The commission also recommended the publication of all the documents (especially the complete contract award notice and the complete contract signing form) and their maintenance on PPA official website over time, in order to increase transparency.

### ***II.2.3 Inquiry into the Sunflower Oil Importing, Manufacturing and Wholesale Selling Market***

Following a complaint on the increased price of vegetable oil in the market, the Competition Authority monitored the market of vegetal oil manufacturing, importing and wholesale selling.

The monitoring found a high degree of concentration in the oil importing and manufacturing market; increased vegetable oil prices that were reflected in the retail market; and a failure to reflect the fall in prices on international commodity markets in the domestic wholesale prices. These arguments were the basis of Decision No. 245 of 2 October 2012 of the Competition Commission. The Decision initiated an inquiry into the market of vegetable oil manufacturing, importing and wholesale selling, in order to identify any competition restrictions in that market.

During the inquiry the Secretariat carried out simultaneous down raids in all the undertakings stated in the complaint filed with the Competition Authority. In the context of an analysis of the competition in the market, the Secretariat requested information from those undertakings and cooperated with the Directorate General of Customs and the Institute of Statistics. The analysis of a potential restriction of competition in the relevant markets was based on the two main pillars specified in Law No. 9121 of 28 July 2003 “On Competition Protection”: potential prohibited agreements and potential abuse of a dominant position.

At the end of the inquiry, after analysing the market segments, market access barriers, the distribution network and the potential competition, none of the undertakings was found to meet the criteria of Article 8 and to have a dominant position in the wholesale market. In order to assess whether the price rise had been the result of behaviour coordination in the wholesale market, the Secretariat analysed the undertaking behaviour in relation to direct and indirect price setting, supply curbing, average price change frequency vis-à-vis the international market prices, and market and supply resource sharing. The analysis showed that the main competitors with approximate market shares had applied wholesale prices that did not reflect the international market prices in cases of price falls on international markets, and that they converged in the price raising trends during the period under inquiry, which are all indications of potential collusion of those undertakings. Under Article 4 (1) of Law No. 9121 of 28 July 2003 “On Competition Protection”, as amended, this might be a prohibited agreement.

Based on the preliminary inquiry report that was prepared by the Secretariat, the Competition Commission adopted Decision No. 249 of 9 November 2012, whereby it decided to initiate an in-depth investigation into the market of sunflower oil importing, manufacturing and wholesale selling market against undertakings Erbiron, Olim and Crystal.

The Secretariat has carried out the investigation under the Competition Protection Law, the Procedure Code and the Rules on Investigative Proceedings. At the end of the proceedings, the Secretariat is going to submit a report to the Competition Commission, including an assessment of the behaviour of the undertakings under investigation.

#### ***II.2.4 In-depth Investigation into the Market of Production, Importing and Wholesale Selling of Bulk and Packaged 42.5 Cement***

On the basis of information raising suspicions of price-fixing agreements in the cement production, importing and wholesale market, the Competition Authority monitored that market.

On the basis of the monitoring findings, the Competition Commission adopted Decision No. 233 of 16 July 2012, whereby it decided to initiate an inquiry into the cement production, importing and wholesale market. The inquiry found signs of competition restriction in relation to bulk and packaged 42.5 cement in the form of a high concentration of the import, production and wholesale market, access barriers, a sharp price rising trend during a certain period. Therefore, the Competition Commission took Decision No. 253 of 3 December 2012, whereby it opened an in-depth investigation into that market against cement manufacturing and importing undertakings.

The Secretariat is currently carrying out an investigation under the Competition Protection Law, the Procedure Code and the Rules on Investigative Proceedings. At the end of the proceedings, the Secretariat is going to submit a report to the Competition Commission, including an assessment of the behaviour of the undertakings under investigation.

#### ***II.2.5 Inquiry into Personal and Physical Security Market in the City of Korca***

The reason for initiating an inquiry into the personal and physical security market was a complaint filed by a company, which reported that undertakings had committed bid-rigging in the procurement of security services. In addition, the Competition Authority was informed about a decision taken by the Prosecution Office of the Judicial District of Korca. That Prosecution Office sent Letter No. 2926 dated 19 July 2012 to the Competition Authority attaching its Decision of 17 July 2012 to dismiss Criminal Case No. 466/2012. In the Letter the Prosecution Office explained that, after reviewing the facts of the criminal case, it concluded that undertakings Hoxha Security, Nisa Security and Korca Security had struck an agreement in advance which was detrimental to free competition.

The inquiry found evidence of collusion in the bidding documents submitted by the undertakings. This is a violation of Article 4 of the Competition Protection Law. Therefore, the Competition Commission took Decision No. 257 of 13 December 2012, whereby it decided to initiate an in-depth investigation into the security service procurement market in the city of Korca.

The Secretariat is currently carrying out an investigation under the Competition Protection Law, the Procedure Code and the Rules on Investigative Proceedings. At the end of the proceedings, the Secretariat is going to submit a report to the Competition Commission, including an assessment of the behaviour of the undertakings under investigation.

### ***II.2.6 Inquiry into the Urban Passenger Transport Market in the City of Tirana***

After reviewing the complaint submitted by Alba Trans, which contained indications of potential competition restriction in the urban passenger transport market in the city of Tirana, the Competition Commission adopted Decision No. 252 of 26 November 2012 “Initiating an inquiry into the urban passenger transport market in the city of Tirana,” whereby it decided to initiate an inquiry into that market in order to determine whether there were any indications of competition restriction.

The evidence collected during inquiry inspections showed several elements of competition restriction in the market of monthly pass and student pass selling in relation to the passenger transport market in the city of Tirana, which might be a violation of Article 4 of Law No. 9121 of 28 July 2003 “On Competition Protection”. By its Decision No. 262 of 14 January 2013, the Competition Commission decided to begin an in-depth investigation into the market of selling generic monthly passes and student passes used in the urban passenger lines in the city of Tirana.

The Secretariat is currently carrying out an investigation under the Competition Protection Law, the Procedure Code and the Rules on Investigative Proceedings. At the end of the proceedings, the Secretariat is going to submit a report to the Competition Commission, including an assessment of the behaviour of the undertakings under investigation.

### ***II.2.7 Inquiry into the Market of Maritime International Shipping of Vehicles and/or Passengers in the City of Vlora***

By its Decision No. 218 of 23 February 2012, the Competition Commission decided to begin a preliminary inquiry into the market of maritime international transport of vehicles and/or passengers in the city of Vlora. The Decision followed a monitoring of the market that had been carried out because of a letter published on the media on behalf of two port service companies operating in the Port of Vlora (Alpida sh.p.k. and Delfini 1 sh.p.k.) which had stated that they had suspended the provision of their services and had applied a joint service schedule, operating their respective boats on alternate days and imposing very high prices in relation to the Vlora-Brindisi-Vlora line.

By its Decision No. 232 of 16 July 2012, the Competition Commission decided to extend the inquiry due to the changes occurring during the inquiry in terms of changes to the market structure from a duopoly into a monopoly, and the beginning of the peak summer season which found the market with a sole operator, a strong demand and a low counteracting purchaser power.

During the inquiry the Authority cooperated with the Ministry of Public Works and Transport and the Port of Vlora Authority, which led to a stabilization of the situation through interventions and bilateral agreements.

At the end of the inquiry, based on the findings in relation to the behaviour of the undertakings on the relevant market, the Competition Commission adopted Decision No. 248 of 11 October 2012, whereby it decided to conclude the inquiry in to the market of international transport of vehicles and/or passengers in the city of Vlora after not finding proof of competition restriction, distortion or obstruction in relation to the abuse of a dominant position or prohibited agreements on that market.

## **II.3 Exceptions from the Prohibition of Agreements**

### ***II.3.1 Exception from the prohibition of the cooperation agreement among companies in the insurance market in relation to information sharing for the service of border TPL motor insurance policies***

Pursuant to Articles 5 and 48 of the Law, the Competition Authority reviewed an application submitted by insurance companies for exempting from the prohibition their cooperation agreement in the motor insurance market (border insurance). The agreement provided for the exchange of information on claim adjustment, market research and joint risk coverage in relation to border insurance policy-holders. After receiving the complete information, a provisional press release was published on the Competition Authority website, inviting third parties to express their interest. During the 15-day period of publication, no third parties send any responses to the addresses published by the Competition Authority.

In assessing the case the Competition Authority referred to the Commission Regulation (EU) No 267/2010 of 24 March 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector, when parties cooperate with each other in the conditions of not having accurate databases in order to exchange information on establishing joint risk provisions; setting joint insurance policy standards, and joint coverage of several types of risks and other products.

The cooperation agreement is a horizontal standardization agreement the mission of which is to set compulsory border motor insurance policy issuance and selling

standards, specify the technical and quality requirements which border insurance are obliged to comply with, eliminate fake products or street selling of border insurance policies, and raise insurers' awareness of covering claims through information sharing.

After reviewing the application, the Competition Commission took Decision No. 225 of 28 May 2012, whereby it exempted from prohibition the information sharing cooperation agreement in relation to the provision of compulsory border motor TPL insurance policies among insurance companies, provided they complied with some conditions and obligations in relation to the reformulation of several parts of the agreement and reducing the period of exemption from five years to three years and clarification of two phrases on the basis of the respective EU Regulation.

## **II.4 Abuse of a Dominant Position**

Pursuant to the Competition Protection Law, the Competition Authority assesses the power of market operators and penalizes those operators that have abused with their market power by direct price fixing or other unfair conditions; restricting production, markets or technical development; applying unequal conditions to same trade transactions or setting additional conditions or obligations to other parties.

### ***II.4.1 In-Depth Investigation into the LPG loading-unloading market in Porto-Romano***

As it was reported in last year's Report, following complaints from two undertakings operating in the LPG importing and wholesale selling market the Competition Authority conducted an inquiry in the LPG loading-unloading market in Porto-Romano in 2011. The inquiry found that undertaking Romano Port sh.a. had demanded in August 2011 from entities operating in the LPG import and wholesale market to sign service agreements with additional obligations for them as a condition for allowing the unloading of their products in the deposits built on the coastal area. The concession agreement and the Port Rules of Procedure provide that any licensed operator (Article 36 (f) and Article 37) may unload their goods, and that Concessionary Romano Port sh.a. has the obligation to satisfy the requests of the operators. This obligation for the undertaking under investigation derives from laws and regulations, and the making of the service subject to additional conditions is not in compliance with the law.

After reviewing the in-depth investigation report that was prepared by the working group, and listening to the claims of the operator under investigation, which were



also submitted in writing, the Competition Commission adopted Decision No. 221 of 11 April 2012 “On the abuse of its dominant position by Romano Port sh.a. in the liquefied petroleum gas (LPG) maritime loading-unloading market”. The Competition Commission found that Romano Port sh.a. had a dominant position in the LPG loading-unloading market during the period under investigation. That Operator had repeatedly refused to perform the process of unloading LPG for the operators that had invested in storage capacity, and had presented unlawful and unreasonable excuses for doing so. The refusal is related to direct economic interests that Operator has in downstream markets, i.e. storage and wholesale selling of LPG, which has led to restricted competition in those markets.

The Competition Commission decided to impose a fine on Romano Port sh.a. of 2.35% of its total turnover in 2010 (corresponding to ALL 6.7 million), and instruct Romano Port sh.a. not to make the provision of the loading-unloading service subject to any conditions, which would be a barrier to the operations of the undertakings in the LPG storage, importing and wholesale.

#### ***II.4.2 Inquiry into the landline telephony prepaid card market***

The preliminary inquiry into the landline telephony prepaid card market began in 2011. The data showed that in the downstream segments of that market there was competition since there were several operators providing the service. In addition, the market analysis showed that the selling price of the Altelecom Alblue Cards was close to the minimum cost incurred by operators in making a successful call.

After reviewing the report, the Competition Commission decided to close the inquiry since there were no signs of competition restriction, pursuant to Article 9 of Law No. 9121 of 28 July 2003 “On Competition Protection”.

In addition, in its Decision No. 231 of 5 July 2012 the Competition Commission recommended that AKEP should make Altelekom record all its retail services or products, including the landline telephony prepaid ALBLUE card service, in separate financial accounts. That would provide for more transparency on services or products in terms of costing, and prevent any anticompetitive phenomena that would lead to unreal costs.

#### ***II.4.3 Inquiry into the mobile telephony retail market***

Following two complaints that had been submitted to the Competition Authority by mobile telephony market operators, and a monitoring of the mobile telephony retail market, the Competition Commission took Decision No. 258 of 21 December 2012 to initiate an inquiry into that market.

The Secretariat is currently carrying out an investigation under the Competition Protection Law, the Procedure Code and the Rules on Investigative Proceedings. At the end of the inquiry it is going to submit a report to the Competition Commission and identify whether there are any indications of competition restriction in the market under investigation.

## **II.5. Control of Concentrations**

The control of concentrations is the third pillar of the Competition Protection Law, under which the Competition Institution supervises any changes to market structure. In order to increase the efficiency of law implementation, it continued to supervise any transactions carried out and filed with the National Registration Centre in 2012. Based on the close cooperation with the National Registration Centre, the Competition Authority has identified transactions in shares which had not been communicated to it, i.e. the undertakings involved in those transactions had failed to comply with their legal obligations to notify them. Last year, the Competition Authority initiated four inspections of share transactions, of which two were cases of concentration with changes to the control structure. The acquiring undertakings which had violated the law for failure to submit a notification within one month were penalized with light fines (three cases of failure to submit timely notifications of transactions).

### ***II.5.1 Authorized concentrations***

In 2011, nine concentration cases were reviewed in relation to acquisition of control, mergers or establishment of a new undertaking. The concentrations were reviewed from the perspective of creating or strengthening a dominant position of the concentrated undertakings, and in terms of any positive impact on the market from the perspective of consumers and increased market efficiency.

#### **i. Merger of two or more undertakings or parts thereof that are independent from each other**

None of the concentrations approved by the Competition Commission in 2012 was a merger of two undertakings.

#### **ii. Acquisition of (direct or indirect) control of one or more undertakings or parts thereof**

In the construction industry, a concentration took place through acquisition of control of undertaking Euro Investment Group Sh.p.k. by undertakings Euronuovo Sh.p.k. and Euroteorema Sh.p.k. The concentration was approved by Competition

Commission Decision No. 213 of 24 January 2012, after finding that it did not create or strengthen the dominant position of undertakings Euronuovo and Euroteorema in the relevant market.

A concentration took place in the gaming market involving Bet 07 sh.a., which was authorized by Competition Commission Decision No. 214 of 24 January 2012. The concentration did not change the overall structure in the gaming market in Albania, as it only caused a change in the structure of share ownership within Bet 07 sh.a.. The concentration did not indicate any signs of significant competition restriction in the whole market or a part thereof due to established or strengthened dominant position in behalf of Bet 07 sh.a.

In the motorcycle market the Authority reviewed the concentration by the acquisition of the entire initial capital of Ducati Motor Holdings S.p.A. by Audi Aktiengesellschaft. The transaction was authorized by Decision No. 227 of 28 June 2012, since it did not cause any horizontal overlapping of the participating parties' business, nor were there any affected markets or an impact on the domestic market.

In the accommodation and tourism industry a concentration through acquisition of Albanian Consortium sh.a. and Sky 2009 sh.a. by Geci sh.p.k. was approved by Decision No. 228 of 28 June 2012 of the Competition Commission. The market position of the new owner of Tirana International Hotel & Conference Centre did not change after the concentration. As a result the transaction did not indicate any signs of competition restriction on the market or a part thereof, and was, therefore, authorized.

In the radio and television market a concentration through the reduction of the number of shareholders of Media Vizion sh.a. was authorized by Decision No. 237 of 26 July 2012. The concentration was carried out by acquisition in two transactions under which Ost Holding GmbH and Media Holding Beteiligungs AG transferred their full control of Media Vizion to shareholders Artan Dulaku, Genc Dulaku and Adrian Dulaku. It did not indicate any signs of significant competition restriction in the market or a part thereof by establishment or strengthening of a dominant position because it led to a change in control of Media Vision sh.a.

The concentration through full acquisition of control of company V.D.M. Invest Comm. VA through purchase of 99.99% of its shares by Japan Tobacco International Holding B,V, was authorized by Competition Commission Decision No. 238 of 26 July 2012, because the transaction did not have an impact on the Albanian market of processed and manufactured cigarettes, and neither created

nor strengthened a dominant position in the domestic market for the participating undertakings.

In the chocolate production market a concentration was done by the renowned undertaking Ferrero. The concentration was authorized by Decision No. 244 of 20 September 2012 “On authorizing the concentration through acquisition by Ferrero International of 100% of Business NAT and 49% of Business SL (members of the Stelliferi Group)”, as the transaction did not distort the competition on the domestic market.

In the banking sector two concentration took place in 2012, which involved Greek banks operating in Albania through subsidiaries. Specifically: acquisition of control of Eurobank Ergasias S.A by the National Bank of Greece S.A and of Emporiki Bank of Greece S.A by Alpha Bank S.A, both authorized respectively by Decision No. 255 of 11 December 2012 and Decision No. 259 of 27 December 2012. In both cases, the concentrations did not seem to have had an impact on the Albanian banking market structure and, thus, they did not create or strengthen any dominant position in that market.

### **iii. Establishment of a joint venture performing all the functions of an autonomous economic entity**

No sustainable change in control due to the formation of a joint venture performing all the functions of an autonomous economic entity resulted from the concentration that the Competition Commission authorized in 2012.

## ***II.5.2 Reviewed Cases not Considered as Subject to Authorization by the Competition Commission***

Under Article 6 of the Regulation on the implementation of undertaking concentration procedures, six transaction cases were submitted to the Competition Authority in 2012. They were not considered to be subject to authorization by the Competition Commission as they did not meet the criteria with regard to changed control of undertakings participating in concentrations or did not reach the turnover threshold laid down in the Law.

In the *banking market*, two transactions were reviewed and were not considered to be subject to authorization by the Competition Commission.

The first transaction was between the shareholders of Procredit Albania Bank, Procredit Holding AG and Commerzbank, through a share purchase agreement

that was signed on 24 May 2012, under which Commerzbank transferred all its shares (20%) to Procredit AG, which, after the transaction, owned 100% of the shares in Procredit Albania Bank. Since Procredit AG already had control (with 80% of the shares), the transaction did not result in a change in the control of Procredit Albania Bank.

The second transaction was between Societe Generale Albania Bank and Sogelease Albania, in the form of a merger by acquisition agreement that was signed on 18 April 2012. Societe Generale Bank acquired Sogelease Albania. The merger was carried out in the context of reorganizing Societe Generale Albania Bank operations, including its financial leasing business.. The objects of Societe Generale Albania Bank also included the objects of Sogelease Albania. Since the acquiring company (Societe Generale Albania) was the sole shareholder of the acquired company (Sogelease Albania), the transaction did not result in any changes to the shareholder structure, share capital and equity of Societe Generale Albania Bank.

In the strategic industry of oil exploration and extraction, there was one transaction that was reviewed by the Competition Authority. It involved the purchase of 50% of shares in Petromanas Albania GmbH by Shell the international company. The assessment was initiated on the basis of information on the media, which was then completed by the information from the transaction parties. Both companies, Petromanas Albania GmbH and Shell, had entered into an interest transfer agreement which provided for the fulfilment of the obligations deriving from Production Sharing Contract on exploration and production of hydrocarbons in Blocks 2 and 3 between the Albanian Ministry of Economy, Trade and Energy and Petromanas Albania.

Pursuant to Article 53 "Notification Obligation" of Law No. 9121 of 28 July 2003 "On Competition Protection", as amended, Lotto Sport sh.a. submitted to the Competition Authority an application for authorizing an agreement for selling 33.4% of the shares of Lotto Sport sh.a. After conducting a legal assessment, the Authority found that the transaction in the form of shareholding size did not result in a change of control structure of Lotto Sport sh.a., and, therefore, did not result in a concentration that should have been authorized by the Competition Commission.

in the footwear manufacturing industry the Authority reviewed one transaction that led to the merger by acquisition of Filanto Albania (acquiring company) and the Tirana Shoe Factory (acquired company). Tirana Shoe Factory had the Italian company Filanto S.p.A. as its sole member, which also owned 100% of the shares

in the acquiring company, Filanto Albania. The operation aimed at changing the control of Filanto Albania, which changed from indirect control to direct control by the Italian company Filanto S.p.A. Both companies participating in the merger were owned by the same member and the merger did not change the quality of control of Filanto Albania, which continued to be controlled by Filanto S.p.A. directly.

After assessing the NRC database, the Authority also looked into the merger between Meggle Albania and Ferlat, which was not found to be a concentration because both undertakings had been owned by the same members who were also members of the same family.

## **II.6 Market Monitoring**

### ***II.6.1 Fuel Market (fuels and LPG)***

The fluctuations of diesel and petrol prices were often the target of monitoring in 2012.

The monitoring focused on the price change trends in the market segments in order to determine the domestic market elasticity in relation to price changes on the international market; the market structure for the purposes of competition (HHI index); identification of potential signs of competition restriction resulting from potential abuse of a dominant position or potential prohibited agreements; and monitor the recommendations on amending any acts that might restrict competition on the market.

The monitoring found that the fuel (petrol and diesel) import market was on average concentrated, with significant concentration among the top three undertakings. An analysis of the market structure showed that none of the undertakings could behave independently from their competitors and customers, and, based on the main indicator of market share, none of the undertakings was found to have an individual dominant position in the fuel market. However, three main undertakings increased their market power, which had resulted in an oligopolistic structure.

Petrol and diesel prices have only increased due to the rise in international market prices and the application of the second part of the circulation tax. In addition, based on the Bank of Albania data on the US currency exchange rate, it was found that the US currency had appreciated by 8% in 2012. All the above factors had led to a price increase of ALL 23 per litre in April 2012 compared with the same period in the previous year, while the diesel price increased by ALL 18.5 per litre in March 2012 compared with March 2011.

Wholesalers respond immediately to rises in import prices or to other price increasing factors, but they fail to reduce prices in the opposite situation. The end-user market segment reflects price variances that exclude the possibility of price fixing but does not exclude the possibility of coordinating behaviour by changing prices by the same degrees. Based on the findings of the monitoring, the Competition Authority is going to continue monitoring the fuel market in accordance with the provisions of Article 28 of the Law, due to the oligopolistic nature of the market and the increasing trend of fuel prices.

The gas importing market shows the characteristics of an oligopolistic market with a very high index of concentration, with the leading undertaking on the market having 47% of the market in 2011. The main reason for the increased market share of the leading undertaking was its shareholding relationship with the undertaking providing the loading-unloading services at Porto-Romano Port. In reference to the information obtained under other procedures (inquiry into the market of loading-unloading in Porto-Romano), other undertakings importing liquefied gas have established their storage terminals in Porto-Romano since 2011, which is expected to increase competition among the undertakings operating in the gas importing and wholesaling market. The abovementioned markets will continue to be in the focus of ongoing monitoring.

### ***II.6.2 Foodstuffs: Sugar, Rice and Vegetable Oil***

Pursuant to Competition Commission Decisions nos. 192 and 193 of 21 June 2011 and its Decision No. 194 of 4 July 2011 “On concluding the preliminary inquiry into the market of importing and wholesaling rice, vegetable oil and sugar”, the Authority Secretariat was assigned the task of monitoring that market.

The market assessment found that the sugar importing and wholesaling market was still a concentrated market, but the wholesale prices follow the import price trend. The rice importing market is characterized by a large number of importers also operating in both the wholesale and retail market segments. Competitors enter and exit this market. The market is dynamic in relation the changing market shares of the various undertakings, which gives it the characteristics of an averagely concentrated market. The importing price and the average wholesale price do not follow the same trend, which could be the result of the fact that the undertakings sell rice that is packaged under their individual brands and, furthermore, sell rice of various qualities and varieties. A comparison of the wholesale rice prices from three wholesalers showed that the undertakings did not sell at the same prices.

The vegetal oil supply comes from two sources: imported oil and locally processed oil. The cooking oil wholesale market includes both importers and local oil

producers. The concentration indicators show a dynamic market, with significant indicator changes. CR and HHI increased in 2011 in comparison with the previous years.

In August 2012, a complaint was filed with the Competition Authority which served as an indication to start a monitoring only of the vegetal oil market, where, on the basis of facts found in the monitoring, an inquiry into the vegetable oil importing, production and wholesaling market was proposed.

### ***II.6.3 Wheat imports***

Assessment of the market of importing wheat and producing flour has constantly been in the focus of the Competition Authority due to the impact on consumers that increased bread prices have. The purpose of the monitoring was to analyse competition indicators for the period 2010- 2012 (CR3, CR5, HHI, Lorenz Curve) and the product supply in the market, any changes to the integrated market structures 2010-2012, and analyse prices in the domestic and international markets.

The analysis found that the concentration indexes show the characteristics of an averagely concentrated market with stable market shares for the three leading undertakings. The Lorenz Curve shows that the market improved in terms of competition in 2008-2012.

The impact of the US dollar exchange rate was reflected by an increase by 6.5% of the wheat purchase price.

The retail wheat prices were found to fluctuate, with bread prices not changing.

### ***II.6.4 Monitoring of Urban Waste Management in Bushat Landfill***

The monitoring of the urban waste management market in the Commune of Bushat, Region of Shkodra, was initiated by the Secretariat. Its purpose was to assess its main players, how the market operated and how the services were managed. In addition, the best European practices were consulted and stakeholder meetings were conducted in order to better address the issue of determining whether there were any violation of the competition law on that market.

The monitoring concluded that Nderkomunale Bushat sh.a. managed the dumping of urban waste and monitored the environment with a view to avoiding any negative impact. The fees applied by that undertaking was the same for all local government units in the Regions of Shkodra and Lezha. The service agreements did not contain any discriminatory conditions.

The assessment of the legislation showed that the construction of landfills was at regional level and that landfill management was related to the relevant



municipalities and communes. The relevant legislation did not show any signs of competition distortion, either.

The landfill was not used to its full capacity yet, and Nderkomunale Bushat sh.a. was operating in the red due to the dumping of a smaller volume of urban waste than the landfill was designed for.

After reading the report and based on the issues found during the monitoring and in the context of public interest, the Competition Commission sent a letter to the line ministries responsible for the issues related to this market whereby it asked them to influence the regulation of the market through the Water Regulatory Authority in the short run or to establish a new regulator of waste management that would be responsible for licensing utilities, approving tariffs and enforcing standards in the market.

The Ministry of Public Works and Transport informed the Competition Authority that it had taken into consideration its recommendation and that it was in the process of regulating the market through amendments to the Law on the Regulatory Framework on Water Supply and Waste Water Disposal and Processing. The Ministry of Public Works and Transport informed that an inter-ministerial working group had been established with representatives from the Ministry of Public Works and Transport, the Ministry of Environment, Forestry and Water Management, the Ministry of Economy, Trade and Energy, the Ministry of Finance, the Ministry of Agriculture and the Water Regulatory Authority, which was working on the legal amendments aiming at transferring the regulatory responsibilities on waste to the Water Regulatory Authority.

#### ***II.6.5 Markets of Seeds, Seedlings, Plant Protection Products and Chemical Fertilizers***

A study was carried out in the markets of seeds, seedlings, plant protection products and chemical fertilizers, with the objective to assess the laws and regulations on the basis of which those markets operate, and to identify the market structures and the competitors in the relevant markets. The monitoring was initiated on the basis of concerns raised in the Parliamentary Economic Committee in relation to those markets.

The assessment found that there were no specific criteria that excluded or prevented access to the business of producing, importing or selling the relevant products. The laws and regulations laid down strong technical requirements on the quality and safety of the products and provided for the powers of the inspection entities responsible for ensuring their quality. No price fixing elements were found in the acts. With regard to economic barriers, the markets under review do not

require large initial investment and entry and exit costs are small and do not cause any economic barrier to market entry and exit.

With regard to the market structure and market competitors, the assessment found that the markets of seeds, seedlings and plant protection products had the characteristics of competitive markets and were averagely concentrated, while the chemical fertilizer market was found to be a very concentrated market.

After determining that the three markets were independent from each other and finding concentration in one of them and lack of competition culture in the agricultural sector, the Secretariat continued its study of those markets. The study focused on the end product consumers in the three markets: farmers. The main technique used to assess undertaking behaviour included questionnaires and interviews that were filled in and conducted in cooperation with Regional Departments of Agriculture, Food and Consumer Protection in the Regions of Tirana, Durres, Lezha, Shkodra and Fier.

An electronic form was prepared for processing the questionnaires, which is available for the stakeholders on the Competition Authority website.

#### ***II.6.6 Monitoring of the Financial Market Mainly in Relation to Agreements between Banks and Insurance Companies***

After a concern raised in a workshop in Elbasan, the Competition Authority Secretariat began to monitor the financial market in relation to the agreements between banks and insurance companies. For the purposes of that monitoring, which mainly focuses on assessing the relationships between banks and insurance companies, the *loan payment insurance service market* will be the relevant product market.

The monitoring report is being reviewed by the Competition Commission.

### **II.7 Judicial Review of Competition Authority Cases**

The Competition Authority has made progress in terms of implementing the law to reintroduce competition in the market by fining undertakings in cases of violations of the law in the form of cartels, abuse of a dominant position, prevention of inspections and failure to communicate concentrations on time. However, the competition law doctrine has shown that the efficiency of the competition institution interventions significantly relies on the implementation of its decisions.

Any final decisions of the Competition Commission are, as a rule, subject to judicial review at all instances. To that end, the Competition Authority pays special attention to pursuing any appeals and court cases in first instance courts, courts of appeals and the Supreme Court.

From 2005, when the first Competition Commission decision imposing a penalty was issued, till last year 26 Competition Commission decisions were appealed against before the first instance court. In statistical terms, 15 cases were won until last year, with six lost cases and five pending ones. Twenty-one cases were appealed against at the court of appeals, but 18 were accepted for judicial review. Until the end of last year, 11 cases in the court of appeals were won, with five lost cases and two pending ones. The Supreme Court was addressed for 12 cases, of which two were won, one case was lost and nine cases are still pending. The judicial review statistical data are also covered in Annex 5 “Judicial Review of Competition Commission Decisions”, which shows that only three cases have been concluded from the 26 appeals.

Also, with reference to the 17 Competition Commission decisions imposing fines, only eight were made final and upheld as enforceable acts, one decision was lost and eight decisions are still pending in the different judicial instances, with three cases in the Supreme Court. This illustrates the long path of the judicial review of Competition Commission decisions, which aim at improving the functioning of markets. This is one of the obstacles to increasing the efficiency of market intervention by the Competition Institution.

Another crucial aspect of judicial review is the defence of the Competition Commission decisions by the Competition Authority, which focuses on the legal argumentation of the determined violations and the identification of the evidence and other clarifying elements in order to ensure the most objective judicial review possible. In the process of judicial review the Competition Authority has cooperated with the State’s Advocate institution in all court instances.

In compliance with the Civil Procedure Code, the Authority submitted all the required documentation to facilitate the execution of the abovementioned enforceable acts by the Enforcement Office in relation to the final Competition Commission Decisions. As Annex 2 “Execution of Fines Imposed by the Competition Commission as of 31 December 2012” shows, 50% of the decisions for which execution orders were issued were collected, at the amount of ALL 259,167,233. The rest is still in the process of enforcement.

## **II.8 Legislation Approximation**

Following entry into force of the Stabilization and Association Agreement between the European Community and the Republic of Albania, an important step is the full approximation of the Albanian competition law with the EU *Acquis*. The implementation of the commitments under the National SAA Implementation Plan

and the compliance with the obligations in relation to legislation approximation will continue to be among the priorities in the area of competition.

The Competition Authority activity in 2012 was oriented towards the development of secondary legislation acts, with the following regulations and guidelines having been approved by the Competition Commission or being in the process of stakeholder consultation.

Regulation on the categories of vertical agreements and concerted practices (adopted): The Regulation implements Article 6 of the Law (exclusion of categories of agreements) and lays down the detailed conditions to be met by vertical agreements and concerted practices in order to be granted an exemption from the prohibition provided for in Article 4 (1) of the Law. The Regulation is fully approximated with European Commission Regulation No. 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union.

Regulation on the categories of vertical agreements and concerted practices in the motor vehicle sector (adopted): In the context of completing the secondary legal framework in accordance with the provisions of Article 6 of the Law and the National SAA Implementation Plan the Authority adopted a regulation on the block exemption of categories of vertical agreements in the motor vehicle sector. The Regulation is approximated with European Commission Regulation No. 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector.

Draft Regulation on the categories of agreements and concerted practices in the insurance sector (in process of stakeholder consultation): Pursuant to Article 6 of the Law and the National SAA Implementation Plan the Authority has drafted a regulation on the categories of vertical agreements in the insurance sector that are exempted from the prohibition of Article 4 of the Law. The Draft Regulation is approximated with the European Commission Regulation No. 267/2010 of 24 March 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector.

Amendments to the Regulation on the approval of expenses and implementation of procedures by the Competition Authority. The purpose of the amendments was to reduce the fees for small enterprises with annual turnover from ALL 200 million to

ALL one billion. The fees for those undertakings will be halved: the concentration notification fee is reduced from ALL 15,000 to ALL 7,500; the provisional concentration authorization fee is reduced from ALL 300,000 to ALL 150,000; and the concentration authorization fee is reduced from ALL 500,000 to ALL 250,000.

Guidelines on the control of concentrations. The Competition Authority has adapted the European Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004. The purpose of the Guidelines is to lay down the rules to be complied with in the assessment and review of concentration notifications in accordance with the provisions of Law No. 9121 of 28 July 2003 “On Competition Protection” and the implementation legislation the Competition Authority has issued in relation to concentrations. The Guideline is aligned with the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (2008/C 95/01).

Pursuant to National SAA Implementation Plan the Commission has approved in principle the Regulation on the categories of agreements in the insurance sector in line with the EU Commission Regulation No. 267/2010 of 24 March 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector. The Regulation has been published on the official website of the Competition Authority and is in the process of consultations with such stakeholders as insurance companies, the Albanian Insurance Bureau, the Association of Insurers and the Financial Supervisory Authority.

### **III. COMPETITION ADVOCACY AND CULTURE**

Company law and particularly its efficient implementation comprise a decisive element of economic growth, which requires an appropriate competition policy that aims at increasing economic efficiency and protecting the interests of undertakings and protecting consumers.

Competition advocacy is one of the aspects of the law. It is also a goal of the Competition Authority, which aims at promoting and encouraging competition by reviewing laws and regulations from the perspective of competition philosophy. The evaluation of draft laws and regulations involves an analysis of any potential impact they might have on the functioning of markets and any potential competition restrictions they might lead to.

#### **III.1 Assessment of regulations and draft regulations**

The number of draft regulations submitted for comments and consultation to the Competition Commission increased in comparison with 2011. This shows increased sensitization among regulators and central institutions with regard to competition protection and advocacy issues.

Annex 6 “Recommendations issued by the Competition Commission in 2011 and their implementation” lists the assessments and recommendations issued in Competition Commission decisions addressing regulators or other central institutions, based on draft or adopted laws and regulations that were submitted for comments to the Authority. The table also indicates how the recommendations were taken into account. The Authority efforts for promoting competition, however, are demonstrated not only in its opinions but also through written communications which have gone through the same process of assessment by the Competition Commission.

*In the area of energy and natural gas*

- In its letter no. 188 of 15 March 2012 the Competition Commission gave its opinion on the Draft Regulation on fines, whereby it confirmed for the Energy Regulatory Entity that the submitted Draft Regulation was not in conflict with the Competition Protection Law, as amended.
- In its letter no. 251/1 of 5 April 2012 to the Energy Regulatory Entity, the Competition Commission stated the following in relation to the Draft Regulation on the gas market assessment procedures in Albania: The natural gas market in Albania is an undeveloped market and there are no data on the capacities to be taken into account by TAP. The Energy Regulatory Entity should pay attention to the creation of barriers to market access or other restrictions on competition.
- The Competition Commission commented on the amendments that KESH sh.a. proposed in relation to disbalances in the Rules of the Albanian electricity market. In its comments it stated that in the context of implementing the recommendations that the Commission issued by its Decision no. 159 of 19 November 2010 “Recommendations on increasing competition in the electricity market”, it is important that any proposed amendments to the electricity market rules should clearly specify the role of new market operators in accordance with their relevant functions, i.e. the role of KESH Gen and of the Public Retail Supplier, and not to be too generic and merely state “KESH sh.a.”.
- In its response to the issue raised by CEZ Shperndarje sh.a. in relation to the importing of electricity, the Competition Authority recommended, inter alia, the following: “The Competition Authority considers that a very important factor for competition and the electricity market is the allocation of interconnection capacities, and has reiterated several times the principle of level playing ground among players in the electricity market. As a result, the allocation procedures

should ensure access on non-discriminatory, transparent and competitive basis for all licenced operators in the electricity market.”

- The Authority contacted ERE in relation to the amendments proposed by CEZ Shperndarje sh.a. and the Electricity Suppliers’ Association on late-payment penalties and other mutual obligations among market operators. Specifically, the Authority stated that: “In relation to the conditions of late-payment penalties applied to transmission service invoices and the contract terms and conditions between customers and qualified suppliers the Authority is of the opinion that they are specific technical issues that can be addressed only on the basis of the principles of equality between operators and effective market competition protection. In addition, given that in this market some operators are undertakings with dominant positions, they should take into account their special responsibilities and obligations vis-à-vis the rest of market operators.”
- Regarding the ERE Draft Regulation on the allocation of interconnection capacities, the Commission commented that the Draft Regulation dealt with technical issues that did not concern Law no. 8121. In addition the Commission adopted Decision No. 177 of 25 February 2011, whereby it issued a recommendation to ERE not to set any restrictions on the number of auction bids.

#### *Electronic and postal communication market*

- Regarding AKEP’s draft Document “Analysis of fixed telephony market: termination, transit and origination retail and wholesale markets”, the Competition Commission adopted Decision no. 231 of 5 July 2012 “Recommendations for the Electronic and Postal Communications Authority regarding the fixed telephony services provided by means of prepaid cards”, whereby it recommended that AKEP “should make Albtelekom record all its retail services or products, including the landline telephony prepaid ALBLUE card service, in separate financial accounts. That would provide for more transparency on services or products in terms of costing, and prevent any anticompetitive phenomena that would lead to unreal costs.”

#### *Financial Market*

- Regarding Albanian Financial Supervisory Authority Regulation No. 110 of 28 July 2011 “On setting the level of technical provisions for compulsory motor insurance”, the Competition Commission adopted Decision No. 247 of 9 October 2012 On issuing recommendations to the Financial Supervisory Authority in relation to the compulsory motor third party liability (MTPL) insurance market, in Paragraph I.1. of which it decided to recommend the Financial Supervisory Authority to amend Article 9(3) of Regulation No. 110 of

28 July 2011 “On setting the level of technical provisions for compulsory motor insurance”, whereby it should reduce the minimum period allowed for changing insurance premiums.

- Regarding the Draft Law on Insurance and Reinsurance Activity, which was submitted for comments to the Competition Authority electronically, the Authority sent a letter dated 28.12.2012 to the Financial Supervisory Authority, whereby it informed that the Authority did not have any comments on the Draft Law.

#### Other acts

- The Competition Authority sent Letter No. 594/1 dated 21 March 2012 to the Ministry of Economy, Trade and Energy, with comments on the Draft Law on Cross-Border Mergers. In the letter the Competition Authority stated that “Article 4 “Application of Other Laws” of the Draft Law provides for the application of regulatory requests and approvals as defined in the Competition Protection Law, in relation to cross-border merger of companies. Hence, the Competition Commission does not have any remarks or comments.”
- In its Letter No. 217/1 dated 3 May 2012 to the Ministry of Tourism, Culture, Youth and Sports, in response to the latter’s request for comments on the Draft Law on Copyright and Related Rights, the Commission that it did not conflict with the provisions of the Competition Protection Law.

#### **Increased Competition in Public Procurement**

*Regarding the market of private personal and property security services, and the Draft Law amending Law No. 9643 of 20 November 2006 “On Public Procurement,” as amended, the Competition Commission adopted Decision No. 243 of 11.09.2012 “Recommendations on increasing competition in public procurement”, in which it recommended the following:*

*I. Article 4(2) of the Draft Law drafted by PPA provides that: The following point (d) is added to Paragraph 3 in Article 13 “Public Procurement Agency”: “d) Where there is a final decision on bid rigging taken by the Competition Authority.”*

*We suggest that the word “Authority” is replaced with “Commission” because the Competition Commission is the decision-making body. Thus, it should be changed into: “Where there is a final decision on bid rigging taken by the Competition Commission.”*

*II. Recommend that the Public Procurement Agency take the following legal initiative:*

*1. Add the following paragraph in Article 3 “Definitions”:*

*“Bid rigging in public procurement” is a form of price-fixing and/or procurement market-sharing agreement, which happens: First, when undertakings of which it is expected to compete secretly agree on the amount of bid to be submitted thus eliminating price competition; and, second, when undertakings agree on which undertaking will submit the lowest bid, and agree on a rotation of winning bids so that each undertaking receives an agreed amount of contracts.”*



2. Add the following provision in Article 46 or in another appropriate article:  
*“For a bid to be valid (qualifying) it must be prepared and submitted completely independently from the rest of competing bids and from other non-bidding operators.” Proof of this can be a bidder’s signature on an “Independent Bid Certificate”, which was recommended to PPA to include in the standard tender documentation in its Decision No. 158 of 12 November 2010 “Several recommendations on the prevention of public procurement bid rigging”.*

3. Article 56 “Unusually Low Bids” should specify a sufficient time period within which economic operators will submit their arguments in relation to their unusually low bid.

4. In Article 61 “Subcontracting” of Law No. 9643 of 20 November 2006 “On Public Procurement”, as amended, a paragraph should be added providing that:  
*“Contracting authorities shall in no case allow subcontracting among bidders participating in the same procurement procedure as this behaviour is in conflict with the principle of independent bidding, nor shall they allow subcontracting in the case of those contracts where, due to their specific and continuous nature, have to be performed by their contractors.”*

*The same prohibition should also be laid down in the relevant Chapter in the Council of Ministers’ Decree on public procurement.*

*III. For the purpose of increasing transparency and competition in public procurement, Contracting Authorities should publish during and at the end of procurement procedure all the documents that are related to the procedure (mainly: the complete contract award notice and the complete contract signing form) and should ensure that they are maintained on PPA official website over time.*

### **III.2 Inter-Institutional Cooperation and Competition Law Implementation Guidelines**

Cooperation with various public institutions is an important factor in the Competition Authority activity. In this context, the cooperation with central and local institutions and, especially, other regulators takes special significance. The Competition Authority has cooperated closely with the Bank of Albania, the Financial Supervisory Authority, the Electronic and Postal Communications Authority, the Energy Regulatory Authority, the Water Regulatory Authority, etc.

The cooperation is mainly in writing, but also in the form of direct bilateral meetings that the Competition Commission has had with the heads of other institutions. In addition, Competition Authority staff members have consulted with the staff of those other institutions whenever it has been necessary in the context of various investigations or consultations.

Another form of cooperation is the organization of trainings, workshops and conferences on issues related to the implementation of competition protection legislation in regulated industries, and the interaction with the relevant institutions. Some of the events have been organized with European Commission support under the IPA 2008 Programme in support for the Competition Authority and State Aid.

In the context of investigations into violations of competition in public procurement, the Authority benefited from the fruitful cooperation with the Public Procurement Agency. A training was organized for the procurement staff of various institutions with the goal to avoid any violations of competition in public procurement of various goods and services. In addition, various guidelines on the prevention and detection of bid rigging in public procurement that had been prepared and published with IPA Project support were handed out and promoted in the trainings.

The Competition Authority has also signed Memoranda of Understanding with various institutions with the goal to enhance inter-institutional cooperation, especially in the area of exchanging data and cooperating to promote competition. Thus, the Competition Authority has signed an MoU with the Civil Aviation Authority. Under the MoU, the parties undertake to cooperate for increasing free and effective competition by exchanging information, cooperating for market research, jointly reviewing legislation proposals in the case of quantitative restrictions on air transport market access, etc.

In addition, the Competition Authority has signed a new Memorandum of Understanding with the Directorate General of Taxes (DGT). The MoU was necessary due to the amendments to the tax procedure legislation. Under the MoU, the parties undertake to cooperate for ensuring the data needed to conduct market supervision analysis and review any regulations issued by DGT. The Competition Authority will be especially consulted in relation to those acts that might impose any restrictions on market access for various taxpayers or in relation to imposing same practices as selling prices or conditions.

In the context of increasing the control of, and fight against, bid rigging in public procurement the Competition Authority has signed a Memorandum of Understanding with the Supreme State Audit Institution. The institutions undertake to cooperate especially in the context of detecting any potential violations of the Competition Protection Law in public procurement procedures that are subject to audit by the Supreme State Audit Institution.

### **III.3 Competition Culture – public and media relations**

Increased public awareness of competition and general competition culture are necessary for a better implementation of the competition protection legislation. This is one of the constant priorities for the Competition Authority. Provision of full information to the public is also an obligation in the context of transparency regarding the activity of the Institution and its officers.

In this context, the public is informed directly on the Competition Authority website, in addition to various informational events organized with IPA Project support in several major cities, such as Shkodra, Elbasan and Tirana.

Various Competition Authority publications that have been published with its own funds or with IPA Project support have also been disseminated to interested parties.

The public has also been informed through various statements and interviews on the printed and audio and visual media. This tool has been used not only to announce the conclusion of investigations, but also to be visible on the World Competition Day.

Some members of the Competition Authority staff also carry on teaching and research activities, and have used this opportunity to promote the efforts of the Competition Authority and increase competition culture.

#### ***III.3.1. Public Relations***

**Website:** The Competition Authority official website ([www.caa.gov.al](http://www.caa.gov.al)) provides detailed information on its activities. It helps inform the general public, the business community, the media, NGOs and various researchers. The website is constantly updated with information on the Competition Authority activities, the Competition Protection Law, the secondary legislation, the Competition Commission activity, and other publications. Competition Commission Decisions are published on the website as soon as they are transcribed. Information published on the website also includes concentrations that are expected to occur, so that any interested parties can state their concerns and opinions in relation to the concentrations. The Competition Authority official website is available in both Albanian and English. The website was changed last year in terms of structure, design and programming, with a view to making it more attractive and interactive for the public and making it more accessible.

The website is entirely integrated into the social networks of Facebook, LinkedIn and Tweeter, so that anyone can post any webpage content on those social networks immediately.

**Publications:** In order to increase public and stakeholder awareness, the Competition Authority published its Bulletin of Decisions and Annual Report for 2012. Those publications are useful for businesses, central institutions, regulators, the general public, etc.

In addition, in various events the Authority has promoted and disseminated the following publications: Competition policy; Competition Glossary; Decision Bulletins; Annual Reports; Summary of primary and secondary legal framework on competition; Competition law in Albania (informational booklet); Booklet “Competition in public procurement: How to Prevent and Detect Bid Rigging in Public Procurement”; “Competition in public procurement” (brochure); Regulatory impact assessment and competition in the regulated markets (booklet); Concessions, competition and state aid rules: an analytical list for identifying some critical issues (booklet); etc.

### ***III.3.2. Media Relations***

Competition Authority activities and, especially, decisions have been covered by the printed and audio and visual media extensively.

The Authority communicated with the media through press releases, interviews, press conferences, participation in various television programmes, etc. The Cabinet prepared press releases on the Commission decision-making and various Authority activities and disseminated them to local and international media and to international specialized news and market intelligence agencies such as MLEX, ILO, CPI, etc., where they have been covered extensively.

This communication with the public on the media has had a significant impact on the promotion of the Competition Authority activity and has led to increased public competition culture and awareness. The communication has targeted both a specialized audience (e.g. academics, economists, lawyers, businesspersons, public officials, etc.) and the general public that is directly affected by the Competition Authority decisions.

## **IV. INTERNATIONAL COOPERATION**

An increased role for the Albanian Competition Authority in regional and international competition networks was one of the goals in 2012. In addition, the Competition Institution is part of the inter-institutional integration network, which plays a coordination role in a specific chapter and contributes to the fulfilment of obligations and reporting under other chapters. The Competition Authority

reaffirmed the inter-institutional working groups under Chapter 8 again in 2012, in the context of fulfilling its institutional task of coordinating that Chapter.

#### **IV.1 Cooperation with European Commission**

According to the European Commission Report on Chapter 8 “Competition Policy”, the Competition Authority had made some progress in the area of competition, with considerable progress with regard to competition protection and the area of competition in general.

##### ***European Commission Progress Report Chapter: Competition policy***

*Progress has been made in the field of anti-trust and mergers. The adoption of the Regulation on agreements of minor importance in November brought the legislation closer to the acquis. The Albanian Competition Authority (ACA) adopted six decisions on anticompetitive Agreements (cartels) and two on abuse of dominant positions. Ten proposed mergers were authorised without remedies. Moreover, the ACA issued three recommendations to other government institutions. The ACA issued a recommendation to the Electronic and Postal Communications Authority (EPCA) concerning a merger between two telecommunications operators with EPCA’s positive response.*

*The ACA’s recommendation to the Bank of Albania (BoA) to increase transparency regarding citizens’ access to information on banks interest rates was accomplished through their on-line publication. The government has not yet followed the ACA’s recommendation to establish a Bank Ombudsman.*

*The ACA concluded investigations into the bread market and security services and imposed fines for illegal price-fixing. After investigating the supply of fixed telephone services with prepaid cards, the ACA issued specific recommendations. It also initiated preliminary investigations into potential abuses of dominant market positions in a range of sectors: compulsory third-party motor insurance; international shipping services; loading and unloading of liquid petroleum gas; the sugar and rice import market; the vegetable oil production market; and the import, manufacturing and wholesale trading market of cement.*

*The ACA continued its advocacy and public-awareness activities, a condition for the implementation of competition policy. Some progress was made as regards the administrative capacity of the ACA. The total number of staff increased by one legal expert and recruitment of an IT and forensic expert is on-going, while two administrative posts were converted into technical posts, in accordance with the new structure of the ACA approved in January. Training helped to strengthen its investigative capacity.*

##### ***Conclusion***

*Some progress can be reported in the area of competition. Further efforts are required to safeguard the administrative capacity and the operational independence of the Competition Authority.*

Following the 2012 Stabilization and Association Report the Competition Authority analysed the recommendations in the Report under Chapter 8 “Competition Policy”, and identified specific tasks and responsibilities laid down in the Report, to make them into a plan of administrative actions. Specific responsibilities were assigned with regard to the implementation of those recommendations, to various Authority units and departments, together with objectives related to legal initiatives and strengthening of institutional capacities.

As the institution coordinating Chapter 8 “Competition Policy”, the Competition Authority has paid utmost attention to progress reporting on things occurring not only in the area of competition but also in the areas the Institution reports about. The Authority has cooperated closely with the members of the Inter-Institutional Working Group on Chapter 8 in order to reflect the current situation realistically and clearly as regards the legal framework, implementation activities, competition evaluation process and interventions in regulated markets, giving opinions on special and exclusive rights, etc.

The Competition Authority has ensured submission of paper to the Ministry of Integration in relation to the Sub-Committee for the Internal Market and Competition under the Stabilization and Association Agreement in April 2012. The Competition Authority presented the results achieved in the process of approximating and implementing legislation in the area of competition and state aid.

#### ***IV.1.1 Competition Authority Obligations Stemming from the Stabilization and Association Agreement***

The Stabilization and Association Agreement is the instrument that will facilitate Albania’s gradual integration into the European Union. It provides the framework required to strengthen the rule of law. The Agreement foresees the adoption of the *Acquis communautaire* in the domestic juridical system of Albania. The approximation of legislation is the establishment of a legal and institutional framework which will allow the Albanian market to integrate with the internal European market with the primary aim to benefit and defend the interests of Albanian citizens.

Obligations for the Competition Authority under the SAA are related to the fulfilment of Copenhagen economic criteria for EU membership; more specifically from Articles 71 and 72 of the SAA, which lay down obligations and responsibilities for the Competition Authority in the context of protecting competition against anticompetitive practices that might affect trade between the Community and Albania (Article 71 “Competition and other economic provisions”)

and tasks assigned to the Competition Authority in the case of exclusive or special rights, which, with the October 2010 amendments to Law 9121 of 28 July 2003 “On Competition Protection” receive a special focus through specific provisions on the implementation and observance of those rules (Article 72 “Public Undertakings”).

#### ***IV.1.2 Periodic Reporting***

The Authority has been in constant contact with the Ministry of European Integration, and has submitted reports on the progress it has made.

The Authority has reported in accordance with the timeframe laid down the National SAA Implementation Plan, giving a description of the degree of alignment of legal acts adopted in the area of competition with the *Acquis*.

The Competition Authority reported upon the Ministry of Integration requests covering the area of competition and other areas for which the Authority coordinates Chapter 8 “Competition Policy”. The following reporting continued: periodic bimonthly (follow-up) and quarterly reporting to the European Community—through the Ministry of Integration—with regard to legislative developments, measures, projects and institutional capacities during the reporting period; annual reporting with regard to all developments in the areas of competition, cooperation and investigation proceedings, Competition Commission decisions, various market processes and monitoring exercises, institutional capacity building, legislation revision and updating in line with the latest Community law in this area, etc.

Being one of the institutions responsible for one of the main chapters to be negotiated by Albania, the Competition Authority pays utmost attention to the European integration process, and gives accurate, rigorous, timely and realistic replies on the situation in the area of competition during the reporting periods. The Stabilisation and Association Agreement provides for the adoption of the *Acquis communautaire* in the domestic juridical system of Albania. The approximation of legislation is the establishment of a legal and institutional framework which will allow the Albanian market to integrate with the internal European market with the primary aim to benefit and defend the interests of Albanian citizens.

#### ***IV.1.3 IPA 2008 Assistance Projects***

The Twinning Project provided the Competition and State Aid Agency with assistance in increasing the professionalism and experience of the Competition Authority staff through the organization of training and provision of expertise by Italian and Hungarian experts from the respective Competition Authorities, in relation to examining real and hypothetical cases on prohibited agreements, abuse

of dominant position and control of concentrations, strengthening of relations with regulators in such industries as the sectors of finance, banking, telecommunications, energy, etc., organization of joint events with regulators from other countries in the region, cooperation with the courts, etc.

The goal of the Project was to strengthen the Competition Authority institutional capacities, which was one of the recommendations in the European Union Progress Reports in the past few years, in addition to building capacities in the specific regulators and the judicial system in relation to the implementation of competition rules. The main target group of the Project included businesses, law students and Magistrates' School students, judges, representatives from central and local public institutions, and the general public.

#### **IV.2. Cooperation with OECD (RCC Budapest)**

The Organization for Economic Cooperation and Development (OECD) policies focus, inter alia, on competition as one of the main areas of economic development and global growth and prosperity challenges.

For the countries in the region, the OECD Regional Competition Centre in Budapest, Hungary, has been a major training centre for experts in the implementation of the competition law and policy.

Like every year, the OECD RCC funded the training of experts from the Competition Authority in 2012 in the areas of abuse of a dominant position (hypothetical cases), judicial defence of Competition Commission decisions, vertical agreements, assessment of concentrations and the granting of concentration authorizations with conditions and obligations, assessment of instruments for detecting cartels, etc.

#### **IV.3. Cooperation with the International Competition Network (ICN) and Other Authorities in the Region**

The Competition Authority is a full member of the International Competition Network (ICN). This important international body comprises various competition agencies from over one hundred countries and other business and international organizations. This organization aims at strengthening the cooperation among its member authorities by achieving convergence among legislations and best practices in the area of law implementation. The Competition Authority has taken active part in the ICN annual conference, telematics seminars and surveys, where it has given its views and opinions on various documents prepared by the ICN working groups.



Given the increasingly larger integration of regional markets into a single competitive market, the cooperation among the authorities in the region is of paramount importance. In this context, the Albanian Authority has intensified its cooperation with competition authorities in the region in the framework of various regional initiatives. The cooperation with the Competition Commission of the Republic of Kosovo is especially important. The cooperation has included visits by heads and experts of both institutions, in addition to exchanging experience on various issues of mutual interest.

**Sofia Competition Forum.** Albania has actively supported the establishment, operation and expansion of the Competition Forum in Sofia. This important regional initiative in the area of competition aims at fostering the cooperation among competition authorities in the Balkan Region. The cooperation aims at a more uniform implementation of competition rules in the region. The Forum will help Balkan countries to maximize the benefits resulting from a competitive and functioning regional market.

The cooperation will be in the form of increasing the capacities of the participating countries in various events on competition law, the establishment of a database with informational and educational material, the development of an online collaborative platform, etc. The cooperation will also contribute to the fulfilment of the obligations of our country in the area of competition in the context of Albania's integration into the EU.

The Forum is supported by such prestigious international bodies as UNCTAD, OECD, ICN and the European Union. The participating countries are Albania, Kosovo, Bosnia and Herzegovina, Serbia, Former Yugoslav Republic of Macedonia, Montenegro and Croatia. Support for the initiative will also be provided by Slovenia, Romania, Greece, Turkey, Russia, Ukraine, Austria and Switzerland.

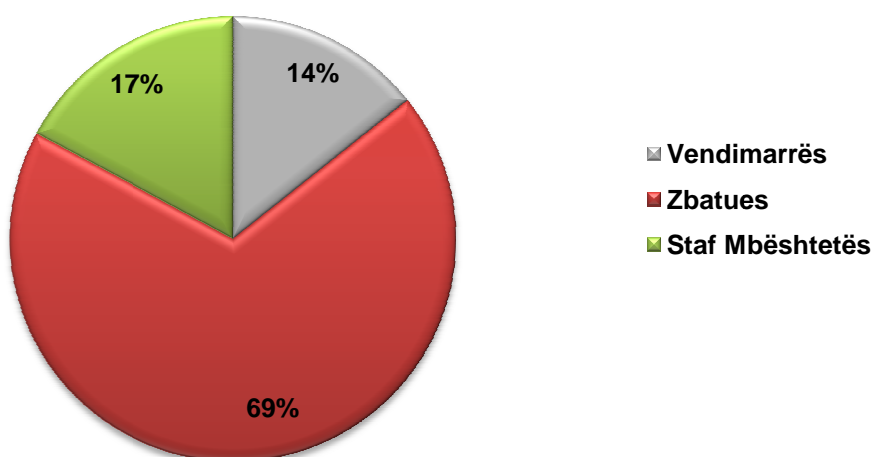
**Energy Community Competition Network.** Albania is also one of the founders of the Energy Community Competition Network, which is composed by EU Member States and other countries that are members of the Energy Community. The purpose of the Network is to promote cooperation and discussion on competition law enforcement in the energy sectors. The members of the Network will exchange experience and develop best practices within the Energy Community. This cooperation is very important because most of the participants have similar market structure and face the same issues. The members of this initiative are Albania, Bosnia and Herzegovina, Croatia, European Union, Slovenia, Former Yugoslav Republic of Macedonia, Moldova, Montenegro, Serbia, Ukraine and Kosovo.

## V. COMPETITION AUTHORITY HUMAN RESOURCES AND FUNCTIONS

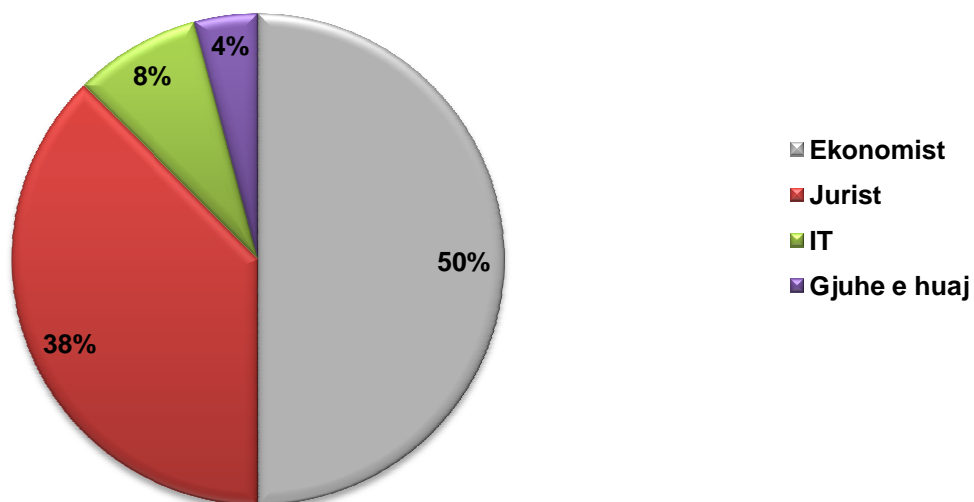
### V.1 Competition Authority Organizational Structure and Functions

The Competition Authority structure remained essentially the same in 2012, and is in accordance with the Parliament of Albania Decision no. 7 of 2 February 2012. The total number of staff is 35, of whom 24 are technical staff comprised of economists and lawyers (12 economists, nine lawyers, two IT experts and one foreign language linguist), in addition to an auxiliary member of staff.

#### Ndarja e stafit sipas funksioneve



#### Ndarja e stafit sipas arsimimit



## **V.2 Organizational Structure**

The Competition Authority is made up by the Competition Commission, which is its decision-making body, and the Secretariat, which is its administrative and investigative body.

Last year, the Competition Commission was completed with a fifth member: Ms Iva Zajmi. Ms Rezana Konomi was elected as the Deputy Chairwoman of the Commission. The decision-making body of the Competition Institution has three economists and two lawyers as members, with almost all of them with scientific titles and degrees.

Annex No. 7 “Competition Authority Structure” shows the organizational chart of the Competition Authority, which shows no changes in the organizational structure and in the functions of the Competition Institution components.

The Competition Authority Mission is to ensure free and effective competition on the market by employing the market intervention instruments that are laid down in Law No. 9121 “On Competition Protection”, as amended, wherever competition is restricted by the abuse of dominant position and/or prohibited agreements. The Competition Authority has the task of controlling concentrations by assessing any changes in market structures resulting from undertaking mergers or changes in control in order to prevent those concentrations that create or strengthen a dominant position and might affect effective competition on the market.

## **V.3 Administrative Capacity Building**

Administrative capacity building and strengthening is a constant challenge for the Competition Authority, and is considered as a crucial factor to the real increase in the independence of the Competition Institution.

A great number of training events for the Competition Authority staff were conducted in 2012. About 100 days of training for Competition Authority inspectors and management staff were conducted by experts from European Union Member States—Italy and Hungary. The trainings focused on the most important markets where the Competition Authority intervenes, horizontal allocation, abuse of dominant position, prohibited agreements, and concentration control.

In the framework of the EU IPA 2008 Programme, the Authority continued to benefit from the implementation of the twinning project. Like one year before, the objective of the Twinning Programme is to ensure a competitive environment in Albania pursuant to Competition Law and the *Acquis Communautaire*, and to

increase and strengthen the efficiency and effectiveness of administrative capacities in the field of competition.

In the framework of the cooperation with the OECD regional centre in Hungary, 18 days of training with the technical staff were carried out, focusing on various competition issues. The technical staff also took part in all seminars or round tables that other regulators and institutions organized.

## **V.4 Financial Management**

In 2012 the Competition Authority duly complied with the requirements of Law No. 10487 of 5 December 2011 “On 2012 State Budget”. The management of material and cash assets was treated as an important field of work for the Competition Authority, in its efforts for due execution of all laws and regulations on the use of Budget funds.

The Finance Office plans and takes care of the good management of appropriated budget funds contributing to the activity of the institution. With its efforts the Finance Office has contributed to the achievement of the institutional objectives.

91.7% of the 2012 budget was executed. Annex 8 “Actual Budget of the Competition Authority, 2012”. The 8.3-percent-execution gap resulted from the failure to perform one procurement procedure for lack of bids, with the rest being unexecuted funds under other procurement procedures that were carried out in 2012.

## **VI. PRIORITIES FOR 2013**

When setting its priorities the Competition Authority relies on an objective evaluation of its experience and issues in the previous year and the identification of future challenges, under the guidance of the Competition Commission vision for a constant growth of market intervention effectiveness by the competition institution.

A priority for the Competition Authority in the following year will be the strengthening of cooperation with the judiciary, as the experience with the judiciary in the previous year has highlighted the need for conveying and absorbing the competition philosophy which should be seen as an element that accompanies the market economy where failure to observe the game rules among market operators increases the costs of public goods and, in turn, reduces consumer wellbeing.

Another priority is the strengthening of institutional capacity instrument effectiveness, consisting of enhancing investigation methods and means and increasing the degree of competition institution staff professionalism. Future challenges are the main inputs for the Competition Commission when building strategies, not only in the context of implementing the Competition Law and Policy, but also in order to further promote competition as one of the safest paths of economic growth in the country.

### **VI.1. Competition Law Implementation**

In 2013 the main priority for the Competition Authority work will be the protection and promotion of free and effective market competition through increased efficiency of market interventions, by sophisticating investigative tools and procedures for identifying and preventing cartels, abuse of dominant power and control of concentrations occurring on the domestic market.

The goal for the Competition Institution in 2013 will be to complete or continue conducting monitoring and inquiry and investigation cases that were initiated in the previous year, and read as best as possible all indications coming from complaints, the media, the business community or consumers.

As already presented in this Report, cases that are close to conclusion include the in-depth investigations into the market of sunflower oil importing, manufacturing and wholesale selling, the market of urban passenger transport in Tirana, the market of public procurement of security services in the Region of Korca, and the cement market; and the inquiry into the mobile telephony market. In addition, the monitoring of the financial market in relation to the agreements between banks and

insurance companies, the electricity market, the liquefied petroleum gas market, and the seed, seedling, fertilizer and pesticide market will continue.

The data for early 2013 show a significant increase in the number of share purchase transactions communicated to the Competition Authority. The Competition Authority will continue its cooperation with the National Registration Centre in 2013 with the goal to identify any unreported concentration transactions, which does not only contribute the implementation of the law but also enhances competition culture in the business community.

## **VI.2 Legislation Approximation**

An important aspect in the process of drafting new acts will be the development of the secondary legislation framework that is aligned with the European competition law. More specifically, the following will be adapted and adopted in 2013:

- 1) EU Regulation (32009R0487) No. 487/2009 of 25 May 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector, in accordance with which the Regulation on the categories of agreements in the air transport sector will be drafted.
- 2) EU Regulation (32009R0246) No. 246/2009 of 26 February 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies, in accordance with which the Regulation on the categories of agreements between shipping companies will be drafted.
- 3) New Communication from the EU Commission (52011XC0114(04)) "Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements", on the basis of which the Instruction on the categories of agreements between shipping companies will be drafted.
- 4) Communication from the European Commission (52009XC0224(01)) "Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings", on the basis of which the Instruction on the application of Articles 8 and 9 of Law 9121 of 23 July 2003 "On Competition Protection".

## **VI.3 Strengthening Competition Advocacy and Culture**

The Competition Commission has constantly emphasized how crucial real and interactive between the Competition Institution and other regulators supervising the relevant markets is. In addition the experience of last year has showed that special attention should be paid not only to central government institutions but also to local government ones that play a regulatory role in regional markets.

The process of adopting the abovementioned regulations and instructions through public discussions at round tables with stakeholders will be another instruments to be used for increasing and strengthening advocacy and culture not only with stakeholders but also with the entire public or community of consumers.

#### **VI.4. Administrative Capacity Strengthening**

A constant challenge for the Competition Authority is the need for strengthening its capacities. To this end, in 2013 due to the completion of the projects State Budget funds (ALL 2.5 million) have been allocated to the training of staff mainly in seminars and conferences organized by OECD, ICN, etc.

Capacity building efforts will focus on IT skills as a basic tool for detecting prohibited agreements, and the consolidation of economic analysis tool in order to identify any interactions between any factors with determining roles in an anticompetitive practice, through various training opportunities in Albania in relation to econometric analysis.

## Annex 1 – Statistical Data on Competition Commission Decisions

Year	Total Decisions	Concentrations	Abuse of dominant position	Prohibited agreements	Exempted agreements	Regulation and guidelines	Recommendations to public institutions	Decisions imposing fines	Other decisions
<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>2010</b>	34	6	3	2	-	7	5	2	9
<b>2011</b>	43	10	2	2	-	6	5	1	17
<b>2012</b>	48	9	2	2	1	5	5	7	16
<b>Total</b>	<b>259</b>	<b>59</b>	<b>10</b>	<b>11</b>	<b>3</b>	<b>36</b>	<b>37</b>	<b>19</b>	<b>84</b>



## Annex 2 - Execution of fines imposed by the Competition Commission, as of 31 December 2012

<i>Fines imposed by CA</i>	<i>Amount (in ALL)</i>	<i>Share of total<sup>2</sup></i>
Total fines	1,030,819,737	100
Fines collection by Judicial Enforcement Services	259,167,233	25%
Fines in the process of collection by Judicial Enforcement Services	9,970,000	1.2%
Fines for which no court order has been issued yet (no EO)	761,682,504	73,8%

### FINES COLLECTED AND TRANSFERRED TO THE STATE BUDGET IN 2012

- a) Vodafone ALL 242,633,000
- b) Çalik Holding ALL 6,549,476
- c) ProCredit ALL 7,237,464
- d) Concrete-production companies ALL 2,747,285

**Total collected fines: ALL 259,167,233**

### FINES IN PROCESS OF COLLECTION BY JUDICIAL ENFORCEMENT SERVICES FOR 2012

- a. Albanian Airlines ALL 2,600,000
- b. K.Hallka ALL 30,000
- c. Bakeries in Vlora ALL 240,000
- d. Ultra Motors ALL 1,517,000
- e. Hyundai ALL 5,383,000
- f. Geci ALL 100,000
- g. Media vision ALL 100,000

**Total ALL 9,970,000**

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<sup>2</sup> Percentages are rounded.

### Annex 3 - Notified and Authorized Concentrations

No	Concentration case	Respective market	Decision No.	Authorization Date	Procedure
1	Euronuovo sh.p.k. & Euroteorema sh.p.k. / Euro Investment Group sh.p.k.	Construction Market	213	24.01.2012	First Phase/simplified notification form
2	Bet 07 sh.a.	Gaming Market	214	24.01.2012	First Phase/simplified notification form
3	Audi Aktiengesellschaft / Ducati Motor Holding s.p.a.	Motorcycle Market	227	28.06.2012	First Phase/simplified notification form
4	Geci sh.p.k / Albania Consortium sh.a. & Sky 2009 sh.a.	Accommodation and Tourism Market	228	28.06.2012	First Phase/simplified notification form
5	Media Vizion sh.a / Ost Holding GmbH & Media Holding Beteiligungs AG	Radio and Television Market	237	26.07.2012	First Phase/simplified notification form
6	Japan Tobacco International Holding B.V / V.D.M Invest Comm. VA	Tobacco Market	238	26.07.2012	First Phase/simplified notification form
7	Ferreri International S.A / Business NAT & Business SL (owned by Stelliferi Group)	Chocolate Market	244	20.09.2012	Second Phase/complete notification form
8	National Bank of Greece S.A / Eurobank Ergasias S.A	Retail banking and corporate banking market	255	11.12.2012	First Phase/simplified notification form
9	Alpha Bank S.A / Emporiki Bank of Greece	Retail banking and corporate banking market	259	27.12.2012	First Phase/simplified notification form

#### Annex 4 - List of Commission Decisions on fine execution

No.	Commission Decision	Court Enforcement Order	Debtor
1	No. 38 of 16 May 2006 "Fine against Çalik Seker Konsorsyum"	Decision No. 3354 of 12 November 2010	Çalik Seker Konsorsyum
2	No. 59 of 9 November 2007 "Fine against AMC SHA and Vodafone SHA"	Decision No. 3359 of 9 November 2010 (only for the part pertaining to AMC)	AMC SHA
3	No. 63 of 3 November 2007 "Fine against Procredit Holding AG"	Decision No. 3358 of 22 November 2010	Procredit Holding AG
4	No. 66 of 18 December 2007 "Fine against undertakings operating in the concrete market"	Decision No. 3357 of 22 December 2010	"Alban Tirana Co", "Best Construction Alb", "Beton Ekspres", "Ferro Beton & Const", "Halili", "Ital – Beton Const", "Kirchberger – Albania", "Qarri - 02", "Shkodra Beton"
5	No. 67 of 24 December 2007 "Individual sanction against Mr Kajo Hallka"	Decision No. 3356 of 10 December 2010	Kajo Hallka
6	No. 123 of 8 September 2009 "Fine against Albanian Airlines MAK SHPK"	Decision No. 3355 of 12 November 2010	Albanian Airlines MAK SHPK
7	No. 59 of 9 November 2001 "Fine against AMC SHA and Vodafone SHA" (only for the part pertaining to Vodafone)	Decision No. 4281 of 22 July 2011	Vodafone SHA
9	No. 229 of 3 July 2012 "Fine against GECI SHPK for failing to observe time-limit for concentration notification"	Decision No. 9771 of 29 October 2012	GECI SHPK
10	No. 154 of 1 October 2011 (only for the part pertaining to Hyunday Auto Albania sh.p.k.)	Decision No. 1611 of 10 February 2012	"Hyundai Auto Albania" sh.p.k.
11	No. 349 of 26 July 2012 "Fine against Media Vizion"	Decision No. 9772 of 9 October 2012	Media Vizion
12	Competition Commission Decision no. 154 of 1 October 2011 (only for the part pertaining to Ultra Motors sh.p.k.)	Decision No. 1612 of 27 February 2012	Ultra Motors sh.p.k

## Annex 5. Judicial review of Competition Commission decisions

Case	Subject-matter	Court		Outcome
1. Romano Port sh.a v Competition Authority P. III: "Mare Oil" SHA	Appeal against CCD No. 197 of 29 July 2011	Tirana Court	District	Dismissed / Decided for CA
2. Romano Port sh.a. v CA	Appeal against CCD No. 221 of 11 April 2012	Tirana Court	District	Dismissed / Decided for CA
3. Classic and Noti SHPK v CA	Quashing CCD No. 154 of 1 October 2010	Tirana Court	District	Accepted / Decided against CA
4. INTERSIG-VIENNA INSURANCE GROUP" Sh.A v CA	Quashing CCD No. 216 of 1 March 2012	Tirana Court	District	Decided for CA
5. Eight Insurance Companies v CA	Quashing CCD No. 246 of 9 October 2012	Tirana Court	District	Pending
6. Nazëri&Dea v Competition Authority	Quashing CCD No. 246 of 9 October 2012	Tirana Court	District	Pending
7. Toni Security v CA	Quashing CCD No. 246 of 9 October 2012	Tirana Court	District	Pending
8. Eurogjici 1Secur. v CA	Quashing CCD No. 246 of 9 October 2012	Tirana Court	District	Pending
9. ARMO SHA v CA	Quashing CCD No. 150 of 20 July 2010	Tirana Court of Appeal		First Instance Court Decision upheld / decided against CA
10. Classic and Noti SHPK v CA	Quashing CCD No. 154 of 1 October 2010	Tirana Court of Appeal		First Instance Court Decision set aside / decided for CA
11. Atlas SHA v CA	Quashing CCD No. 125 of 8 October 2009	Tirana Court of Appeal		First Instance Court decision upheld / decided against CA
12. Bloja SHA v CA	Complete Quashing CCD No. 125 of 8 October 2009	Tirana Court of Appeal		First Instance Court decision upheld / decided against CA
13. Romano Port sh.a. v CA	Appeal against CCD No. 221 of 11 April 2012	Tirana Court of Appeal		Pending for judgment date
14. INTERSIG-VIENNA INSURANCE GROUP Sh.A	Quashing CCD No. 216 of 1 March 2012	Tirana Court of Appeal		Pending for judgment date.
15. Insurance companies v CA	Quashing CCD No. 50 of 23 March 2007	Supreme Court		Dismissed by the Court / decided against CA
16. Atlas SHA v CA	Quashing CCD No. 125 of 8 October 2009	Supreme Court		Pending for judgment date

<b>17. Bloja SHA v CA</b>	Quashing CCD No. 125 of 8 October 2009	Supreme Court	Pending for judgment date.
<b>18. ARMO SHA v CA</b>	Quashing CCD No 150 of 27 July 2010	Supreme Court	Pending for judgment date
<b>19. Hyundai Auto Albania sh.p.k.</b>	Quashing Decision No. 154 of 1 October 2010	Supreme Court	Pending for judgment date
<b>20. Procredit Holding AG v CA</b>	Quashing Decision No. 63 of 3 December 2007	Supreme Court	Pending for judgment date
<b>21. Vodafone Albania SHA v CA</b>	Quashing Decision No. 9 November 2007	Supreme Court	Pending for judgment date
<b>22. AMC SHA v CA</b>	Quashing Decision No. 9 November 2007	Supreme Court	Pending for judgment date
<b>23. AMC SHA v CA</b>	Quashing Decisions CCD No. 26 and 27 of 2 December 2005 and 12 December 2005	Supreme Court	Pending for judgment date

## Annex 6- Recommendations Issued by the Competition Commission in 2012 and their implementation

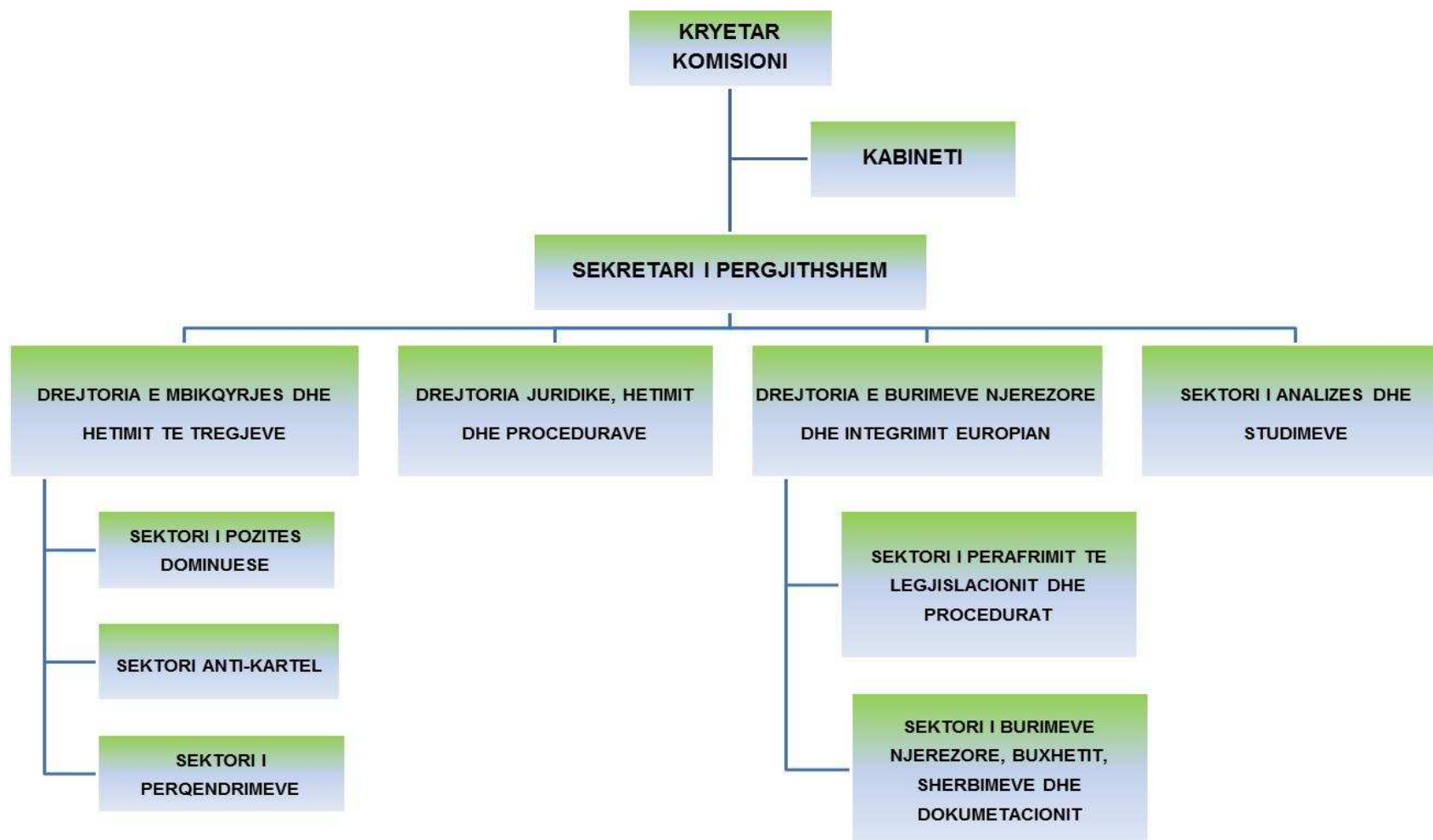
Nr.	Decision	Competition Authority Recommendation	Response to the Recommendation
<u>1</u>	<p>Competition Commission Decision no. <b>231 of 5 July 2012</b></p> <p>“Recommendations for the Electronic and Postal Communications Authority regarding the fixed telephony services provided by means of prepaid cards”</p>	<p>Competition Commission Decision no. <b>231 of 5 July 2012</b> “Recommendations for the Electronic and Postal Communications Authority regarding the fixed telephony services provided by means of prepaid cards”:</p> <p><i>“I. AKEP should make Altelekom record all its retail services or products, including the landline telephony prepaid ALBLUE card service, in separate financial accounts. That would provide for more transparency on services or products in terms of costing, and prevent any anticompetitive phenomena that would lead to unreal costs.”</i></p>	<p>Following the recommendation, Altelecom is the process of separating its accounts in compliance with the instruction issued by AKEP in the context of the merger with Eagle Mobile.</p>
<u>2</u>	<p>Competition Commission Decision no. <b>243 of 11 September 2012</b></p> <p>“Recommendations on increasing competition in public procurement”</p>	<p>Competition Commission Decision no. <b>243 of 11 September 2012</b> “Recommendations on increasing competition in public procurement”, decided:</p> <p><i>“I. Article 4(2) of the Draft Law drafted by PPA provides that: The following point (d) is added to Paragraph 3 in Article 13 “Public Procurement Agency”:</i></p> <p><i>“d) Where there is a final decision on bid rigging taken by the Competition Authority.”</i></p> <p><i>We suggest that the word “Authority” is replaced with “Commission” because the Competition Commission is the decision-making body. Thus, it should be change into:</i></p> <p><i>“d) Where there is a final decision on bid rigging taken by the Competition Commission.”</i></p> <p><i>II. Recommend that the Public Procurement Agency take the following legal initiative:</i></p> <p>1.</p> <p><i>dd the following paragraph in Article 3 “Definitions”:</i></p> <p><i>“Bid rigging in public procurement” is a form of price-fixing and/or procurement market-sharing agreement, which happens: First, when undertakings of which it is expected to compete secretly agree on the amount of bid to be submitted thus eliminating price competition; and, second, when undertakings agree on which undertaking will submit the lowest bid, and agree on a rotation of winning bids so that each undertaking receives an agreed amount of contracts.”</i></p> <p>2.</p>	<p>With the adoption of Law no. 131 of 27 December 2012 Amending Law No. 9643 of 20 November 2006 “On Public Procurement”, as amended” the following recommendation was taken into consideration:</p> <p style="text-align: right;">A</p> <p>paragraph I of CCD (Article 5(2)(b) of Law 131/2012); The recommendations proposed in Paragraph II of DCC were not reflected.</p> <p style="text-align: right;">A</p> <p>The recommendation proposed in Paragraph</p>

		<p>add the following provision in Article 46 or in another appropriate article:  <i>“For a bid to be valid (qualifying) it must be prepared and submitted completely independently from the rest of competing bids and from other non-bidding operators.”</i>  <i>Proof of this can be a bidder’s signature on an “Independent Bid Certificate”, which was recommended to PPA to include in the standard tender documentation in its Decision No. 158 of 12 November 2010 “Several recommendations on the prevention of public procurement bid rigging”.</i>  3. Article 56 “Unusually Low Bids” should specify a sufficient time period within which economic operators will submit their arguments in relation to their unusually low bid.  4. In Article 61 “Subcontracting” of Law No. 9643 of 20 November 2006 “On Public Procurement”, as amended, a paragraph should be added providing that:  <i>“Contracting authorities shall in no case allow subcontracting among bidders participating in the same procurement procedure as this behaviour is in conflict with the principle of independent bidding, nor shall they allow subcontracting in the case of those contracts where, due to their specific and continuous nature, have to be performed by their contractors.”</i>  <i>The same prohibition should also be laid down in the relevant Chapter in the Council of Ministers’ Decree on public procurement.</i></p> <p><i>III. For the purpose of increasing transparency and competition in public procurement, Contracting Authorities should publish during and at the end of procurement procedure all the documents that are related to the procedure (mainly: the complete contract award notice and the complete contract signing form) and should ensure that they are maintained on PPA official website over time.</i></p>	<p>III remains to be assessed over time.</p>
<p><b>3.</b></p>	<p>Commission Decision No. <b>247 of 9 October 2012</b> “Recommendations to the Financial Supervisory Authority in relation to the compulsory motor third party liability (MTPL) insurance market”</p>	<p>Competition Commission Decision no. <b>247 of 09.10.2012</b> “Recommendations to the Financial Supervisory Authority in relation to the compulsory motor third party liability (MTPL) insurance market” decided:  <i>I. Recommend the Financial Supervisory Authority to:</i>  <i>I.1. Amend Article 9(3) of Regulation No. 110 of 28 July 2011 “On setting the level of technical provisions for compulsory motor insurance”, whereby it should reduce the minimum period allowed for changing insurance premiums.</i>  <i>I.2. Implement the bonus-malus system in the near future. The system would provide opportunities of diversifying and applying differentiated premiums to individual compulsory motor insurance policies, which would thus increase competition among market operators;</i>  <i>I.3. Avoid joint work among actuaries from insurance companies in the process of calculating risk premiums, which should be carried out by the Financial Supervisory Authority based on the data submitted by insurance companies independently.</i></p>	<p>With its Decision No. 142 AFSA amended Regulation No. 110. Article 9(3) of the Regulation was amended by reducing the minimum time-limit for changing insurance premiums from six months to three months. Thus the recommendation in Paragraph I.1 was taken into consideration. The Bonus-Malus system has not been implemented yet.</p>

<p><b>4.</b></p>	<p>Decision No. <b>254 of 6 December 2012</b> On issuing recommendations to the Financial Supervisory Authority in relation to the compulsory motor third party liability (MTPL) insurance market.</p>	<p>Competition Commission Decision no. <b>254 of 6 December 2012</b> On issuing recommendations to the Financial Supervisory Authority in relation to the compulsory motor third party liability (MTPL) insurance market, decided: <i>Recommend the Financial Supervisory Authority to:</i></p> <ol style="list-style-type: none"> <li>1. <i>Revoke Article 4(1) of the Regulation "On setting the level of technical provisions for compulsory motor insurance" (adopted by FSA Board Decision No. 110 of 28 July 2011, and amended by Board Decision No. 142 of 29 October 2012)</i></li> <li>2. <i>Revoke Decision No. 151 of 29 October 2012 of the Financial Supervisory Authority Board approving the risk premium table used for the calculation of the level of technical provisions for compulsory motor third party liability insurance.</i></li> </ol>	<p>The recommendations have not been taken into account by AFSA yet. In the contrary, AFSA has requested the revocation of CC Decision No. 254 in its Letter No. 720 Prot. of 24 December 2012. The request was not granted by the Competition Commission.</p>
<p><b>5.</b></p>	<p>Decision No. <b>256 of 11 December 2012</b> "Recommendations for the Albanian Insurance Bureau"</p>	<p>Competition Commission Decision no. <b>256 of 11 December 2012</b> "Recommendations for the Albanian Insurance Bureau" decided:</p> <ol style="list-style-type: none"> <li>1. In Article 3 of Regulation No. 129 of 28 July 2012 On the procedure of approving correspondents in Albania, add the following point after point b: <i>"A legal person not having a fronting agreement referred to in the point above that has, nonetheless, been approved by the Members' Assembly to handle claims in compliance with the specified criteria."</i></li> <li>2. <i>The amendment should be made within 30 days from notification of this Decision.</i></li> </ol>	<p>AIB has not communicated whether it has taken the recommendation into consideration yet.</p>



## Annex 7 - Competition Authority Structure



## Annex 8 - Competition Authority actual budget, 2012

	<b>Approved</b>	<b>Actual</b>	<b>Difference</b>	<b>In %</b>
<b>Personnel expenses</b>	40,309,000	39,539,000	770,000	98%
<b>Social insurance contributions</b>	5,825,000	5,491,000	334,000	94.2%
<b>Supplies and services</b>	9,000,000	8,385,000	615,000	93.1%
<b>Investment</b>	5,000,000	1,733,000	3,268,000	34%
<b>Total:</b>	<b>60,134,000</b>	<b>55,148,000</b>	<b>4,986,000</b>	<b>91.7%</b>