



**AUTORITETI I  
KONKURRENCËS**

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# **2014** ANNUAL REPORT

AND

# MAIN GOALS FOR **2015**

**Competition Authority**

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## **INTRODUCTION BY THE COMMISSION CHAIR**

Competition is the best tool to promote economic growth because productivity can increase only in a competitive environment. Its impact is restricted by distortions and inefficiencies, which can be fought against by implementing the Competition Protection Law. In this way, the implementation of the Competition Law and Policy plays a key role in any economic growth strategy.

The main goal of competition is to ensure efficient resource allocation, a mission which is completely enabled only through very close cooperation between all the regulators of the specific markets and the Competition Institution. This is an ongoing challenge to overcome the concerns facing those market, converging into the instruments that should ensure their sustainable functioning well. That is why working in partnership with all the regulatory entities and institutions has been one of the consolidated features of the Albanian Competition Institution.

The rules on the protection of free and effective competition aim at correcting the malfunctioning of the market economy by establishing an environment that is conducive to economic growth. Competition promotes economic growth through reduction of entry barriers, increased efficiency, liberalisation, and fight against prohibited agreements and abuse of dominant position.

The Competition Institution cannot build a real partnership with the business and consumer community in the context of detecting anticompetitive practices unless it observes the basic principles of ethics and transparency.

The Competition Authority had its tenth anniversary in 2014; the anniversary was used to assess the best practices and see what the path towards improved effectiveness of the Competition Institution would be. In addition, its tenth anniversary confirmed its reputation as an independent public body operating in the context of free and effective market competition, the features of which have been evaluated in detail by personalities in the area of antitrust under a UN peer review programme that was solicited by the Competition Authority itself.

Competition is a market value, but also a value of the society in general, and that is why the promotion and protection of competition against any potential restrictions is a constant challenge for the Competition Authority and other bodies. Competition law is an integral part of the institution of law, the application of which is one of the instruments in the fight against corruption. These are ongoing challenges for the Competition Authority.

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

Law No. 9121 of 28 July 2003 “On Competition Protection,” as amended, and the National Competition Policy provide the tools that facilitate the addressing and resolution of free and effective market competition restrictions, distortions and obstructions. However, when conducting its activity, the Competition Authority is based on the Constitution of Albania, the Administrative Procedure Code, the entire Albanian legislation on a case by case basis and the competition law best practices, mainly from European Union Member States.

### ***I.1 Competition Authority Mission and Goals***

The Competition Authority acts to ensure free and effective market competition pursuant to the Competition Protection Law, based on the four main pillars that guarantee competition protection and promotion. In all respects, the Competition Protection Law has been approximated to a broad extent with the *Acquis Communautaire*, not only in substance, but also in terms of its implementation tools.

In order to fulfil its statutory mission as specified in the Competition Law, the Competition Institution uses such legal and by-legal tools as investigative proceedings to detect any anticompetitive practices. These practices appear in the form of prohibited agreements to fix prices, share markets, and restrict 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; etc.

The Competition Authority supervises any changes in market structures in the form of concentration of undertakings which take place through share purchase transactions among them, in order not to allow creation or strengthening of a dominant position in the respective markets.

Promotion of free competition among undertakings in the market, which is achieved through advocacy and efforts for increasing competition culture, is one of the goals of the Law. The Competition Authority ten-year experience has shown that increased Competition Authority impact on the market and efficient implementation of the law requires an assessment of those laws and regulations that are related to quantitative restrictions on the market or granting exclusive or special rights.

Well-functioning markets involves both taking care of consumer wellbeing and making markets more competitive. One of the competition policy and law features is involvement and cooperation of the various players and factors, which is carried out in constant cooperation with the Parliament, central and local agencies, other regulators, businesses and their organizations and consumer protection associations.

## **1.2 Executive summary**

The activity of the Competition Authority and the decisions of the Competition Commission were in line with the goals set for 2014, the Parliament Resolution on the Competition Authority Activity, and the European Union Progress Report, and in response to all the complaints addressed to the Competition Institution or consumers' concerns covered by the media.

The goals of the Competition Authority in 2014 continued to include the professional and objective treatment of the cases under review, mainly from complaints, increased efficiency of investigation proceedings, consolidation of the Authority profile as an independent and professional institution, increased and strengthened administrative capacities, approximation of the implementation legislation framework, and the starting of work for the development of the National Competition Policy.

The Competition Authority activity mainly focused on the identification of, and investigation into, anticompetitive practices, mainly in the form of prohibited agreements and abuse of dominant position, the *ex post* evaluation of exclusive rights, and the evaluation of laws and regulations affecting competition in various markets. In 2014, **42 decisions were taken**, of which two decisions on administrative action (fines); one decision imposing conditions and obligations; in three cases investigations in relation to abuse of dominant position were conducted; the number of prohibited agreement investigation cases increased to seven; eight decisions were taken to authorize concentrations; one decision was taken to grant an exemption of an agreement from prohibition; four decisions were taken with recommendations addressed to public institutions in relation laws; and the rest of the decisions were procedural in nature.

**The increase by more than double in the number of complaints** submitted to the Competition Authority in 2014 (a total of 33) was a significant development in terms of increased competition culture and advocacy, as the practice in developed countries and European Union Member States suggests that most of investigations

(over 90 percent) are initiated on the basis of undertakings' complaints and applications for fine leniency.

There were several **investigation cases** in 2014 in the following markets: the mobile telephony market; the motor vehicle insurance market; the fuel production, importing and wholesale market; the market of maritime transportation of passengers and vehicles; the market of purchasing energy to cover losses in the distribution system; the packaged tobacco importing and wholesale market; the personal and physical security procurement market in the Region of Dibra; and the procurement of the construction of the outer section of the Tirana Greater Ring Road—from Sauk to Bregu i Lumit. In all the cases, the Authority Secretariat carried out inspections in the form of dawn raids in all the undertakings simultaneously, and carried out a review of the documents electronically, for which two forensic inspectors were trained, which has enhanced the quality of collected evidence.

Work in 2014 also focused on the specific markets that were included in the Parliament Resolution recommendations for regulation. Thus, in the **mobile telephony market**, cooperation with the Electronic and Postal Communications Authority increased so that it took into consideration the Competition Commission recommendations on the regulation of the wholesale market (reduction of termination tariffs) and the retail market (ensure equal levels of on-net calls and off-net calls), following which the Electronic and Postal Communications Authority enshrined those recommendations in its decision on the analysis of the mobile telephony market.

**In the insurance market**, the novelty in 2014 was related to the commitments undertaken by the insurance companies, which were transformed into regulatory and mandatory measures by the Competition Commission in order to set the conditions of free and effective competition in the market. These measures were mainly related to the execution of contracts with more than one broker, the start of operation of the Bonus-Malus system (in the context of risk-based insurance tariffs), direct insurance (handling of claims by the direct insurer of the damaged vehicle owner), etc. Those commitments were included in the scope of further monitoring by competition inspectors, which showed that the insurance companies had observed the conditions and obligations set by the Competition Commission in part, and that their fulfilment required intervention of the Financial Supervisory Authority (AFSA) and the taking into account of the Competition Commission recommendations on the adoption of regulations.

In the **fuel market** the Competition Authority carried out an objective full process on how this market operates, what the degree of concentration in that market is, and what impact on competition the undertaking behaviour has, in addition to the assessment of the laws and regulations governing this market.

After reviewing the in-depth investigation report and the claims that the parties submitted in the hearings, the Authority did not find any evidence during the period under investigation that would prove the existence of a prohibited agreement or abuse of collective dominance among the undertakings under investigation. Although competition in the fuel import and wholesale market is not effective enough due to the market structures and the legal framework on this market.

The Competition Commission decided to recommend that the Ministry of Industry and Energy and the Ministry of Economic Development, Tourism, Trade and Entrepreneurship revise Law No. 8450 of 24 February 1999 “On processing, transportation and trading of oil, gas and their by-products”, in order to enable the undertakings operating in the Eurodiesel and petrol wholesale market to: (a) also sell as retailers, thus eliminating the excessive links in the market chain, which would result in the reduction of unnecessary economic costs relative to the added value of the product; and (b) maintain their product identity and compete through their respective logos in the retail segment, which would encourage effective competition in the market.

Another recommendations suggested the establishment of the required legal basis and administrative infrastructure for a hydrocarbon price transparency unit to which undertakings operating in the production, import and wholesale of fuels must submit a notification in real time within five to 15 minutes, including a notification to the Competition Authority, of any changes to wholesale prices.

The Authorised State Body was requested to evaluate the implementation of the concessionary agreement on the Port of Vlora 1, in order to verify compliance with the obligation of the concessionary not be involved in the selling of fuel, and the transfer of the exclusive right to related markets.

The Secretariat will continue to monitor the import, wholesale and retail market in order to see what the behaviour of the undertakings in that market will be.

**Public procurement** has also been under monitoring and investigation by the Competition Authority. The change in 2014 was related to closer cooperation with the Supreme State Audit Institution, which, after auditing the Albanian Road Authority in relation to the 2013 public procurement of the lots 1, 2 and 3 of the



construction of the Outer Ring Road of Tirana—the section from Kthesa e Saukut to Bregu i Lumit—had found that economic operators that had participated and been disqualified in Lot 1 had been awarded a contract on a rotation basis in Lots 2 and 3, after submitting tenders on the same requirements for each lot with negligible differences between them. Based on the evidence collected during the preliminary inquiry in relation to bid rigging elements such as rotation of contracts and proximity to the limit fund, on 12 February 2015 the Competition Commission decided to open an in-depth investigation into the relevant market against six companies and their consortium in order to see whether there were any restrictions of competition in the relevant market.

**In the electricity sector**, the market was monitored mainly in terms of the unregulated segment of energy purchase by the Distribution Operator for purposes of covering losses, followed by investigation proceedings and decisions taken on that sector and hearings with OSHEE and the complainant. This case is still under review in order to assess any potential for market restriction resulting from potential vertical agreements.

The Competition Authority gave recommendations to **liberalise and promote competition in the electricity market** as early as 2009, and in 2014 the Authority gave specific recommendations to the Energy Regulatory Entity (ERE). The recommendations consisted of adoption of a special regulation on electricity purchase by OSHEE, separation of the wholesale and retail markets in the production and distribution segments, and specific suggestions during the approval of the new energy tariffs for 2015. The Energy Community Secretariat found the Authority recommendations appropriate and commended them. The recommendations were also discussed with ERE at round tables, but they have not always been taken into consideration at the same pace. In addition, the Authority cooperated with the Ministry of Energy in the first stages of the Electricity Bill development. Despite nonparticipation in the follow-up events where the Bill was discussed, the Competition Authority has been proactive with specific recommendations for this production industry.

**In the transport sector**, an inquiry into the market of International maritime transportation of passengers and vehicles was opened last year, which showed that the licensees had a dominant position in the geographical markets they had been licensed on. In conclusion of the inquiry, the Competition Commission decided to instruct the undertakings operating in that market to keep transparent daily data on the tariffs applied to any sold tickets and to keep records of ticket sales for a three-

year period, which should be accessible at any time to the Ministry of Transport and Infrastructure and the Competition Authority.

Following the round table with the representatives from the Ministry of Transport and based on the agreement with them, the Authority decided to recommend the Ministry of Transport and Infrastructure to (i) prepare a study on the setting of the maximum tariffs for the service of international maritime transportation of passengers and vehicles; (ii) ask from the undertakings, and approve, when licensing them, the maximum tariffs to be applied under each category of journey for each season; (iii) supervise the tariffs applied by the undertakings relative to the approved maximum tariffs; and (iv) monitor, on a quarterly (seasonal) basis, the licensed undertakings in relation to the tariffs applied to each ticket sold, and the obligation of the licensees to keep records on ticket sales for a three-year period.

In its Resolution on the Evaluation of the Competition Authority 2013 activity, the Albanian Parliament stated that a legal evaluation of competition restriction in concessions granted as exclusive or special rights should be carried out. In this way, one aspect of the Competition Institution activity was the evaluation of granted concessions—this was an *ex post* evaluation; it also focused on the *ex ante* evaluation of any concessionary contracts before they are awarded. Section II.6 gives the Competition Commission findings and recommendations for each concession in detail.

In 2014, **eight mergers** were authorised, as they did not establish or strengthen a dominant position. One merger was suspended due to lack of information, and seven other cases were not subject of authorisation because they did not meet the requirements of Article 10 and/or Article 12 of the Law.

The Authority had several **monitoring** cases in 2014, following complaints or initiated by itself, especially in the markets of cement, tobacco and its by-products, liquefied petroleum gas and sunflower oil, and a market study on excise goods was carried out.

No **changes to the primary legislation** were made last year; however, the following two regulations were adopted pursuant to the National Plan for European Integration: the Regulation on the categories of agreements and concerted practices in the maritime transportation of goods sector; and the Guideline on the applicability of Articles 8 and 9 of the Law on the dominant position, which aim at consolidating the Competition Law implementation practice.

The **court review** of Competition Commission decisions entered a new phase in 2014, following the opening of the Administration Court, with the Commission decisions now being taken to that Court. The court proceedings have become faster with the Administrative Court, while there was a transitional period for migrating the cases from civil courts to the Administrative Court. Cases still pending at the Supreme Court are taking a much longer time.

In 2014 the Competition Authority had eight cases in the Administrative Court of First Instance, of which five cases were reviewed, with three cases pending in 2015. Eight cases were with the Administrative Court of Appeal, of which four cases were reviewed and four cases were pending in 2015. There were 11 cases in the Administrative Chamber of the Supreme Court in 2014, of which one decision dismissed the recourse from Vodafone Albania sh.a., thus upholding the Competition Authority decision, and one case was reviewed after the recourse was submitted by the Competition Authority (AMC SHA), where the Supreme Court decided to return the case for retrial to the Court of Appeal; nine cases were pending in 2015.

In 2014 the Competition Authority paid special attention to **advocating for** the Competition Protection Law, issuing recommendations on several laws and regulations in the areas of telecommunications, insurance and electricity. In all cases when recommendations were given, round tables with the regulators and representatives from central agencies were organised.

The Competition Authority has undertaken a number of activities to increase the competition **culture**, including the organisation of the international scientific conference on the occasion of the institution tenth anniversary, where participants included personalities in the area of competition from USA, EU, other countries in the region, etc. In addition, workshops in other districts (Gjirokastra, Korca and Shkodra) were organised with representatives from the local government and the business community, and publications were made and submitted to university libraries.

The content and implementation of the competition law and policy were evaluated by UNCTAD competition experts in 2014. The evaluation was solicited by the Competition Authority in order to identify the level of implementation of the basic law, the quality of the secondary legislation, and the practice established by the Albanian Competition Institution, comparing them with the European standards and best practices. This report will be the subject of an analytical discussion in the UN Conference on Trade and Development in July 2015.

Regarding **capacity building and strengthening**, the Competition Authority increased its staff by one inspector at the Market Surveillance Department Concentration Unit, in addition to conducting a number of trainings in the context of capacity strengthening. The Authority staff was trained by ICN, OECD, homologous authorities (Italy and Austria), OECD-Budapest, UNCTAD, EU, OECD (Paris), SETTO, ICN, the Austrian Authority, and Taiex (Tirana), in addition to internal staff trainings in econometric assessments. Constant enhancement and consolidation of Authority experts' knowledge and expertise is considered as a key factor for the real independence of the Competition Institution.

## **II. COMPETITION LAW IMPLEMENTATION**

In 2014 the Competition Authority continued to operate under the Competition Protection Law, using all the instruments to detect anticompetitive practices among undertakings and to identify the factors having an impact on the good functioning of the markets and the restoration of market competition.

This section presents all the procedures carried out by the Competition Institution pursuant to the Law in detail, grouped under categories matching the main pillars of the Law. The main characteristics of the Competition Law is ensuring that competition investigation is based on the complaints submitted by market operators.

### **II.1 COMPLAINT HANDLING**

The rise by more than twice in the number of complaints submitted to the Competition Authority is considered as a positive development towards achieving the standards of a European competition authority. Until recently most of the investigation cases were started by the Authority ex officio, while now a general awareness among the business community has been seen in terms of the role and impact of the Authority in the area of setting market behaviour rules.

The Competition Authority received 33 complaints in 2014 (compared with 16 complaints in 2013). The objective pursued by the Competition Authority was to carry out a legal assessment and follow-up of all the submitted complaints until their full resolution, or to refer them to the relevant authorities where they do not fall into the direct remit of the competition law.

The complaints were mainly related to such regulated markets as energy and electronic communications, and so the Competition Authority closely cooperated with the regulators in compliance with the provisions of the relevant laws.

#### **Electronic communication market**

**1. Complaints from Plus Communication SHA against Vodafone Albania SHA.** The complainant claimed that the company with a dominant position in the market had applied an aggressive exclusionary behaviour with the clear goal to eliminate smaller market operators in the period 1 January 2013- 31 December 2013, which had indirectly obstructed the development of competition irreversibly in the mobile telephony industry, particularly so in the retail market. As a result, this had allegedly harmed the Albanian consumers in the longer run. Following an evaluation of the complaint, an inquiry was

opened against Vodafone SH.A. in the mobile telephony market, in order to identify whether there were indications of competition restriction pursuant to the provisions of Article 9 of Law No. 9121 “On Competition Protection”, which was approved by a Competition Commission decision, for an inquiry period of 1 January-31 December 2013. The inquiry is expected to be completed by 14 February 2015.

**2. Complaints from Plus Communication SH.A** - Plus Communication SHA complained to the Competition Authority on the process of granting users’ rights to frequencies 1900-1980 MHz, 2110-2170 MHz (IMT) and on Agency for Electronic and Postal Communications Governing Board Decision No. 2426 of 4 March 2014 On approving the public discussion paper on granting users’ rights to frequency bands 1900-1980 MHz, 2110-2170 MHz (IMT). The complainant's concern was related to the procedure that was followed to grant users’ rights to limited and exhaustive resources in a regulated market and the consequences for Plus SH.A. and consumers resulting from that procedure in the Albanian telecommunications market.

After assessing the letters from Plus SH.A, in relation to the frequency bands the Competition Authority had expressed its opinion in its Decision No. 161 of 2 December 2010 “Several recommendations on increasing competition in the sector of electronic communications on the 3G broadband technology market”. As a result, the Authority decided to inform the Ministry of Innovation and Public Administration and the Electronic and Postal Communications Authority of Competition Commission Decision No. 161 of 2 December 2010 “Several recommendations on increasing competition in the sector of electronic communications on the 3G broadband technology market”, so that it could be taken into account during the public stakeholder consultations and the procedure of granting users’ rights to frequency bands 1900-1980 MHz, 2110-2170 MHz (IMT), which would result in setting a level playing field for mobile telephony operators in terms of technical aspects and competition.

**3. Complaint from Plus Communication against Vodafone, AMC and Albtelekom, in the international incoming call termination market** – The complainant claimed that during the period February 2012-23 February 2013 (and even resuming in February 2014) undertakings Vodafone, AMC and Albtelekom had concluded a prohibited agreement by coordinating their respective practices in order to discriminate against Plus in terms of transiting international incoming phone calls to each of them, in full contracts from their respective behaviour (Vodafone and AMC) towards Albtelekom. Based on the above, the international incoming call transiting was monitored. Upon its completion, the monitoring showed no indications of anticompetitive behaviour among the undertakings.

**4. Complaints from Plus Communication SHA on the immediate interruption of the provision of under-cost tariff plans by Albtelekom SHA** – The complainant claimed that the under-cost tariffs were an unfair, anticompetitive and discriminatory practice towards the rest of market operators and other end users, in open violation of the legislation in force. The evaluation of the complaint showed that Albtelekom did not hold a dominant position in the retail mobile telephony market, because its market share across all indicators in the first half of 2013 was 10%. Thus, given the lack of a dominant position, the conditions for a potential violation of Article 9 (abuse of dominant position) of the Competition Protection Law were not met.

**5. Complaint from Plus Communication on the Electronic and Postal Communications Authority** – According to the complainant the measures taken under AKEP Decisions No. 2431-2435 of 13 April 2014 in relation to the reduction of mobile telephony termination tariffs had not reflected the conclusions of Decision No. 303 of the Competition Authority, and the regulation of competition in the market. The complaint was evaluated and it was determined that the issues raised by Plus pertained to the relevant regulator—AKEP—and the Competition Authority stated its opinion that AKEP assessment should abide by the required deadline.

**6. Absence of alternative operators to Albtelekom SH.A.** – Undertakings Espace Sh.p.k, Enkelana – Communication Sh.p.k, Rutel Sh.p.k and Orikum Telekommunikations Sh.p.k complained that Albtelekom SHA had send an ultimatum to all the operators to accept its demands, despite the fact the parties had signed on 23 September 2013 Amendment No. 4 in relation to the termination tariff for international calls routed through the Albtelekom system at the price of ALL 7 per minute. An evaluation of the complaint in the light of Article 50 of Law No. 9918 of 19 May 2008, “On Electronic Communications in the Republic of Albania” showed that if the contractors fail to reach an agreement within 45 days, then they may take their case to AKEP, which will start proceedings pursuant to the Administrative Procedure Code and the provisions of Article 60 of the Law, and will issue the relevant order at the end. Therefore, the conclusion was that each undertaking operating in the field of electronic communications that has a dispute with other undertakings in relation to interconnection or tariff agreements will have to take its case to the Electronic and Postal Communications Authority, which is the responsible authority to which the Law has assigned the responsibility to resolve any disputes among operators.

**7. Complaint from AMC SHA against Eagle Mobile SHA in relation to the Valentine’s Day Offer** – The complainant stated that Eagle Mobile SHA had marketed an offer called “Valentine’s Day Offer” targeting prepaid subscribers, and claimed that it was an anticompetitive practice because it resulted in market competition distortion and obstruction and directly harmed other operators in that specific market. In the case of

this complaint, the assessment of market shares in the light of the provisions of Article 8 of the Competition Law showed that Eagle Mobile did not hold a dominant position in the retail mobile telephony market because its market share across all indicators in the first half of 2013 was 10%. Given that the undertaking did not hold a dominant position, the conditions for a potential violation of Article 9 (abuse of dominant position) of the Competition Protection Law were not met.

**8. Complaint from Iliria Telecom A against operators** – The Competition Authority received from ILIRIA TELECOM A four letters, bearing numbers 35, 36, 37 and 38, of 30.01.2014, registered by the Competition Authority with number 48 Prot., of 31.01.2014, whereby it informed the Competition Authority of the complaints it sent to the Electronic and Postal Communications Authority against undertakings Albanian Mobile Communication Sh.a (AMC), Plus Communication Sh.a (Plus), Vodafone Albania Sh.a and Altelekom Sh.a.

Based on the Complainant's letters and pursuant to the requirements of AKEP Regulation No. 19 of 14 June 2010 On access and interconnection, Law No. 9918 of 19 May 2008, "On Electronic Communications in the Republic of Albania", as amended, and RIO of AMC, Plus, Vodafone Albania and Altelekom, effective as of 14 December 2013 and approved by AKEP and published on the websites of those undertakings, Iliria telecom requested the direct conclusion of an interconnection agreement in order to send and receive telephone calls between the technical systems of the complainant and those undertakings. The services requested of those operators were national and international call services.

Regarding the interconnection and termination of national calls, the Competition Authority Letter no. 548/1 Prot of 13 February 2015 asked the Electronic and Postal Communications Authority to take a decision on the administrative complaint submitted by Iliria and inform the Competition Authority of its decision.

#### Public procurement market

**9. Complaints in relation to the Albanian Road Authority infrastructure construction public procurement procedures** – In the framework of the cooperation agreement, the Supreme State Audit Institution informed that after auditing the Albanian Road Authority in relation to the 2013 public procurement of the lots 1, 2 and 3 of the construction of the Outer Ring Road of Tirana—the section from Kthesa e Saukut to Bregu i Lumit—it had found that economic operators that had participated and been disqualified in Lot 1 had been awarded a contract on a rotation basis in Lots 2 and 3, after submitting tenders on the same requirements for each lot with negligible differences between their tenders. After an evaluation of the documentation at its



disposal, the Competition Commission took Decision No. 333 of 21 October 2014 whereby it opened an inquiry into the procurement of the construction of the Outer Ring Road of Tirana—the northeast section from Kthesa e Saukut to Bregu i Lumit—Lots 1, 2 and 3, with the inquiry period being year 2013.

**10. Complaints in relation to the Albanian Development Foundation public procurement** – In the framework of the cooperation agreement, the Supreme State Audit Institution informed us that after auditing the Albanian Development Fund it had found that while the tendering of the Reconstruction of the Mollas-Selita-Frasher Road and the Reconstruction of the Kthesa e Patosit-Roskovec Road was done in two separate procurement procedures a comparison of the tenders submitted under them showed that the bidders had applied the rotation scheme. A legal evaluation of the case in the light of Article 4 of Law No. 9121 of 28 July 2003 “On Competition Protection” and the OECD Guidelines on fighting bid rigging in public procurement found no indications of competition restriction, distortion or obstruction in the area of public procurement in relation to the Reconstruction of the Mollas-Selita-Frasher Road and the Reconstruction of the Kthesa e Patosit-Roskovec Road and the bidding undertakings the behaviour of which might be in violation of Article 4 (1) (a) of Law No. 9121 of 28 July 2003 “On Competition Protection”, as amended.

**11. Complaints in the construction market – Apollon Qeramika Sh.p.k.** – Apollon Qeramika Sh.p.k., which operates in the field of manufacturing ceramics, informed that the managing directors of seven brick production factories operating in Albania had established a union of the brick and tile factories in Albania—UFTTSH. The complainant claimed that the Union members had established a market on the basis of secret agreements to impose higher prices on Albanian consumers. The evaluation of the complaint and documentation did not find any indications of competition restriction within the meaning of Article 4 of the Competition Protection Law that could result in an agreement among the undertakings in the market of ceramic product production.

#### *Complaints in the gaming market*

**12. Lotaria Kombëtare (National Lottery) complained in relation to unfair competition** – According to the complainant, Nacional SHA was selling scratch and win tickets under its logo. Nacional had been licensed to organise the Bingo game by the Gaming Supervision Unit. Pursuant to Article 26 (2) (ç) (i) of Law No. 10033 of 11 December 2008 “On Gaming”, scratch and win tickets are part of the national lottery games and as such may only be marketed by the national lottery licensee, i.e. by Lotaria Kombëtare, which operates under the National Lottery Licensing Agreement. At the end, the evaluation of the complaint concluded that the raised issues were to be dealt with by the Ministry of Finance, which is a party to the National Lottery Licence

Agreement that was ratified by the Parliament of the Republic of Albania by Law No. 95/2013 of 4 March 2013, and the Gaming Industry Supervisory Unit, which supervises and inspects the activity of operators organising games of chance in the Republic of Albania in compliance with the relevant laws and regulations in force, and the complainant was informed that the issue did not fall in the scope of Law No. 9121 of 28 July 2003 “On Competition Protection”, as amended, and therefore could not be reviewed by the Competition Authority.

**13. Nacional Bingo against Lotaria Kombëtare** – The complainant claimed that the granting of the national lottery licence to the Austrian company Austrian Lotteries created a monopoly in the Albanian gaming market. With regard to the dominant position in the relevant market, Articles 8 and 9 of Law No. 9121 provide for sanctions against abuse of a dominant position by an undertaking, but not the existence of a dominant position per se. The Gaming Law provides that the Authority specified in the Law has the right to granting the National Lottery licence for a period of 10 years. The licence/contract becomes effective upon its approval by the Parliament. There is only one single licence and that is granted to the applicant that is ranked first in the competition carried out in accordance with the procedures laid down in the law and other regulations. That law also specifies the gaming categories that are included in the national lottery licence. In the end, the Authority concluded that the categories of games of chance that have been granted as an exclusive right to the national lottery licensee are laid down in the law.

#### Transport market

**14. Complaint from Magic Travel** – The Ministry of Economic Development, Trade and Entrepreneurship referred the complaint submitted by the passenger transport company Magic Globe – Travel Sh.p.k, in which that company had asked it to put an end to the illegal use of the bus line Babrru – Paskuqan – Tiranë, alleging unfair competition by Henri Trans Sh.p.k, because it allegedly interfered in the route specified in the licence and caused anomalies in the daily activity of Magic Globe – Travel sh.p.k. The evaluation of the complaint, which was also based on the complainant’s statements, found that this issue was supervised by the Commune of Paskuqan, which granted and revoked the licences and checked the adherence to the routes specified in the licences. In the end an answer was sent to the complainant informing it that its complaint did not fall in the scope of Law No. 9121 of 28 July 2003 “On Competition Protection”, as amended, and therefore could not be reviewed by the Competition Authority.

#### The personal and physical security market

**15. Complaint from Pelikan Security** – The complainant claimed that operators Dea Security and Nazëri 2000 had not observed Competition Commission Decision No. 240 of 26 July 2012, but had even deepened their unfair competition practices (Paragraph II of the Decision) and had thus violated Article 4 of Law No. 9121 of 28 July 2003 “On Competition Protection,” as amended. A review of the submitted documentation and the market monitoring pursuant to Article 28 of the Law did not find any indications of competition restriction in the form of bid rigging by Nazëri 2000 Sh.p.k and Dea Security Sh.p.k.

**16. Complaint from Grand Security** - Some concerns were raised with the Competition Authority in relation to the potential competition restriction in the market of security services procurement in the Region of Dibra. Following an evaluation of the complaint, the Competition Commission took Decision No.306 of 19 February 2014 “On initiating a preliminary inquiry into the market of personal and physical security procurement in the Region of Dibra”, in order to determine whether there were any indications of competition restriction in the inquiry period from January 2012 till January 2014. The process is described in more detail further below in this Report (Section II.2.4).

**17. Complaint from Bilbil Hajdini, a natural person, against Digitalb SHA** – The natural person called Bilbil Hajdini submitted a complaint against Digitalb SHA (DGA), which operates as a ground and satellite digital platform. According to the complainant, DGA had abused with its dominant position within the meaning of the Law. In relation to the complaint, the Competition Authority requested information from Digitalb SHA. Based on the letter from Digitalb SH.A., the exclusive right is requested because most of the channels provided by the Digitalb platform are owned by that platform and only that company can deem how to best provide them for the public. In addition, Digitalb SH.A. had also made an evaluation of the agreement between Digitalb SH.A. and cable televisions, listing the benefits from the agreement for cable operators, end consumers and national television channels, and restricting distribution of piracy, because Digitalb SH.A. claimed that 95% of the channel-relaying platforms were pirates. At the end of the complaint review the Authority concluded that there were no signs of potential free and effective market competition restriction within the meaning of the Law.

**18. Complaint from Dinamo in relation to the wholesale market place** – Dinamo complained against Ekma Albania sh.p.k. in relation to the establishment of a market place on the Tirana-Durrës highway. Regarding this complaint the Authority organised a meeting with representatives from Ekma Albania sh.p.k., which operates as a lessor of premises in the agricultural and foodstuff wholesale market place on the highway. According to the representatives from that company, no additional tariffs were applied to the renting of premises in that market. The company had complied with all the legal

procedures for getting a number of permits to operate. With reference to the complaint the conclusion was that the activity of Dinamo had been closed down by the public authorities for other reasons, and legally Dinamo should have submitted an administrative and/or judicial appeal against the decisions of those authorities. Based on the above, the complaint from Dinamo did not fall in the remit of the Competition Protection Law because the retail market places are numerous and there is a lot of choice.

**19. Complaint from EUROTEAM sh.p.k** – The complainant, which operates in the market of hospital waste collection and processing, submitted its complaint stating that the inspectors of Tirana Regional Environmental Agency had abused with their office and had allowed the creation of monopolies and discouraged free competition in that market. The Competition Authority opened a monitoring case in the market of hospital waste collection and processing, and collected information on the processed hospital waste (quantity, price and contractors, for the period 2011-March 2014) from the Regional Environment Department, National Agency of Environment, company Meditel sh.p.k and company Euroteam sh.p.k. In order to carry out a more complete evaluation of the hospital waste processing market, the working group went out in the field to conduct an onsite inspection of processing and relevant issues. The monitoring showed that the hospital waste processing market had more than one operator: it had two licensed operators, with a third operator (in the process of licensing) being ready to enter the market; six autoclaves had been installed in regional hospitals to process hospital waste. Therefore, it was decided to conclude the monitoring case, and reply to the complainant.

**20. Complaint in the market of sage collection in the area of Malësia e Madhe.** The complainant claimed that the undertaking collecting sage had reduced the purchase price significantly. The Authority Secretariat monitored the market with the purpose of evaluating the behaviour of collection undertakings and its impact on the farming and exporting markets in order to see whether there were any indications of competition restriction resulting from potentially concerted behaviour and/or abuse of dominant position among the undertakings operating in the relevant markets. The complaint evaluation showed that the collection prices and selling prices in the international market varied among the undertakings, and no indications of a potential geographical division of the market were found, nor were found any indications of concerted behaviour with the goal to restrict the supply or reduce the collection price. Therefore the evaluation showed no indications of competition restriction, distortion or obstruction in the case of collection or export undertakings, which would be in violation of Articles 4 and 9 of the Law and would constitute a ground for starting the preliminary inquiry

pursuant to the provisions of Article 42 of Law No. 9121 of 28 July 2003 “On Competition Protection,” as amended.

**21. Complaint from Agon Channel in relation to the application of the VAT Law –**

The company submitted a complaint whereby it petitioned the Competition Authority to intervene for the establishment of equal conditions and elimination of discrimination in terms of operations, in accordance with Law No. 7928 of 27 April 1995 “On VAT”, as amended. Following the complaint review, the Competition Authority informed the complainant that the issues raised in its complaint were covered by the Customs Administration and did not fall in the scope of Law No. 9121 of 28 July 2003 “On Competition Protection”, as amended.

**22. Complaint from Huawei Technologies of unfair competition –**

The complainant stated its concerns in relation to the competition in the area of selling products bearing the HUAWEI brand; it informed that it had entered the Albanian market in 2014 with its Huawei products (mobile phones), which were sold through authorised sellers—partners of Huawei Technologies Albania Sh.p.k, such as Albtelekom, Vodafone Albania and Neptun, which had been transferred selling, distribution, advertising and maintenance rights to those products. Following the complaint review, the Competition Authority informed the complainant that the issues raised in its complaint did not fall in the scope of Law No. 9121 of 28 July 2003 “On Competition Protection”, as amended, and could not be subject of review by the Competition Authority.

**23. Complaint from Tring TV in relation to exclusive broadcasting rights –**

The complainant submitted a complaint in relation to the broadcast of a match on television. According to the complainant, the Albanian Radio Television did not begin the broadcasting of that match but had broadcast television commercials advertising its broadcast on a private platform and later began the broadcast under the logo of one of the channels of that platform, thus encouraging the public directly to buy the service from that specific private operator. The review of the complaint concluded that the issues raised by the complainant were dealt with by the Audio-Visual Media Authority, in accordance with Law No. 97/2013 "On Audio-Visual Media in the Republic of Albania", as amended, which regulates and supervises radio and television activity in the Republic of Albania in compliance with the legislation on that activity and the implementation regulations in force. The complaint was referred to that Authority and the complainant was informed that the issue did not fall in the scope of Law No. 9121 of 28 July 2003 “On Competition Protection”, as amended.

**24. Complaint from Gaz Group Sh.p.k on the procurement of gas –**

In its complaint, Gas Group Sh.p.k. referred to Law No. 8450 of 24 February 1999 “On processing, transportation and trading of oil, gas and their by-products”, as amended, and the Public

Procurement Law, clarifying that “in the procurement tender organised by the General Directorate of Prisons “negotiated procedure without publication of a contract notice” for the supply of liquefied gas from A&V Gaz SH.A, no. 18/04/, date 26/02/2014, at an amount of ALL 4,097,198.424 (inclusive of VAT), the required tender procedures were violated by the contracting authority. A legal evaluation of the complaint showed that the issues that the complainant raised were related to the contracting authority, the Public Procurement Commission and the Public Procurement Law, and to the broader issue whether the companies that were licensed to operate as wholesalers should participate in public procurement procedures. The issues that the complainant raised were referred to the Ministry of Energy and Industry (Department of Hydrocarbon Policy and Development), which is the authority that the law authorises to grant licences and authorisations for the selling of oil, gas and their by-products.

**25. The pharmaceutical market The Pharmacists’ Association vs Berlin Chemie** Pharmaceutical companies Actavis, Bilim Ilac, Sandoz, Alkaloid, Nobel Ilac, Alvogen, Replek, Hemo Farma, Abdi Ibrahim and KRKA claimed that company Berlin-Chemie Meranini had started a smear campaign against the rest of operators and the companies they represented. An evaluation of the complaint showed that the complainants claim was valid in terms of Berlin-Chemie Menarini conducting unfair misleading business practices in the form of misleading advertising, which could be in violation of Law No. 9902 of 17 April 2008 “On Consumer Protection”, and the complaint was referred to the Ministry of Economic Development, Trade and Entrepreneurship to be reviewed by the Consumer Protection Commission. The complainant was informed of that.

## ***II.2. PROHIBITED AGREEMENTS***

Within the meaning of the Competition Protection Law prohibited agreements are considered binding or nonbinding agreements of all forms concluded between undertakings, decisions or recommendations of associations of undertakings, and concerted practices of undertakings operating at the same level (horizontal agreements) or at different levels (vertical agreements), or a consensus between two parties, restricting or distorting competition.

### **II.2.1 Investigation in the compulsory motor insurance market**

Based on some signals that the Competition Authority received from the insurance market, the Competition Authority Secretariat, upon a request from the Competition Commission, monitored the sales of compulsory motor third party liability insurance policies in late 2013. The monitoring showed that from 1 November 2013 all agents had

sold those policies through a system called MSHM, which was managed by an entity that had been licensed by the Albanian Financial Supervisory Authority as a brokerage company. At the time of sending the selling transaction to the agent, the system did not show all the companies licensed for the product in question but only a limited number of them.

Competition Commission Decision no. 297 of 18 November 2013 initiated an inquiry into the compulsory motor third party liability (MTPL) insurance market in order to determine whether there were any indications of competition restriction in that market. The inquiry into the insurance market was completed on 17 January 2014. Taking into account the market sensitivity to that issue and the request from the Albanian Financial Supervisory Authority (AFSA) that the financial stability of the insurance market would benefit from giving consideration to the characteristics and fragility of the financial insurance market, especially in the area of compulsory insurance, the Competition Authority Secretariat proposed to monitor the market pursuant to Article 28 of the Law. During the monitoring period, a public concern was expressed on the printed media of 12 February 2014 in relation to the rise in motor insurance tariffs the previous day. The immediate monitoring of the market showed that the applied premiums had been increased significantly at the same time by all the insurance companies by approximate amounts. Competition Commission Decision no. 305 of 14 February 2014 extended the period of the preliminary inquiry into the compulsory TPL insurance market to 28 February 2014.

Based on the report of the inquiry, which found that the behaviour of the undertakings might have aimed at, or resulted in, restriction, market control, market division and direct or indirect price fixing for the selling of MTPL insurance policies, the Competition Commission, pursuant to Article 43 of the Law, adopted Decision No. 310 of 31 March 2014 whereby it decided to open the in-depth investigation into the compulsory motor third party liability (MTPL) insurance market against the undertakings operating in that market.

The undertakings operating in the relevant market at the opening and completion of the in-depth investigation stated their claims and views in relation to the investigation report findings and other factors and AFSA role affecting the functioning of this market.

The insurance companies (except for SIGMA SH.A.) stated their commitments to implement the arrangements proposed in the in-depth investigation report. In summarised form, the following were those commitments: Payment of claims according to the companies from which the vehicle insurance has been taken out, as also provided for in Law No. 10076; Concrete implementation of the Bonus-Malus system for the specification of individual selling premiums for the compulsory motor insurance

products; Direct handling of claims by the insurance companies would develop competition among companies for their products by encouraging competition not only in terms of offered tariffs but also in terms of the payment of claims under the insurance products, which is the main goal of each purchase of risk by insurance companies from the insured; All companies confirmed that they had begun testing the individualised compulsory insurance Bonus-Malus system and that the testing would end on 22 August 2014 and the system would become operational for the market.

In conclusion, pursuant to the Competition Protection Law and in line with its goal to determine undertaking behaviour in the context of ensuring free and effective market competition, the Competition Commission finds the behaviour of the undertakings in the market to be against the principles of free and effective market competition since they equally increased and fixed MTPL insurance prices for a period of three days and used a concentrated selling system through Star Broker in order to maintain their market shares. In order to have a real impact of the intervention on this market, and pursuant to Article 45(2) of the Law, the Competition Commission imposes conditions and obligations on all the undertakings under investigation, as an instrument of restoring free and effective competition in the compulsory motor insurance market.

The insurance companies must comply with the following conditions and obligations within 90 days from the date of this Decision: Put into operation the Bonus-Malus programme for the individualised system of compulsory insurance based on the data on the insured, vehicles, and track record of caused damages and their location; The logos of all insurance companies with which the agent or broker has compulsory insurance policy selling agreements with must be displayed on the system provided by brokerage companies and insurance company agents; Apply the legal provision on the payment of claims by the direct insurer; Conclude agreements with more than one brokerage company in compliance with the requirements laid down by the AFSA in relation to the online compulsory insurance system and the bank payment system in accordance with the legislation in force; Print and sell insurance policies bearing the logo of each undertaking. Failure to comply with these conditions and obligations in accordance with Article 45(2) of the Law is punished by a fine for serious violations of up to 10 percent of the turnover, pursuant to Article 74(1)(c) of the Law.

Competition Commission Decision no. 325 of 30 July 2014 gave recommendations to the Financial Supervisory Authority on promoting competition in the compulsory motor third party liability (MTPL) insurance market.

In November 2014 the Competition Authority Secretariat monitored the implementation of Competition Commission Decision No. 324 of 30 July 2014, in relation to the conditions and obligations imposed on the insurance companies in order to restore



competition in the MTPL insurance market. The monitoring showed that the conditions and obligations that the Competition Commission had imposed had been met by the undertakings, while the obligation in relation to the Bonus-Malus system and the obligation to impose the direct payment of claims needed intervening by the Albanian Financial Supervisory Authority and the adoption of by-laws by that Authority.

## **II.2.2 Inquiry into the market of International maritime transportation of passengers and vehicles**

Pursuant to Article 42 (1) of Law No. 9121 of 28 July 2003 “On Competition Protection”, with proposal from the Secretariat, the Competition Commission took Decision no. 316 of 23 May 2014, whereby it decided to open an inquiry into the market of International maritime transportation of passengers and vehicles. The Secretariat carried out the necessary market inspections and requested information from the undertakings.

The analysis of the available data and information showed that undertaking AFH SPA/Adria Ferries had a dominant position in the submarket of maritime international shipping of vehicles and/or passengers from the Port of Durrës to the Port of Ancona/Trieste, because it was the only operator operating in that submarket, and the analysis of that undertaking behaviour showed that there were no indications abuse of its dominant position, pursuant to Article 9 of Law No. 9121 “On Competition Protection”.

Undertakings NorthBay LDA/Gerverni Travel and NorthBay/Euroferries Sh.p.k had a dominant position in the submarket of maritime international transport of vehicles and/or passengers from the Port of Durrës/Vlora to the Port of Brindisi, because it was the only operator operating in that submarket.

The Competition Commission decided to instruct the undertakings operating in that market to keep transparent daily data on the tariffs applied to any sold tickets and to keep records of ticket sales for a three-year period, which should be accessible at any time to the Ministry of Transport and Infrastructure and the Competition Authority.

The Authority decided to recommend the Ministry of Transport and Infrastructure to (i) prepare a study on the setting of the maximum tariffs for the service of international maritime transportation of passengers and vehicles; (ii) ask from the undertakings, and approve, when licensing them, the maximum tariffs to be applied under each category of journey for each season; (iii) supervise the tariffs applied by the undertakings relative to the approved maximum tariffs; and (iv) monitor, on a quarterly (seasonal) basis, the

licensed undertakings in relation to the tariffs applied to each ticket sold, and the obligation of the licensees to keep records on ticket sales for a three-year period.

All the Competition Commission findings and recommendations were discussed with the Ministry of Transport, which accepted them while underlining the importance of continuing the cooperation in order to facilitate their specific implementation.

### **II.2.3 Preliminary inquiry into the public procurement of the construction of the Outer Ring Road of Tirana**

The inquiry was initiated on the basis of a letter from the Supreme State Audit Institution, registered with No. 341 Prot., of 06.08.2014, whereby, pursuant to the cooperation agreement, it informed that after auditing the Albanian Road Authority, it had found that in relation to the 2013 public procurement of the lots 1, 2 and 3 of the construction of the Outer Ring Road of Tirana—the section from Kthesa e Saukut to Bregu i Lumit—economic operators that had participated and been disqualified in Lot 1 had been awarded a contract on a rotation basis in Lots 2 and 3, after submitting tenders on the same requirements for each lot with negligible differences between their tenders.

Based on an evaluation made of that information by the Secretariat, the Competition Commission adopted Decision No. 333 of 21 October 2014 whereby it opened an inquiry into the procurement of the construction of the Outer Ring Road of Tirana—the northeast section from Kthesa e Saukut to Bregu i Lumit—Lots 1, 2 and 3, with the inquiry period being year 2013.

The Secretariat carried out the investigation under the Competition Protection Law, the Procedure Code and the Rules on Investigative Proceedings and the OECD - Guidelines for Fighting Bid Rigging in Public Procurement.

Based on the inquiry findings in late 2014 and the review of the bid rigging elements such as rotation of contracts and proximity to the limit fund, on 12 February 2015 the Competition Commission decided to open an in-depth investigation into the relevant market against six companies and their consortium in order to see whether there were any restrictions of competition in the relevant market.

### **II.2.4 Inquiry into Personal and Physical Security Market in the Region of Dibra**

Following several concerns submitted to the Competition Authority in relation to the potential restriction of competition in the personal and physical security market in the Region of Dibra, the Competition Commission took Decision No.306 of 19 February 2014 “On initiating a preliminary inquiry into the market of personal and physical

security procurement in the Region of Dibra”, in order to determine whether there were any indications of competition restriction in the inquiry period from January 2012 till January 2014.

In order to assess the behaviour of undertakings in the security services procurement market the inquiry looked at the data received from the contracting authorities, as no evidence of collusion in the preparation of bids for public procurement was found in the raids at the security undertakings in the Region of Dibra. The evaluation of the entire documentation collected during the inspections conducted in the undertakings under investigation and the documentation submitted by the relevant contracting authorities did not produce any direct or indirect evidence of collusion among undertakings in preparing their bids for the public procurement in the security services market in the Region of Dibra (for the period under investigation), which meant that there were no signs of a potential violation of Article 4 of Law No. 9121 of 28 July 2003 “On Competition Protection”.

In conclusion the Competition Commission took Decision No. 317 of 23 May 2014 whereby it closed the inquiry into the personal and physical security market in the Region of Dibra since there were no signs of competition restrictions pursuant to Article 4 of Law No. 9121 of 28 July 2003 “On Competition Protection,” as amended.

### **II.2.5 Inquiry into the Tobacco Product Importing, Manufacturing and Wholesale and Retail Selling Market**

Pursuant to Article 42 (1) of Law No. 9121 of 28 July 2003 “On Competition Protection”, with proposal from the Secretariat, the Competition Commission took Decision no. 302 of 14 January 2014 whereby it ordered an inquiry into the tobacco product importing, manufacturing and wholesale and retail selling market.

During the inquiry period, the inspection team carried out the necessary inspections at the undertakings operating in that market. The analysis of the available data and information showed that there were 140 different types of cigarette packs in Albania. The tobacco import market was found to be oligopolistic since five large companies operated in it. However, based on the market shares of the undertakings under investigation, the independent behaviour of market undertakings, the countervailing buyer power, and entry barriers in the relevant market the conclusion was reached that the undertakings under investigation operating in the relevant market did not meet the Article 8 criteria since they did not hold a dominant position in the relevant market and, as a result, could not have abused with their dominant position. The inspections did not find any direct evidence of potential collusion among the undertakings. This was also confirmed by the conducted analysis. At the end of the inquiry it was decided to close

the inquiry into the tobacco product importing, manufacturing and wholesale and retail selling market, and keep it under monitoring due to its oligopolistic structure.

### ***II.3 EXEMPTIONS FROM THE PROHIBITION OF AGREEMENTS***

The Competition Protection Law offers a tool enabling undertakings to cooperate in favour of reducing costs or offering an investment, by exempting them from the prohibition based on the Competition Commission assessment and authorisation.

#### **II.3.1 Exemption from prohibition of the Digitalb – Television Operators agreement**

Pursuant to Articles 5 and 48 et seq. of the Law, the Competition Authority received a notification from undertaking Digitalb SH.A in relation to its application for exemption from prohibition of the agreement DIGITALB – TELEVISION OPERATOR with subject-matter the relay of television channels on the Digitalb platform. The purpose of the agreement was the inclusion of the television channels of 14 television operators in the satellite platform, consisting of the relay of those channels in real time via satellite broadcasting and with no interfering in the original channel. 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 30-day period of publication, no third parties sent any responses to the addresses published by the Competition Authority.

The assessment of the submitted agreement looked in detail at the benefits and limitations of the agreement and concluded that the agreement had a few restrictions of competition as its subject-matter and consequence, but a comparison of the benefits and restrictions of the agreement showed that, in accordance with the provisions of Article 5 of the Law and the Guidelines on the Assessment of Vertical Agreements, it was concluded that the agreement met the requirements for being exempted from the prohibition because: subscriber access to national and local channels was allowed, regardless the broadcast on Digitalb, with the latter increasing the geographical coverage for national and local channels through the relay; the vertical agreement contributes to the enhancement of distribution, since it provides the public with additional choice (even in areas that are not covered with analogue licensed television signal); the vertical agreement allowed consumers to have direct participation in those benefits; the vertical agreement did not impose on the signatory undertakings any vertical restrictions that would not be necessary for achieving those benefits; it did not significantly restrict competition in respect of the products/services which are subject of the agreement; the duration of the agreement would be for a limited period of time, until the end of 2015, which coincides with the expiry and self-termination of contracts among parties in relation to the basis of the exempted agreement.

With regard to the criterion of exclusivity, in relation to which some of the parties responded that it was made on the basis of mutual benefits and on free will and that there were arguments (such as the protection of copyright and increased broadcast quality) for the restriction imposed in terms of exclusivity, it was necessary for the execution of the agreement and no fewer restrictions existed to achieve similar benefits.

The Competition Commission took Decision No. 338 of 11 November 2014 “On the individual exemption from prohibition of the template agreement between Digitalb SH.A. and television operators”, since, pursuant to Article 5 of Law No. 9121 of 28 July 2003 “On Competition Protection”, as amended, the Competition Commission decided to exempt the template agreement between Digitalb and television operators from prohibition, because it contributed to improving distribution, promoting technological progress, while allowing customers and consumers a fair share of the resulting benefit. The exemption was granted provided that the validity of the agreement would be one year and any changes or amendments to the agreement and any resigning of the agreement after its expiry on 31 December 2015 was to be notified to the Competition Authority for exemption again.

## ***II.4 ABUSE OF A DOMINANT POSITION***

Article 8 of the Competition Protection Law states that a dominant position is the one possessed by one or more undertakings, allowing them to be capable of acting, in terms of supply or demand, independently from other market players. However, while any abuse of this market power is a violation of the law, holding such a dominant position is not. Abuse of an individual or collective dominant position can be in the form of high and unfair prices, discriminatory prices or conditions, refusal to provide services, etc.

### **II.4.1 In-depth investigation against Vodafone Albania SHA in the retail mobile telephony market**

As it was reported last year, the Competition Authority concluded the in-depth investigation proceedings into the retail mobile telephony market against Vodafone Albania SH.A. Based on the concerns on the level of competition in the mobile telephony market, as shown from the investigation, the Competition Commission took Decision No. 303 of 16 January 2014 On concluding the in-depth investigation into Vodafone Albania SHA in the retail mobile telephony market, and recommendations for the Electronic and Postal Communications Authority.

The analysis of the behaviour of the undertaking under investigation showed that the strategy that operator followed caused concerns with regard to competition in the respective market and negative effects on competition in the long run vis-à-vis smaller competitors through the application of price differentiation to on-net versus off-net calls. An analysis of similar cases shows that price differentiation of on-net versus off-net calls can be used by large operators as a tool to close off the market against smaller operators which might even risk exiting from the respective market, and that is a concern for the good functioning of the market in the longer run.

Vodafone publicly committed to equalize the tariffs within Vodafone Club and towards off the Vodafone network (terminating in landline, AMC, Eagle and Plus networks) in order to reduce to elimination the tariff differentiation for on-net and off-net calls. In Decision no. 303 of 16 January 2014, the Competition Commission came to the conclusion that Vodafone Albania behaviour was not abuse of its dominant position during the investigation period, but the strategy that the undertaking had implemented caused concerns with regard to competition in the longer run, and it, therefore, gave several recommendations to the market regulator (AKEP).

The Competition Commission decided to recommend that the Electronic and Postal Communications Authority should take interim and immediate measures, prior to the conclusion of the analysis of the retail mobile telephony market, in order to enforce the market regulation solutions for preventing market exits that would have a long-term impact on competition; the Electronic and Postal Communications Authority should especially modify the BULRAIC model by significantly reducing the cost of termination for smaller operators towards larger operators in the market, in order to increase free and effective competition in the respective market; and enforce the real reduction of the difference between off-net and on-net calls within and off specific tariff packages and plans for those operators holding a dominant position.

The Competition Commission also recommended that AKEP carry out an analysis of the retail mobile telephony market to address the competition concerns in that market by taking specific regulatory measures for reducing the emphasized differentiation between on-net call tariffs and off-net call tariffs applied by Vodafone. AKEP should also monitor the fulfilment of Vodafone Albania's public commitment to equalize the tariffs within Vodafone Club and towards off the Vodafone network (terminating in landline, AMC, Eagle and Plus networks) in order to reduce to elimination the tariff differentiation for on-net and off-net calls, as well as the units included in the optional national communications packages (weekly, monthly and annual offers and packages).

Pursuant to the Competition Commission decision and the Albanian Parliament Resolution on the evaluation of the Competition Authority activity in 2013, the Competition Authority cooperated with the Electronic and Postal Communications Authority, which took the Competition Authority recommendations into consideration. Following the Competition Commission recommendations, AKEP included in the Mobile Telephony Market Analysis document a more detailed analysis of the retail mobile telephony market, in order to more effectively regulate that market, by using all the legal instruments under Law No. 9918 and the Albanian legislation as a whole, especially the Competition Law, in particular in relation to reducing termination tariffs for off-the-net calls; reducing differences between on-the-net and off-the-net tariffs not only with regard to regular tariffs but also optional plans; revising termination tariffs for calls terminating in mobile networks in order to have a pure long run incremental cost (LRIC) orientation.

Pursuant to the Competition Commission Decision, the Competition Authority Secretariat monitored the market to check the equalisation of the tariffs within Vodafone Club and towards off the Vodafone network, the reflection of the real reduction of the tariff differentiation not only with regard to the regular tariffs for on-net and off-net calls, but also with regard to the units included in the optional national communications packages. The data show that Vodafone has reduced the termination tariffs in other networks, and has increased the number of (off-net) national minutes included in the flat-rate monthly package for Vodafone Card subscribers.

#### **II.4.2 In-depth Investigation into the Fuel Importing and Wholesale Selling Market**

In 2014, pursuant to Decision No. 315 of 13 May 2014 the Competition Authority carried out an in-depth investigation into the fuel importing, production and wholesale selling market against the undertakings operating in that market, specifically against: Kastrati SH.A, Kaspetro SH.A, Europetro Durrës Albania SH.A, Portoromano Oil SH.A, Bolv Oil SH.A, Genklaudis SH.A, Everest Oil SH.A, Taci Oil SH.A. and Armo SH.A., in order to see whether there were any potential competition restrictions in the relevant market in line with the provisions of Articles 4 and 9 of Law No. 9121 of 28 July 2003 “On Competition Protection, during the period from 1 January 2010 till 30 April 2014.

The Competition Authority conducted dawn raids at the same time and day in the undertakings under investigation to find any direct and indirect evidence of potential collusion among the competitors; however, no direct or indirect proof or evidence was found in the inspections. Given that the inspections did not find any direct evidence of communication among competitors based on OECD Methodology<sup>1</sup> economic analyses were carried out in order to identify any potentially concerted behaviour among competitors within the meaning of Article 3 (4) of the Law which can be manifested in

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<sup>1</sup> [www.oecd.org/competition/CompetitionInRoadFuel.pdf](http://www.oecd.org/competition/CompetitionInRoadFuel.pdf)

the form of collective dominance of the undertakings under investigation with a potentially restrictive impact on competition.

In its investigation report, the Working Group concluded that in the case of undertakings Kastrati SH.A, Kaspetro SH.A, Europetro Durrës SH.A, Bolv Oil SH.A, Porto Romano Oil SH.A, Genklaudis SH.A, operating in the fuel import and wholesale market, the market structure was oligopolistic, with horizontal and vertical integration of the undertakings in the importing, manufacturing and wholesale and retail selling market. The main evidence that was used to assess collective dominant position included: legal barriers, economic barriers, potential competition, countervailing buyer power, undertaking network, demand stability, product homogeneity, market transparency, transactions among undertakings, joint purchases, and the high market shares across all trading levels. The Working Group concluded that the oligopolistic market structure constituted collective dominance, and that the undertakings had abused with their dominant position and set unfair prices, pursuant to the provisions or Article 9 (2) (a) of the Competition Protection Law.

After reviewing the in-depth investigation report, the investigation file and the claims submitted by the parties in the hearings, the Competition Commission notes that:

In order to prove the collective dominance, the European caselaw has made an assessment on a case-by-case basis, and in all reviewed cases it has been noted that the following three criteria must be met in order to prove a collective dominant position: (i) comparable market shares among the undertakings in the relevant market during the period under investigation; (ii) sustainability in the respective market shares and entry barriers to new market entrants; and (iii) market transparency and existence of a mechanism of “revenge” among competitors.

In reference to the market share data included in the in-depth investigation report and described in Paragraphs 29, 36 and 37, during the investigation period the undertakings under investigation did not have comparable market shares in both submarkets: import and wholesale markets for both products.

With reference to the findings of the in-depth investigation, the undertakings experienced different dynamics in terms of their respective market shares in the period under investigation, and various market entries and exits were identified in both submarkets.

With reference to the data on wholesale prices, parallel price changes were found among the undertakings under investigation for the Eurodiesel and petrol products. The investigation found that oligopolistic structures were in place (a few wholesalers) in this market in 2013 and an analysis of their behaviour was carried out on the basis of theories on undertaking behaviour in such a structure.



Due to the high degree of market transparency, the undertakings under investigation were able to monitor each other's price change trends, with no need for punishing any undertakings deviating from the oligopoly prices.

A comparison between the monthly CIF fuel prices exclusive of taxes and retail prices exclusive of taxes applied by the undertakings under investigation in 2013 and the respective gross margins, for both products, identified small differences in the retail prices and small difference in the CIF prices of purchased fuel which did not result in same amounts in terms of gross margins for those undertakings. In addition, there is a low average elasticity of retail prices vis-à-vis changes in CIF purchase prices, especially when the latter fell.

A solidification of the retail market was found during the period under investigation. This is a vertical restriction of competition, resulting from Instruction No. 17/2008, which specified that wholesalers (main sellers) would set the prices for retailers (agents). Because of this it was not possible to measure the impact of each segment—import, wholesale and retail—on the final prices for Eurodiesel and petrol that are offered to end consumers.

The large differences among market shares and the non-comparable market structures among the undertakings, the market entries and exits in the period from January 2010 to April 2014, and the existence of two models in the import market where different competitors operate do not comprise sufficient evidence that would justify an argument for joint dominance of several undertakings operating in the relevant market in the investigation period.

Although competition in the fuel import and wholesale market is not effective enough due to the market structures and the legal (the Law on Hydrocarbons) and sublegal (the Ministry of Finance and Ministry of Energy instructions) framework. The Competition Authority investigation found that there were excessive links in the market structural chain that did not justify any added value from imports, free customs zones, wholesale, retail and end consumers, thus artificially increasing costs and reducing the average elasticity of prices.

The high degree of market concentration and the increasing trend of that concentration, especially in the import market, requires market structural improvements and a combination of tools beyond the tools available to the Competition Authority, in order to help with the control of abuse and with preventing undertakings with market power from applying abusive practices that harm end consumers.

In order to have a more competitive market and facilitate the assessment of real effects of the undertakings' behaviour in the market, in its Decision No. 345 of 12 February 2015 the Competition Commission gave several recommendations to the Ministry of Energy and Economy:

Revise Law No. 8450 of 24 February 1999 "On processing, transportation and trading of oil, gas and their by-products", in order to enable the undertakings operating in the Eurodiesel and petrol wholesale market to: also sell as retailers, thus eliminating the excessive links in the market chain, which would result in the reduction of unnecessary economic costs relative to the added value of the product; maintain their product identity and compete through their respective logos in the retail segment, which would encourage effective competition in the market;

Establish the required legal basis and administrative infrastructure for a hydrocarbon price transparency<sup>2</sup> unit to which undertakings operating in the production, import and wholesale of fuels must submit a notification in real time within five to 15 minutes, including a notification to the Competition Authority, for any changes to wholesale prices; Evaluate the implementation of the concessionary agreement on the Port of Vlora 1, in order to verify compliance with the obligation of the concessionary not be involved in the selling of fuel, and the transfer of the exclusive right to related markets; Establish instruments to control frequent entries and exits within one financial year of undertakings operating in the fuel wholesale market, which generates unfair competition.

In addition, they should have the undertakings operating in the hydrocarbon market submit to the Competition Authority their agreements on joint imports or use of logistics, for evaluation purposes, in order to receive individual exemption of those agreements under Article 5 of the Law. The Competition Authority will continue to monitor this market.

## ***II.5. CONTROL OF CONCENTRATIONS***

The number of concentration cases reviewed by the Competition Authority increased to 16 cases in 2014. This increase in the number of cases resulted from the lowering of the turnover of undertakings included in concentrations that have the legal obligation to apply for the Competition Commission authorisation, and from the cooperation with the

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<sup>2</sup> This recommendation is based on the best practices in the fuel market such as the case of market regulation in Germany (2013).

National Registration Centre (NRC), which contributed by informing entities when they have to notify a concentration. In the context of market oversight, the Competition Authority reviewed the entire National Registration Centre database and started to inform all those undertakings that met the legal requirements to apply for authorisation with the Competition Commission.

In 2014, 8 concentration cases were reviewed in relation to takeovers, mergers or establishment of a new undertaking. The concentrations were reviewed in terms of any positive impact on the market from the perspective of consumers and increased market efficiency, and from the perspective of creating or strengthening a dominant position of the concentrated undertakings.

- i. Merger of two or more undertakings or parts thereof that are independent from each other (Article 10 (1) (a) of Law No. 9121 “On Competition Protection”) - None of the concentrations approved by the Competition Commission was a merger of two undertakings.
- ii. Acquisition of (direct or indirect) control of one or more undertakings or parts thereof (Article 10 (1) (b) of Law No. 9121 “On Competition Protection”).

**In the mining market** there was one concentration in the copper sector notified to the Competition Authority, which took Decision No. 309 of 6 March 2014 whereby it authorised the concentration through indirect control acquisition in Beralb SH.A., in the form of transferring 50% of the shares in Nesko Metal Sanayi Ve Ticaret AS, from Ekin Maden Ticaret Ve Sanayi AS to companies Jiangxi Copper Company Limited, Beijing Metal Challenge Global Trading Co. Ltd and CRM International (Beijing) Co. Ltd. The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position.

With regard to the international transactions having an impact on the domestic market, the Competition Commission takes them under review when they meet the domestic turnover condition laid down in Article 12 of Law No. 9121 “On Competition Protection”, as amended. In this context, the Competition Commission authorised four concentrations.

In its Decision No. 313 of 30 April 2014 the Competition Commission decided to authorise the concentration through control acquisition of the ACE brand business by Fater S.p.A. through the purchase of assets from The Procter & Gamble. The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position.

In its Decision No. 328 of 11 September 2014 the Competition Commission decided to authorise the concentration through the control acquisition by Alpha Bank S.A. of the assets owned by CitiBank International PLC pertaining to the retail banking services in Greece and of Diners Club of Greece Finance Company S.A. The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position.

In its Decision No. 330 of 3 October 2014 the Competition Commission authorised the concentration through acquisition of full control of Oltan Group companies by Ferrero International S.A. The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position.

In its Decision No. 335 of 31 October 2014 the Competition Commission authorised the concentration through acquisition of full control of Stream Oil & Gas Ltd by Trans Atlantic Petroleum Ltd. The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position.

The consensual settlement agreement between the Republic of Albania and CEZ A.S. of 31 July 2014 was approved by Albanian Parliament Law No. 114/2014 of 31 July 2014. The transaction of the transfer of 76% of the share capital of Operatori i Sistemit të Shpërndarjes SHA (“OSSH”—Distribution System Operator) from CEZ A.S. to the Government was part of the consensual settlement agreement, as provided for in Annex 6 thereof. The Share Purchase Agreement between MoEDTE and CEZ A.S. was subject of Competition Authority authorisation under the legislation on the control of transactions (concentrations) that cause sustainable changes in control with an impact on the market. To that end, the Competition Commission took Decision No. 331 of 7 October 2014 whereby it authorised the concentration achieved by the transfer of 76% of the shares in CEZ SH.A. from CEZ A.S. to the Ministry of Economic Development, Trade and Entrepreneurship (MoEDTE). The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position.

At the end of the year, there was a movement in the financial leasing segment of the banking sector. In this respect, in its Decision No. 343 of 4 December 2014 the Competition Commission authorised the concentration achieved through the acquisition of 100% of the share capital in Landeslease SH.A. by Union Bank SH.A. The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position.

- iii. Establishment of a joint venture performing all the functions of an autonomous economic entity (Article 10 (1) (c) of Law No. 9121 “On Competition Protection”).

There was one case that demonstrated sustainable change in control due to the formation of a joint venture performing all the functions of an autonomous economic entity, resulting from the concentrations that the Competition Commission authorised in 2014.

That concentration in the form of Joint Venture was authorised by Competition Commission Decision No. 340 of 27 November 2014, in the form of the establishment of CMA CGM Albania sh.p.k., by undertakings CMA CGM Agencies Worldwide and Pelikan sh.p.k. The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position, and was, therefore, authorised.

- iv. Reviewed cases not considered as subject to authorisation by the Competition Commission

Under Article 6 of the Regulation on the implementation of undertaking concentration procedures, five transaction cases were submitted to the Competition Authority in 2014. 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.

#### Telecommunication Market

The notified transaction involved the takeover of Global Telecommunications Services (GTS) (target company) by the German company Deutsche Telekom AG. To that end, the parties signed a purchase agreement on the shares in Consortium 1 S.a.r.l between the majority shareholders (as sellers) and Deutsche Telekom AG (as the buyer) on 8 November 2013. After the transaction company Consortium 1 S.a.r.l (GTS parent company) would be entirely controlled by Deutsche Telekom AG through the purchase of all ordinary shares, all preferential shares and 63,102,820 preferential and convertible share certificates issued by Consortium 1 S.a.r.l. The proposed transactions intended the provision of national telecommunications services (NACE code j.61), and related information service activities (NACE code J.63). The takeover of GTS (Eastern Europe) by Deutsche Telekom (Germany) was a concentration occurring outside the market of the Republic of Albania. The concentration did not affect the domestic market directly or indirectly, and, therefore, pursuant to Article 2 (b) of Law No. 9121, it was not subject to authorization by the Competition Commission.

#### Electricity Market

In the context of the cooperation with the NRC, the latter advised the representatives of Energia Pulita Sh.p.k to notify a transaction to the Competition Authority. The notified transaction was related to the transfer of 51% of the shares in Energia Pulita Sh.p.k to NCI Sh.p.k with sole member Mr. Ergys Halili. The transaction was effected by a donation contract on 9 May 2014. With the conclusion of the contract NCI Sh.p.k, with sole member Mr. Ergys Halili, is recognised as an owner and member of Energia Pulita Sh.p.k by virtue of holding 51% of its shares. In accordance with Article 10 (1) (b) of the Law, the transaction was a concentration through control acquisition. The accounts of the parties that were submitted to the Competition Authority showed that Energia Pulita had a turnover of ALL 0 in 2013, while NCI Sh.p.k was established on 8 May 2014 and, therefore, had no turnover. Therefore, the participating undertakings did not meet the turnover requirement provided for in Article 12 (1) (b) of the Law, which means that the transaction was not subject to authorisation by the Competition Authority.

#### *Retail trade in foodstuff products (supermarkets)*

Pursuant to Article 53 “Notification Obligation” of Law No. 9121 of 28 July 2003 “On Competition Protection”, as amended, Delhaize Albania Sh.p.k (Euromax) and CMB Albania Sh.p.k submitted to the Competition Authority an application for Competition Authority opinion in relation to the internal restructuring of the same group of companies. The transaction was carried out under a business transfer agreement of 1 April 2014 signed by CMB Albania Sh.p.k and Euromax Sh.p.k. The subject-matter of the transaction was the transfer of assets, contracts, stocks and employees from the seller (Euromax Sh.p.k) to the buyer (CMB Albania Sh.p.k). The operation of transferring the business through the transfer of assets and contracts from Euromax to CMB Albania, which had occurred between undertakings Euromax and CMB Albania (which are controlled by the same shareholder—CMB Balkans) did not bring about a qualitative change of control in the target company (Euromax) and as a result it was not considered as a concentration pursuant to Article 10 (1) (b) of the Law. The transaction was not subject to Competition Commission review.

#### *Trade in electrical products*

The preliminary notification from companies Faie Sh.p.k and Siame Sh.p.k resulted from the cooperation with the NRC, too. The notified transaction was related to the operation of the full merger of two independent undertakings (Siame Sh.p.k and Faie Sh.p.k) into a joint venture performing all the functions of an independent entity. To that end, the participating undertakings signed a draft agreement on a merger by acquisition between companies Siame Sh.p.k and Faie Sh.p.k”, of 3 June 2014. The participating companies operated in the same domestic and foreign markets: Kosovo and Macedonia. They also shared the same foreign suppliers, and sold the same electrical products, such as wall

sockets, light switches, circuit breakers, etc. The participating companies sold the goods, and held the exclusive rights, of Gewis brand. The transaction of merger by acquisition involving Siame Sh.p.k and Faie Sh.p.k was a concentration in the form of merger of two independent undertakings, in accordance with Article 10 (1) (a) of the Law. But this concentration did not meet the turnover requirement provided for in Article 12 (1) (a) of the Law and, as a result, it was not subject to authorisation by the Competition Commission.

### Insurance Market

Pursuant to Article 53 “Notification Obligation” of Law No. 9121 of 28 July 2003 “On Competition Protection”, as amended, the legal representative of the Vienna Insurance Group in Albania submitted an application for interpretation in relation to the merger of two Albanian companies of the VIG Group—Interalbanian SH.A and Sigma SH.A.

In order to reduce their operational costs and improve the services provided to Albanian consumers, VIG and the rest of shareholders of companies Interalbanian SH.A and Sigma SH.A (the Parties) were considering a merger of those two insurance companies into a single company. The result of the envisaged merger would probably be the acquisition of Interalbanian SH.A by Sigma SH.A. Even after the merger, the VIG would still be the controlling shareholder of Sigma SH.A holding at least 85% of that company. To that end, the parties signed a draft merger agreement (no date) between Sigma Vienna Insurance Group SH.A and Interalbanian Vienna Insurance Group SH.A. Pursuant to the draft agreement (Paragraph 1.3) Interalbanian would be merged into (acquired by) Sigma, with Interalbanian ceasing to exist as a separate legal entity. The shareholders of Interalbanian would be considered as shareholders of Sigma and would exercise their rights as such, including the right to receiving a dividend, as of the entry into force of the merger. From a legal perspective, the merger by acquisition of Interalbanian SH.A by Sigma SH.A, an operation which was between two member undertakings of the same group (VIG), did not result in a qualitative change of control in the ultimate undertakings resulting from the operation (Sigma Interalbanian Vienna Insurance Group SH.A) because that continued to be controlled by the VIG, and the operation was not, therefore, subject to Competition Commission authorisation.

## **II.6 REVIEW OF EXCLUSIVE RIGHTS**

In its activity in 2014 the Competition Authority focused on a number of exclusive and special rights granted in Albania. The assessment of those concession agreements is based on Law No. 9121 of 28 July 2003 “On Competition Protection”, as amended,

Article 2 of which provides that the Law applies to both public and private undertakings which have been granted special and exclusive rights by the State. In addition, the assessment was made pursuant to the Albanian Parliament Resolution on the evaluation of the Competition Authority activity in 2013, which had specified several concession agreements to be in the focus of the Authority in 2014.

The Competition Authority made an ex post evaluation of those special and exclusive rights that had been granted by various institutions in Albania, giving consideration to the protection and maintenance of free and effective competition principles. The review and assessment of all concession agreements showed that the concession granting procedures had not complied with the obligation laid down in Articles 2 (1) (c) and 69 (1) (b) of Law No. 9121/2003 “On Competition Protection” because the responsible institutions had not solicited the Authority assessment of the granting of exclusive rights.

### ***Vehicle technical inspection service***

In its Decision No. No. 312 of 18 April 2014 “Recommendations on the functioning of the vehicle technical inspection market”, the Competition Commission recommended that the Ministry of Transport and Infrastructure, in the short run, ask the Concessionary SOCIETE GENERALE DE SURVEILLANCE S.A. to establish more than one consumer choice options for the annual compulsory vehicle technical inspection in the city of Tirana; in the long run, it should consider the provision of vehicle technical inspection service by several operators. In the case of exclusive rights, the Competition Authority should be asked an opinion pursuant to Articles 69-70 of the Law. Public institutions have also been made aware of the new EU Directive on the new rules on concessions based on the principle of transparency, and the criterion of the “best economic advantage of the bid”.

### ***East Terminal of Port of Durres***

The Competition Authority assessed the concession agreement on the management, operation and maintenance of the East Terminal of Port of Durres, for which it also requested comments from the public authorities monitoring the implementation of that concession agreement. In conclusion, the Competition Authority decided to bring to the concessionary’s attention the fact that in the case of bulk goods EMS was the only service provider for a relatively long period of time (35 years) and, therefore, recommend the Ministry of Transport to specify that the East Quai will be for bulk goods if it revises the concession agreement. The Authority recommended considering the differentiation among margins in the case of fees applied by the Port Authority for generic goods, in order to adjust the fees in accordance with the market and effectively compete with the concessionary.



### ***Vehicle scanning service***

In its Decision No. 319 of 13 June 2014 “Recommendations in relation to the concessionary agreement on funding, establishing and operating the service of scanning containers and other vehicles in the Republic of Albania and the scanning service fee”, the Competition Commission recommended that the Ministry of Finance and Council of Ministers revise the concessionary agreement on funding, establishing and operating the service of scanning containers and other vehicles in the Republic of Albania and the scanning service fee. Another item of the decision was the obligation of public institutions to observe the provisions of Law No. 9121 “On Competition Protection”, as amended, and ask in advance the Competition Authority to make a legal assessment of the adoption of acts having as their purpose or consequence the granting of exclusive rights or quantitative restrictions in various markets or industries.

### ***Fiscal stamps***

Competition Commission Decision no. 337 of 11 November 2014 “Recommendations in relation to the concessionary agreement on the designing, financing, production and establishment of a system for issuing, distributing, tracing and monitoring of fiscal stamps and medicament control stamps” recommended that the Ministry of Finance and the Ministry of Economic Development, Trade and Entrepreneurship carry out an economic and technical evaluation of the applicability of the concession agreement terms and conditions, and an analysis of the economic justification of the concession that was followed by increased costs to businesses in terms of fiscal stamps, and fight against evasion and smuggling of excise-tax products. The Competition Commission recommended that they revise that part of the concessionary agreement that deals with medicament fiscal stamps, because their production had not started and would increase the cost of pharmaceutical products that were highly sensitive.

### ***National Lottery***

The Competition Authority carried out an evaluation of the National Lottery licence agreement between the Ministry of Finance, as the authorised authority, and Oesterreichische Lotterien GmbH, through Olg Project sh.p.k. At the end of the evaluation, a letter was sent to the Ministry of Finance informing that the Competition Law principles had not been observed during the procedure of granting that right, while also underlining the fact that the procedure had been applied in view of the principles and experience of almost all other countries where there is a sole licence on the games

to which the Lottery has exclusive rights. However, given the situation of a dominant position, the Authority is going to monitor the behaviour of the undertaking in the market in order to observe the organic law.

## **II.7 MARKET MONITORING**

### **II.7.1 Market of importing, production and wholesale of bulk cement**

After the in-depth investigation into the cement importing, production and wholesale selling market, the Competition Authority Secretariat carried out constant monitoring of the cement importing, production and wholesale selling market. The purpose of the monitoring was to assess the structures of the relevant markets of importing, production and wholesale of cement, and to analyse the prices of undertakings operating in the relevant markets in order to assess the level of competition.

The methodology used during the monitoring was mainly based on the analysis of competition carried out during the investigation on the basis of the market structure indicators, wholesale price dynamics, market supply evaluation and trading policies pursued by the undertakings in terms of export volumes and domestic sales.

The monitoring showed that the market of importing, production and wholesale of cement, while having the characteristics of an oligopolistic market, demonstrated development dynamics both domestically and regionally. The undertakings offered different prices to different customers, which indicated countervailing buyer power. The monitoring did not find any evidence of anticompetitive behaviour in relation to prices.

### **II.7.2 Tobacco and its by-products market**

Pursuant to the Competition Commission Decision No. 314 of 8 May 2014 “On closing the preliminary inquiry into the tobacco product importing, manufacturing and wholesale and retail selling market” the Secretariat monitored the tobacco market. During the monitoring, the Secretariat collected information on the volume and selling prices of cigarettes from the largest importers in Albania, and the price dynamics as applied by the importers.

In mid-October 2014 a concern was raised on the media by consumers in relation to the price of manufactured cigarettes, which required an immediate assessment of the cigarette market. The data analysis, the field monitoring and the contacts with traders showed that the market of importing manufactured cigarettes had the characteristics of a market with high concentration, with two main undertakings holding about 80 percent of the market.

At the end of October it was found that two importing undertakings had increased the price in approximate periods of time and at similar incremental margins, even though the excise tax law had not entered into force. The evidence indicated that between the two cigarette importers there could be concerted behaviour, which was against Article 4 of Law No. 9121 of 28 July 2003 “On Competition Protection”.

Based on the monitoring, with proposal from the Secretary General the Competition Commission took Decision No. 342 of 27 November 2014 whereby it decided to open an inquiry into the manufactured cigarette market.

### **II.7.3 Liquefied petroleum gas import and wholesale market**

In the past few years, the liquefied petroleum gas import and wholesale market has been under constant monitoring. Previous reports found that the gas import market was very concentrated, with the concentration indicators being the highest for the entire period for which there was data available. In the market the undertakings were offering homogenous products, with visibly transparent cost elements (exchange prices, offload, shipping and storage expenses, and operation as importers in the same location), with inelastic product demand and with an undertaking having a significant position in the market.

The shareholding connection between the main undertaking in the market (A&V Gas Sha) with Intergaz (owner of gas storage facilities) and Romano Port could have been the factors resulting in the strengthened position of that importer in the market.

The significant changes in the market shares of the rest of the undertakings, dramatic reductions or increases in their market shares indicated unstable and insecure position of the rest of competitors, which is an indicator of poor competition in the gas import market.

The available data did not show any elements of collusion among the larger wholesale undertakings, and the influence of the main importing undertaking on the rest of trading levels, buyer economic reliability or access to vertical integration at various trading levels.

Based on the above, the Secretariat experts assessed the behaviour of A&V Gaz (the main importer) to see whether it had abused with its market position. The assessment was made pursuant to the Dominant Position Guideline and the best OECD methodologies on abuse of a dominant position.

The assessment found that the LPG wholesale domestic price set by A&V GAZ SH.A was lower than the price it applied in the regional market. The LPG selling price in the market followed the exchange trend, and reflected purchase invoice prices faithfully. A comparison of the effective selling prices (in the country and abroad) to the average

variable cost (AVC) did not show that there were any predatory prices during that period. An analysis of profit margins in 2011-2012-2013 showed that the undertaking had sold at normal annual average profit margins, with no signs of excessive prices. The detailed analysis of the wholesale prices that A&V Gas Sha applied in the upstream market against other undertakings (except for AV Distribution) and the prices applied by the undertaking integrated with the undertaking holding a dominant position in the downstream market showed that it was not a classical situation of margin squeeze. The assessment concluded that undertaking A&V Gas SH.A had a dominant position in the market of importing and wholesaling liquefied petroleum gas (LPG), but found no indications of abuse of its dominant position in the relevant market.

Given that the market is highly concentrated and is sensitive to consumer spending, the Secretariat will continue to monitor the behaviour of importers in this market.

#### **II.7.4 Sunflower Oil Importing, Manufacturing and Wholesale Selling Market**

Pursuant to Competition Commission Decision No. 284 of 13 May 2013 “On concluding the in-depth investigation into the sunflower cooking oil importing, producing and wholesale selling market against undertakings Erbiron sh.p.k, Olim sh.a and Crystal sh.p.k.”, the Secretariat kept that market under monitoring.

The purpose of the monitoring was to identify the dynamics that might have occurred in the market of vegetal oil manufacturing, importing and wholesale selling in relation to the structure indicators of manufacturing, importing and wholesale selling market, the concentration index, the behaviour and prices applied by the main manufacturers and importers of sunflower oil sold in 1-litre packaging.

The analysis of the data and competition indicators showed that in the period January 2013-June 2014 the imported oil met most of the domestic demand for sunflower oil (about 85% of the oil was imported); the cooking oil market was less concentrated than in the investigation period and the prices in every trading link (import, wholesale, retail) fell significantly compared with the previous periods. In the import market there were new entrants, while in the wholesale market all the undertakings had reflected the fall in the import price in their wholesale prices. No anticompetitive behaviour among the undertakings was noticed in relation to the prices, because the undertakings had applied different price-setting policies in the form of reflecting the variable indexes in the fall in import/purchase prices in the wholesale market link.

At the end of the monitoring, based on the dynamics of cooking oil import/production and wholesale market and the elements determining the behaviour of undertakings in relation to their prices, the decision was made to close the monitoring of the sunflower cooking oil production and wholesale market, while the Analysis Unit will continue to collect data on the vegetal cooking oil import market.

## **II.7.5 Monitoring of the excise tax goods market**

Pursuant to Article 28 of Law No. 9121 of 28 July 2003 “On Competition Protection,” as amended, the Competition Authority Secretariat monitored the excise goods market. The monitoring was initiated due to the recent changes to the fiscal package and the impact on the tax burden on those markets. The purpose of the monitoring was to assess the markets after the changes to the fiscal package and identify the structures of the relevant markets for the period from January 2013 till January 2014.

The methodology that was used in the monitoring of the excise goods was mainly based on the analysis of import and production market, the classification of markets by the nomenclature of goods used by DG Customs and the relevant codes, the “Structure, Performance, Behaviour” Methodology under which for each market the market shares by quantity/weight and value were calculated, the brands were identified, and the interbrand and intrabrand analysis identified the main undertakings for each brand.

A questionnaire was designed, which was completed in cooperation with the Tirana University Economics School students in shops. The purpose of the questionnaire was to assess how energy drinks and beer were distributed and priced, how the goods were marketed, whether there were any mandatory conditions set by the suppliers to the end sellers, and what the price dynamics after January 2014 were.

The assessment of excise goods market took into consideration both the laws and regulations in Albania and a regional benchmarking with other countries in the region (Kosovo, Macedonia and Montenegro) in terms of taxation, based on the legislation of those countries.

After concluding the data analysis on the relevant market indicators, we found that in the coffee market Law No. 180/2013 “On Excise Tax in the Republic of Albania” did not bring about any changes to the excise tax on coffee products for 2014, and that the import market was not concentrated.

In the energy drink market, Law No. 180/2013 “On Excise Tax in the Republic of Albania” newly introduced an excise tax of ALL 50 per litre on this category of products. This tax is already applied in Kosovo at EUR 0.45 per litre, while the rest of the countries did not apply a tax on this category of products. There was competition and a variety of prices among the brands in the market. Within brands, competition was low because within brands the markets were very concentrated or there was only one importer.

In the beer market, domestic production accounted for 93% of the beer supply. In the beer market, Law No. 180/2013 “On Excise Tax in the Republic of Albania” significantly reduced the excise tax, and its values are now comparable with other countries in the region. The intrabrand analysis showed that the same importing undertakings imported

more than one brand. In the case of beer production brands, one undertaking produced a single beer brand, making the market very concentrated.

In the wine market, the wine demand in Albania is met by foreign (import) and domestic supply. The excise tax on this product had increased and was reflected in how the undertakings were operating in the import market, since they imported large quantities in December 2013, before excise tax increase became effective. A very large number of undertakings operated in the wine import and domestic production market, and that market was averagely concentrated.

In the alcoholic drinks market, Law 180/2013 increased the excise tax on the group of interim alcoholic beverages, with the exception of those categories that include domestic alcoholic beverages (raki, cognac and ouzo). In comparison with other countries in the region, the Albanian legislation provides for progressive excise tax rates depending on the type of product and volume of product in the main factories, while the legislation in other countries in the region provides for a fixed excise tax for a very wide range of goods listed in the nomenclature. With regard to the excise tax rate, in the Republic of Albania the highest excise tax is on hard spirits, which is higher than in Kosovo and Macedonia, while the excise tax on the rest of beverages is the lowest in the region. An assessment of the relevant submarket structures by brand showed that for each beverage there was a large number of brands that demonstrated significant price changes. An assessment of the market structure by importer showed that the markets were mainly concentrated, with the largest undertakings having exclusive rights on brands.

The analysis of the questionnaires found that there was a price increase across all products after February 2014; several brands of energy drinks or beer were sold in the retail points of sale, at different prices reflecting the price increase after January 2014 at different proportions; the importers or producers offered merchandise, set discounts and various sale offers to make their products more attractive than those of other competitors. No discriminatory behaviour against other competitors in the same product market were found, nor were there any mandatory conditions set by the suppliers with regard to supply demands.

Due to market characteristics and competition among and within brands, and based on the collected information on the price behaviour, the monitoring concluded that there were no indications of competition restriction in the relevant market.

The monitoring report on the excise tax goods was published on the institution website and was sent to the Ministry of Finance, the Directorate General of Customs and the Directorate General of Taxes.

## **II.8 JUDICIAL REVIEW OF COMPETITION AUTHORITY CASES**

Due to entry into force and implementation in 2014 of Law No. 49/2012 of 3 May 2012 “On the Organization and Functioning of Administrative Courts and the Judicial Review of Administrative Disputes,” the litigations cases the Competition Authority was a party to were reviewed by the Administrative Court of First Instance in Tirana. In addition, the cases that were pending at civil courts were transferred to the Administrative Court of First Instance in Tirana.

The Competition Authority has paid special attention to tending to those cases, because the efficiency and real impact of the Competition Commission decision-making is closely related to the process of judicial review of Competition Commission decisions. The reason for this is that almost all decisions that have found violations of the Law and have imposed penalties on undertakings have been appealed against in courts. This section describes the cases, the appeal cases against Competition Commission Decisions in the judicial system, their performance in the proceedings, and the final enforcement of those decision by transforming them from enforceable acts into execution orders. The proceedings are closed with the final depositing of the proceeds from the fines against competition violators to the Albanian State Budget.

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.

Therefore, any final decisions of the Competition Commission, which are administrative acts, and are, under Law No. 49/2012, subject to judicial review (appeal) at all instances of the administrative judicial division. To that end, the Competition Authority pays special attention to pursuing any appeals and court cases in first instance administrative courts, administrative courts of appeals and the Supreme Court Administrative Chamber.

With reference to statistics, which are given in more detail in the Annexes of this Report, a total of eight Competition Commission decisions were reviewed in the Administrative Court of First Instance, of which five cases were reviewed in the reporting year (in the three of cases the decision was for the Competition Commission, in two cases the decision was against the Competition Commission), with three cases pending in the beginning of 2015. Eight cases were submitted for review to the Administrative Court of Appeal in 2014, of which four were pending in 2015 and four were reviewed. In the

three of the cases the claimants' suits against the CCDs were admitted, and in one case the lawsuit application was dismissed (Romano Port), while four pending cases are expected to be transferred to the Administrative Court of Appeal in 2015. On the other hand, ten cases were submitted for review to the Supreme Court Administrative Chamber in 2014, of which in one case the Court decided to accept the recourse submitted by Plaintiff AMC SH.A. and decide to return the Case on CC Decision No. 59 of 9 November 2007 for retrial to the Administrative Appeal Court because until the trial at the Chamber the case had been reviewed by civil courts but following the entry into force of Law No. 49/2012 of 3 May 2012 "On the Organisation and Functioning of Administrative Courts" it had to be returned to the administrative branch of the judiciary for retrial. Nine cases are still pending in 2015.

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 administrative court instances.

It should be noted, however, that 26 cases in the three instances (eight cases in the first instance, eight cases in the court of appeal and ten cases in the Supreme Court) were to be monitored, of which 16 were pending in 2014 and ten were reviewed in 2014, with the following provisional results: five lost cases, four won cases, and one case was referred back to the Administration Court for review due to lack of jurisdiction.

### **II.8.1 An analysis of judicial review cases**

In relation to the cases in which the judiciary authorities have decided for the plaintiffs (resulting in complete or partial quashing of the CC Decisions), the judgments indirectly argue that a good portion of the evidence submitted by the Competition Authority is not considered as such by the courts. To illustrate this conclusion several findings from court judgments on the evidence submitted by the Competition Authority are listed below:

#### **Case 1: The court decides in different ways in relation to the violations of Tirana urban transportation undertakings.**

According to Competition Commission Decision no. No. 290 of 23 July 2013 undertakings Ferlut sha, Tirana Lines sha, Alba Trans shpk, Tirana Urban Trans sha, Parku i Transportit Urban të Udhëtarëve shpk and Otto-al shpk had decided within National Urban Transportation Association to reach an agreement under which they did



not sell more than 50% of the quantity of student monthly passes for 2007 and about 80% of the quantity of student monthly passes for 2008-2012. The Competition Commission decided to take an administrative measure in the form of a heavy fine against undertakings Ferlut sha, Tirana Lines sha, Alba Trans shpk, Tirana Urban Trans sha, and Parku i Transportit Urban të Udhëtarëve (Passenger Urban Transportation Park) on grounds of violation of Article 4 of the Competition Law.

The decision was individually appealed against by undertakings Ferlut SH.A, Tirana Lines SH.A, Alba Trans Sh.p.k, Tirana Urban Trans SH.A. The court decided for the claims lodged by Ferlut SH.A and Alba Trans Sh.p.k and against the claims submitted by Tirana Lines SH.A dhe Tirana Urban Trans SH.A, thus deciding in different manners on cases with the same subject-matter. What follows are some of the grounds stated in the court judgments, for both for and against submitted claims in each case.

### **1. Alba Trans vs Competition Authority (CCD no. 290 of 23 July 2013)**

In the case of the claim lodged by Alba Trans, Tirana District Court and Tirana Administrative Court of Appeal decided for the plaintiff, on the following grounds:

*“...the decision to restrict the selling of student monthly passes was taken by the Association, the members of which include all the market operators. Therefore the decision did not prejudice, harm or affect any of the competitors in that market. The organic law aims at prohibiting those agreements that harm competition, but not any agreements that might have other purposes than the obstruction of competition.*

*The jurisdiction of the Defendant is limited only to the cases resulting from a violation of Organic Law No. 9121 of 28 July 2003 "On Competition Protection". As long as the actions of the Association do not harm competition but in the contrary they favour competition, the Defendant has acted in excess of its rights and unfairly imposed a fine in its act which is the subject-matter of this appeal.”*

### **2. FERLUT vs. Competition Authority (CCD no. 290 of 23 July 2013)**

The Administrative Court of First Instance in Tirana decided to admit the lawsuit application submitted by FERLUT on the ground that the refusal to recognise the monthly ticket cards of GERARD-A SH.A. for 5,500 monthly tickets was a decision made by the National Association of Urban Transportation (SHKTQ), which is a separate legal person that was established and registered on 15 December 2003, and not by FERLUT SH.A. Therefore, the administrative contravention should have been applied to the Association and not to FERLUT SH.A.

According to the Court, even if it is recognised that in the specific case there is a prohibited agreement, as claimed by the Defendant, under Article 4 (1) (b) and (c) of Law No. 9121 of 28 July 2003 “On Competition Protection”, as highlighted above, the

administrative contravention should have been applied to the Association, which is a separate legal person, and not to FERLUT SH.A.

### **3. Tirana Urban Trans vs Competition Authority**

Regarding the same issue the Court decided against the lawsuit application submitted by another party: Tirana Urban Trans. In this case, in reference to the specific refusal to recognise any monthly passes without the relevant cards issued by the Association and the restriction imposed on the selling of student monthly passes, the Court found the actions committed by the Association members, including Plaintiff Tirana Urban Trans SH.A. to be a prohibited agreement within the meaning of Article 4 of Law No. 9121 of 28 July 2003 "On Competition Protection".

*The Administrative Court of First Instance in Tirana decided to dismiss the lawsuit application lodged by the undertaking, and reaffirm the Competition Authority decision. The undertaking appealed against the judgment before the Administrative Court of Appeal in Tirana.*

#### **Case 2: The Court upholds the decision to close the in-depth investigation against Vodafone Albania SH.A, and provide recommendations to AKEP**

Competition Commission Decision no. 303 of 16 January 2014 concluded the in-depth investigation into Vodafone Albania SHA in the mobile telephony market, and gave recommendations for the Electronic and Postal Communications Authority. That decision was appealed against by PLUS COMMUNICATION SH.A. the Administrative Court of First Instance in Tirana.

In the judgment the Court reasoned that in the merits of the case under review referred to the applicability of Law No. 9121 of 28 July 2003 "On Competition Protection", as amended, which is a special law; Article 40 (Right to Appeal) of the law provides that: "The Authority decisions may be appealed against with the Tirana Court within 30 days of notification of a decision." The maximum time-limit laid down in the Law is 30 days, which was complied with by the Plaintiff.

The Court concluded that the time-limit for submitting the lawsuit application is 30 days and not 45 days, because this is a special law that has already specified the right to appeal and the relevant time-limit, thus prevailing over the appeal provisions in other laws.

*The Administrative Court of First Instance in Tirana decided to dismiss the lawsuit application lodged by Plaintiff Plus Communication SH.A, because it did not meet the formal requirements, and upheld the Competition Authority decision. PLUS appealed against the judgment before the Administrative Court of Appeal in Tirana.*

**Case 3: Tirana Administrative Court of Appeal upheld the Decision against Romano Port SH.A. in the liquefied petroleum gas (LPG) maritime loading-unloading market.**

Competition Commission 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” decided, inter alia, to impose a fine on that undertaking. Romano Port SH.A. lodged an appeal against that decision with Tirana District Court, which decided to stop the review of the civil case due to failure to attend court hearings, and uphold the Competition Authority decision..

An appeal against the Tirana District Court judgment was submitted by Romano Port SH.A. to Tirana Administrative Court of Appeal, which decided to uphold the judgment made by the Court of Instance in Tirana, thus reaffirming the Competition Authority Decision.

Plaintiff ROMANO PORT SHA took recourse against that decision.

**Case 4: The court quashes the Competition Commission decision on bid-rigging agreements, against undertakings NAZERI SHRSF & DEA SHRSF.**

Competition Authority Decision no. 240 of 26 July 2012 banned the bid-rigging agreement in the market of private security services among undertakings Eurogjici Security SHPK, Toni Security, Eurogjici Security 1 SHPK, Nazeri – 2000 and Dea Security, as a prohibited agreement under Article 4 (1) (a) of Law No. 9121 of 28 July 2003 “On Competition Protection”.

The undertakings took action with Tirana District Court, each submitting a lawsuit application. The lawsuit applications submitted by NAZERI SHRSF & DEA SHRSF were reviewed jointly, and at Tirana District Court decided for plaintiffs Nazeri 2000 sh.p.k. and Dea Security sh.p.k, partly annulling the administrative act, Competition Authority Decision No. 240 of 26 July 2012, in relation to the fine imposed to Nazeri 2000 sh.p.k. and Dea Security sh.p.k. for participating in prohibited agreements, and staying the execution of that administrative act until the end of the trial.

Within the time-limits specified in the Civil Procedure Code, the Competition Authority appealed the judgment, and Tirana Administrative Court of Appeal decided to uphold the Tirana District Court judgment, thus quashing the Competition Authority Decision, on the following grounds: *The Defendant did not submit any evidence showing that the Plaintiffs' actions caused any consequences for the market. Therefore it was not shown what consequences the Plaintiffs' behaviour brought in the security market, and to what degree they exerted their influence in order to eliminate other operators from the market*

*with their actions. The mere fact that certain actions occurred between them in terms of identical and similar documents may not be sufficient cause for penalising them for market breach.*

*The court of first instance took the correction position in stating that: "based on the findings of the judicial examination, the legal analysis included in this material and the evidence and facts submitted in the investigation report we are of the opinion that the procurement participation of companies Nazeri 2000 sh.p.k and DEA Security sh.p.k was in compliance with the laws and regulations in force and did not intend to commit any illegal actions or actions that may be included in the scope of investigation by the Defendant or that could bring about consequences that may be investigated by the Defendant."*

### **Case 5: The Supreme Court returns the case on the serious penalty against AMC for retrial to the Administrative Court of Appeal**

In its Decision no. 59 of 9 November 2007 "On abuse of the dominant position in the mobile telephony market by companies AMC SHA and Vodafone SHA" the Competition Commission proved that AMC and Vodafone had abused with their dominant position and set unfair prices in the mobile telephony market in the period under investigation (2004-2005). Based on the found violations, AMC and Vodafone were imposed a fine of 2% of their annual turnovers, with ALL 211,552,000 and ALL 242,633,000 respectively.

Both companies appealed against the decision at Tirana District Court separately. In its part pertaining to AMC, Tirana District Court Judgment No. 172 of 19 January 2009 supported the Competition Commission conclusion. According to the Court Judgment the mobile telephony service fees in Albania were too high if compared with other geographic markets. Given the degree of analysis in order to carry out the tests specified by the EU, the Court concluded that AMC had abused with its dominant position in the market. As a result, the Court concluded that Competition Commission Decision no. 59 of 9 November 2007 had been just, based on the law and evidence and, as such, should be reaffirmed. The Court of Appeal upheld the Tirana District Court judgment, after which AMC SH.A. took recourse with the Supreme Court.

After reviewing the recourse submitted by AMC SH.A. the Supreme Court decided to return the case for retrial to the Administrative Court of Appeal.

**However, for the same Competition Commission decision, the judicial system (the court of first instance, the court of appeal and the Supreme Court), when reviewing the appeal case submitted by Vodafone Albania SH.A. reaffirmed the Competition Commission decision to impose a heavy fine on that company. In its judicial review the Tirana District Court decided to dismiss the lawsuit application**

submitted by Vodafone, and reaffirm the Competition Commission decision. The Administrative Court of Appeal decided to uphold the First Instance judgment, thus reaffirming the Competition Authority decision. Vodafone Albania SH.A. also submitted a recourse to the Supreme Court, which, after reviewing it in chambers, decided to dismiss the case.

**Case 6: The Administrative Court of Appeal quashes the Competition Authority decision to impose a fine on AMC SH.A. for failing to submit the requested data (Competition Commission Decisions Nos. 26 and 27 of 2 December 2005 and 12 December 2005)**

Court Case with parties: "AMC SHA vs Competition Authority"; with subject-matter: Annulment of Competition Commission Decision no. 26-27 of 2 December 2005 and 12 December 2005. The case was adjudicated by the Supreme Court after the recourse used by the Competition Authority. The Supreme Court decided to return the case for retrial to Tirana Court of Appeal. In relation to this case, the Tirana Court of Appeal ruled that it did not have jurisdiction, pursuant to Law No. 49/2012 of 3 May 2012, and returned the case for review to the Administrative Court of Appeal in Tirana, which decided for the Plaintiff in part, and dismissed the part of the case pertaining to Competition Commission Decision No. 26 of 2 October 2005, and accepted the part of the case pertaining to Competition Commission Decision No. 27 of 12 October 2005. The Competition Authority submitted a recourse to the Supreme Court against that judgment.

The analysis above clearly indicates a confusion within the judiciary in terms of competition law terminology and, furthermore, lack of knowledge in terms of evaluating the evidence of competition violation, distortion or restriction. The practice of the European Court of Justice in Luxembourg, and other internationally recognised practices in developed countries (which also serve as a competition law school), the evidence that the Competition Authority has found and used in its decision-making (guided by those precedents) are absolutely considered as more than enough for the purpose of determining competition restriction.

An analysis of the court judgments shows that none of the Competition Commission decisions have been attacked, or that the procedures followed by the Competition Authority have not been invalidated. The claims have always related to the essence of the competition violations determined in the Competition Commission decisions. The merits of the claims are interpretable and rely on the "depth of knowledge" the parties have in relation to the competition law terminology, as mentioned above, which has also resulted in the judgments issued on the Competition Commission decisions.

However, beyond the statistics, the main concern the Competition Authority has is related to what degree the administrative judiciary bodies have absorbed the competition philosophy and terminology, in general, and the competition law principles, in particular. It is very important to ensure that the reasoning underlying the judgments is based on the public interest as a public good.

Therefore, the key challenge for the competition institution 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. This would be effectively helped by increased judge training, especially for administrative courts of all instances, since those courts will be the ones to decide on the fairness of Competition Commission decisions in the future.

### **II.8.2 Execution of decisions**

In compliance with the Civil Procedure Code, and Article 80 of Law No. 9121 of 28 July 2003 “On Competition Protection” the Authority submitted all the required documentation to facilitate the execution of the abovementioned enforceable acts by the Enforcement Office in Tirana in relation to the final Competition Commission Decisions.

As shown in Annex No. 3 “Execution of fines imposed by the Competition Commission, as of 31 December 2014”, out of a total of ALL 1.37 billion in administrative fines imposed by the Competition Commission 25% of the decisions turned into enforceable acts (ALL 259,821,000) had been collected, ALL 45.7 million (or 4.5 percent of the total amount) were in the process of enforcement, and about ALL 731.6 million (or 70.5 percent of the fines) had not been subjected to a final court decision yet.

An application was submitted for enforcement orders to be issued in relation to two Competition Commission decisions against the following undertakings. We have also submitted to the Enforcement Office the enforcement order against VILOIL. Specifically:

- 1) Competition Commission 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”, for which an enforcement order was issued by means of Decision No. 703 of 23 May 2014 of the Administrative Court of First Instance in Tirana;
- 2) Competition Commission Decision no. 318 of 2 June 2014 “On imposing a fine on Heaney Assets Corporations for failing to submit information within the time-limit laid down in the Commission Decision”, for which an enforcement order was issued by means of Decision No. 934 of 10 September 2014 of the Administrative Court of First Instance in Tirana;

In compliance with the Civil Procedure Code, the Competition Authority submitted all the required documentation to facilitate the execution of those enforceable acts by the Enforcement Office and to follow up on the enforcement acts carried forward from previous years.

## **II.9 LEGISLATION APPROXIMATION IN THE AREA OF COMPETITION**

One of the main goals for the Authority since its establishment has been the competition and constant enhancement of regulatory and supervisory legislation in the area of the supervised competition aspects that would enable the enforcement of the law. This completed legal framework aims at the approximation with the international standards in the context of meeting the commitments of the institution and Albania for the implementation of the Stabilization and Association Agreement with EU.

Since Albania now, after being granted the status of a candidate country, has the obligation to approximate its legal framework with the European legislation, this obligation and commitment is sanctioned in Article 70 of the Stabilisation and Association Agreement. Under that article, Albania shall endeavor to ensure that its existing laws and future legislation will be gradually made compatible with the Community *acquis*. Therefore, the process of legislation approximation remains one of the main priorities for the Competition Authority since not only does the implementation of this process serve the establishment of the competition legal framework in line with the institution requirements and in approximation with the *Acquis Communautaire*, but it also ensures the administrative and other necessary conditions for its effective implementation.

In the process of legislation approximation the Competition Authority is transparent and thus publishes its draft regulations on its official website and circulates them among third parties in order to also receive their comments. This procedure is and will be applied by the Competition Authority. This cooperation has been fruitful because the comments on the draft regulations have contributed to improving them.

In 2014 the commitments assumed under the National European Integration Plan were implemented by translating, adapting or approximating and adopting the specified regulations within the specified deadlines. The Competition Authority has contributed the following acts to the secondary legal framework:

**1. Regulation on the categories of agreements and concerted practices in the maritime transportation of goods sector.** The regulation specifies which agreements and concerted practices in the maritime transportation of goods are exempted from the

application of Article 4 of the Law. The regulation introduces a few novelties in terms of definitions and provisions on various terms used in it. The regulation includes clear definition of the maritime transportation, the consortium, the conditions for granting an exemption, the respective market shares, etc. The exemption provided for in this regulation is applied where several conditions are met and for those consortia that provide international maritime transportation from/to a sea port.

**2. Guideline on the applicability of Articles 8 and 9 of Law No. 9121 of 28 July 2003 “On Competition Protection”.** The purpose of the guidelines is to clarify the evaluation techniques used in the cases of dominant position and abusive behaviour. The guideline gives priority to the study and analysis of those cases, treating them as harmful and with an impact on consumers. It provides explanations for third parties, especially for the business community, on how the Competition Authority makes an assessment based on market effects resulting from the abuse of a dominant position. The ultimate goal is to protect free and effective competition and the wellbeing of all consumers and not an individual competitor. The Competition Authority assessment consists of an evaluation whether there some specific behaviour might restrict market competition, any entry barriers, competitors’ positioning and counter-strategies, which market shares are affected by that behaviour, etc.



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

The fourth pillar of the Competition Law is advocacy, the aim of which is to protect competition against the effects of other laws and regulations, and to promote competition. However, the main condition for the effective implementation of this legal requirement is the close and real cooperation with central government agencies and other regulators. The experience last year was not always positive, an indication of which is the degree to which the Authority recommendations were taken into account.

#### **III.1 ASSESSMENT OF ACTS**

The environment for the development of free and effective competition in the market is included in the scope of a number of central and local institutions, including ministries, regulators, municipalities, etc.

Pursuant to Article 69 of Law No. 9121 of 28 July 2003, central and local government bodies have the obligation to request an assessment from the Authority of each draft regulation that is mainly related to the quantitative restrictions to market access and trading and the granting of exclusive rights. It is a statutory obligation of the Authority to assess the degree of competition restriction or obstruction. Despite the proactive approach taken by the Authority, however, it has not always been possible to make an assessment of all draft acts due to the neglect demonstrated by the various institutions which are required to ask the Authority for its opinion before adopting acts restricting competition.

With support from the EU technical assistance project, the Competition Authority proposed and is already implementing a matrix of self-assessment of law and/or regulation impact on competition, which is a tool for all institutions so that they can make a preliminary self-assessment of the impact of an act in terms of potential market competition restrictions.

The following are the draft laws and pieces of legislation that were submitted for comments to the Competition Authority, and the laws related to the markets under investigation or monitoring by the Competition Institution, which were subjected to legal assessments.

- Draft Law on Insurance and Reinsurance;
- Assessment of fuel selling legislation in the course of investigating the respective market;
- Assessment of maritime passenger transport legislation in the course of investigating the respective market;

- Draft Regulation on the SEE CAO Capacity Allocation Auction (Auction Regulation);
- Evaluation of the application submitted by Vodafone M-PESA sh.p.k. to the Bank of Albania for a licence to operate as a non-banking financial entity/electronic money institution—requested by the Bank of Albania;
- Legal assessment of the Draft Law on Value Added Tax, requested by advertising agencies;
- Assessment of the Bank of Albania Regulation on licensing and operation of non-banking financial institutions, following a request from UNIONI FINANCIAR TIRANE Sh.p.k.;
- Assessment of legislation in the electricity sector, and especially of the rules and procedures of electricity purchase by CEZ SHA/OSHEE;
- Assessment of the legislation on the compulsory motor third party liability (MTPL) insurance market, during investigation proceedings into that relevant market;
- Assessment of telecommunication legislation in the course of investigating the respective market;
- Assessment of the Draft Law “On the Electrical Power Sector”;
- Legal assessment of OSHEE procedures on the standard electricity procurement rules and procedures, in the course of reviewing the complaint submitted by Gen-I sha;
- Assessment of the draft amendments to the Administrative Procedure Code;
- Assessment of, and opinion on, the Sector Strategy for the Digital Agenda 2014-2020;
- Legal assessment of OSHEE procedures on the standard electricity procurement rules and procedures, in the course of reviewing the complaint submitted by Gen-I SH.A.;
- Assessment of the concession on the service of compulsory technical inspection of motor vehicles and trailers in the Republic of Albania, issued by Commission Decision No. 312 of 18 April 2014;
- Assessment of the National Lottery Licence agreement;
- Assessment of the Draft Decision amending the Regulation on licensing and operation of banks and branches of foreign banks in the Republic of Albania;
- Opinion on the AKEP 2013 Mobile Telephony Market Analysis.

Like in the previous year, a significant number of regulations were submitted by government agencies to the Competition Authority for comments in 2014. This shows a constant increase in other institutions’ awareness of developing their draft acts in such a way as to promote competition.

### **III.2. GIVING RECOMMENDATIONS**

During monitoring and investigation proceedings, the Competition Authority analyses the factors affecting the good functioning of the respective markets, by identifying any promotional or restrictive impact that laws or regulations of various regulatory or central institutions have. In overall, the Competition Commission recommendations have been presented in the respective report sections on the specific procedures by monitored or investigated markets, and in Annex No. 8 “Recommendations Issued by the Competition Commission in 2014”. The respective recommendations are shown below.

At the end of the investigation into the retail mobile telephony market, the Competition Authority took Decision No. 303 of 16 January 2014, whereby it gave recommendations for the Electronic and Postal Communications Authority with the purpose of increasing competition in that market.

In its Decision No. 308 of 21 February 2014, the Competition Authority gave several recommendations on increasing competition in the air transport services market.

At the end of monitoring the exclusive service of vehicle technical inspection, recommendations were given to the Ministry of Transport and Infrastructure in order to ensure more effective competition in that particular market.

After monitoring the concessionary agreement on funding, establishing and operating the service of scanning containers and other vehicles in the Republic of Albania and the scanning service fee, the Competition Commission recommended that the Ministry of Finance and the Council of Ministers revise the concessionary agreement on funding, establishing and operating the service of scanning containers and other vehicles in the Republic of Albania and the scanning service fee.

At the end of the investigation into the compulsory motor third party liability (MTPL) insurance market, recommendations were given to insurance companies on restoring competition in that particular market, and to the Financial Supervisory Authority on promoting competition in that particular market.

After monitoring the market of electricity import by CEZ SHA for purposes of covering losses, the Authority gave recommendations on increasing competition in the market of procuring electricity for purposes of covering losses in the distribution network.

After assessing the concessionary agreement on the designing, financing, production and establishment of a system for issuing, distributing, tracing and monitoring of fiscal stamps and medicament control stamps, the Authority gave several recommendations to the Ministry of Finance and the Ministry of Economic Development, Trade and Entrepreneurship in relation to the concessionary agreement on the designing,

financing, production and establishment of a system for issuing, distributing, tracing and monitoring of fiscal stamps and medicament control stamps.

### **III.3 TRANSPARENCY AND INCREASED COMPETITION CULTURE**

In 2014 the Competition Authority made its activity transparent mainly by publishing its decisions on its website and official journals, issuing press releases and statements on its key decisions, giving interviews and statements to the media upon request, and publishing its annual report, and laws and regulations in the area of competition. Almost all Competition Authority publications have been acquired by university libraries, especially by law and business schools.

#### **III.3.1 International conferences**

The international scientific conference that was organised on the Tenth Anniversary of the Competition Authority in March 2014 should be highlighted. Its topic was “Competition Law and Policy Impact on Economic Growth”, which is also one of the economic debate topics in Albania. An argument that was emphasised in the Conference was the making of the market efficient by protecting it against anticompetitive behaviour committed by one or more market players or against government influence as a market factor was the philosophy underlying the Competition Authority activity.

The panellists concluded that the Competition Institution was more developed than when it was established, and much more consolidated than five years before, as it had been clearly highlighted by the European Commission in its Progress Reports, underlining that the Competition Authority was one of the institutions that had clearly improved its performance in the recent years.

One of the key factors contributing to the Competition Institution consolidation has been the encouragement coming in the form of positive evaluation of the law enforcement performance, increased and strengthened administrative capacities and disseminated competition culture through competition advocacy, as well as the constant support through funding for institutional capacity building.

Increased competition culture can first be achieved through the implementation of the law, and consumers have undoubtedly felt the real effects resulting from the Authority interventions to restore free and effective competition in the market. Investigation cases in markets with a significant contribution to the gross domestic products such as mobile telephony, financial industry, construction industry, public procurement, etc., and the investigation and confrontation with large international and local corporations which can

tap into the best law firms in Albania and Europe, from London to Brussels, has been a challenging process for the Competition Authority.

Competition law is an integral part of the institution of law, the application of which by all public institutions is one of the instruments in the fight against corruption. Another important issue that has been encountered in the practice of several years of the Competition Authority is the lack of experience and expertise for a complete assessment of the effects that an anticompetitive practice can have in the market to be carried out by the judiciary bodies; this has resulted in problems in relation to the effective implementation of competition law.

The business community itself should cooperate with the Competition Authority proactively, especially towards the competition culture promotion through joint activities and business individual policies in order to ensure that their activity complies with competition rules.

The main goal of competition is to ensure efficient resource allocation, a mission which is completely enabled only through very close cooperation between the regulators of the specific markets and the Competition Institution. This is an ongoing challenge to overcome the concerns facing those market, converging into the instruments that should ensure their sustainable functioning well.

### **III.3.2. Regional round tables with the business community and the academia**

In cooperation with the Ministry of Economic Development, Trade and Entrepreneurship, the Competition Authority conducted several workshops on competition policy and state aid in the districts of Gjirokastra, Korcha and Shkodra.

In her remarks, the Competition Authority Chairwoman, Mrs. Lindita Milo (Lati), stated that the implementation of the national competition policy and law requires a partnership with the business community, the local government, the regional tax authorities and the academic staff of the University in the context of the implementation of free and effective market competition principles and rules.

The representatives from the Chamber of Commerce and Industry in Gjirokastra considered the workshop as indispensable to raise the business community awareness of market competition rules, elimination of unfair competition and informal economy, and establishment of a level playing field for businesses by the central and local government bodies, tax authorities, public procurement authorities, etc.

Representatives from the Competition Authority presented the main pillars of the Competition Law and case studies of its implementation in practice, mainly in relation to

the abuse of a dominant position, prohibited agreements, control of concentrations, exclusive rights and competition advocacy.

Representatives from the State Aid Unit presented specific requirements in the State Aid Law and case studies of the verification of the state aid granted by the local government authorities, which have to apply for an authorisation from the State Aid Commission at the Ministry of Economic Development.

## **IV. INTERNATIONAL COOPERATION**

An increased role for the Albanian Competition Authority in regional and international competition networks was one of the goals in 2014. 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.

### ***IV.1 COOPERATION WITH THE EUROPEAN COMMISSION***

In June 2014 the European Union opened the path for Albania to become an EU member by deciding to grant it the status of the candidate country, which is also a recognition of the reforms undertaken by the Albanian Government. Following the granting of that status, the efforts of Albania and all Albanian institutions, including the Competition Authority, will focus on the opening of the EU membership negotiations.

#### **Relations with the Ministry of European Integration**

In 2014 the Competition Authority continued to be in regular contact with the Ministry of European Integration, which is the institution coordinating all the efforts in Albania towards European integration. In its periodic reports the Competition Authority described the progress made in the area of legislative and implementation activities within the timeframes laid down in the National European Integration Plan, and the concordance with the *Acquis communautaire* of the legal acts adopted in the area of competition. The Competition Authority is the coordinating institution for Chapter 8 “Competition Policy” in the context of the European Commission Progress Report on Albania. Albania has made progress towards approximating its legislation with the EU requirements and towards meeting the legal criteria for membership.

The SAA implementation by Albania continued to be monitored regularly also in the annual meetings of the Stabilisation and Association Committee composed of representatives from the Albanian Government and EU institutions. The Competition Authority took part in, and contributed with materials to, the meeting of the Committee in March 2014. In addition, representatives from our institution participated in the regular

meetings of the EU-Albania Subcommittee on Internal Market and Competition (April 2014) where they reported on the activity of the institution, the decisions taken, the improvement of the regulatory framework in the area of competition, etc. In addition, the Competition Authority reports to the Ministry of Integration upon its request in relation to the activity of the institution, implementation of the law, increased competition culture and advocacy, new legislative initiatives, etc.

Under TAIEX (Technical Assistance and Information Exchange), which enables short-term assistance from the EU with the goal to know, implement and strengthen the EU legislation, the Competition Authority conducted an event/workshop in 2014, with experts from Competition Authorities of EU Members States, with the topic “Cartel detection without any direct evidence/econometric analysis.” The issues selected for counselling or training were closely related to the investigation cases intending to detect prohibited agreements not based on direct evidence.

In its very beginnings the Competition Authority needed consolidated experience and a consistent working practice, and needed to learn from the experience in other countries in the region or beyond; since then the Authority has shown commitment to strengthening its investigative capacities, mainly its human resources dealing with administrative investigation directly.

In its ten-year experience not only has the Competition Authority participated in various national and international events, but it has also been a promoter for such events. This is also the reason why our institution has actively participated in various trainings in the area of competition.

#### ***IV.2. COOPERATION WITH THE INTERNATIONAL COMPETITION NETWORK (ICN) AND OTHER AUTHORITIES IN THE REGION***

The Competition Authority participated in the ICN Annual Conference that took place in Marrakech on 23-25 April 2014. The conference was organised into sessions and sub-sessions. The first session was on anti-cartel practices, focusing on the investigations carried out to detect and punish cartels. Hypothetical scenarios on the implementation of the facilitation programme, cartel detection without the facilitation programme, inability to pay fines, imposing of fines, etc. Among the discussed topics was the collection of digital evidence, referring to the digital evidence collection resources, best practices in the collection of evidence, the power on the collected legal evidence, advantages, etc.

The second session was on competition advocacy. A manual with the best market survey practices was presented in that session. The information on market surveys will contribute to the identification of research issues, the identification of paths for specific

market issues, the identification of those ICN members that are capable of providing assistance/advice on their experience in leading market research in specific sectors, etc.

The third session was on agency effectiveness, aiming at identifying the key elements contributing to the building of successful capacities and the implementation of competition policy in developing and transition economies.

The fourth session was related to concentration assessment. The purpose of the presented papers was to encourage the adoption of best practices in the presentation of concentrations. Recommended market determination practices were presented. These new recommended practices were followed by the presentation of several such concentration assessment practices as: the legal framework, market structure, market entry and expansion, competition analysis in horizontal concentrations, etc. Attention was paid to the SSNIP hypothetical monopolistic test.

### ***IV.3. COOPERATION WITH THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)***

On 29 January-1 February 2014, Mr. Hassan Qaqaya, Head of UNCTAD Competition and Consumer Policies Branch, visited Tirana. The visit was in the context of an evaluation of the Competition Authority activity by UNCTAD and other member countries of this important international institution, requested by the Competition Authority.

During the visit, Mr. Qaqaya met with the Competition Commission and the Competition Authority staff to discuss the process. In addition, Mr. Qaqaya and the Chairwoman of the Competition Authority, Ms. Lindita Milo, had meetings with Mr. Ilir Meta, Speaker of the Parliament, Ms. Zineb Touimi-Benjelloun, UN Resident Coordinator in Albania, Ms. Eralda Cani, Public Law Advisor to the Prime Minister, Ms. Floreta Luli-Faber, Executive Director of the American Chamber of Commerce in Albania, Ms. Blerina Raca, GIZ representative, etc.

During the peer review process, UNCTAD independent experts will prepare a report on potential improvements and the assessment of needs of the Competition Authority in order to achieve those improvements. The report will be the basis of the peer review made by the authorities responsible for competition in the 192 UNCTAD member states in the annual session of the Intergovernmental Group of Experts (IGE).

During the UNCTAD Annual Conference to take place in Geneva on 6-10 July a full session will be organised on Albania and the Albanian Competition Authority and Policy, which were assessed in detail by the UNCTAD experts. The findings of the report and



the functioning of the institution and degree of the implementation of Competition Law will be discussed by all the participants, who will represent all the countries.

The process offers a unique opportunity of reviewing and learning from the experience and challenges facing the various countries in the implementation of competition policy. The reports that are produced during this process in relation to the state of competition law and its implementation in the involved countries are impartial and are rigorously prepared by competition policy experts from both developed countries and developing ones with practical experience in the implementation of competition law.

The peer review is interactive and combines the exchange of experience with giving recommendations on potential improvements in terms of both competition law drafting and competition law implementation. It also provides the interested countries with technical assistance development if they are willing to implement the relevant recommendations.

#### ***IV.4 MEMORANDUM WITH THE AUSTRIAN COMPETITION AUTHORITY***

The Albanian Competition Authority and the Austrian Federal Competition Authority signed a memorandum in Vienna, Austria, on 12 December 2014, with the goal to encourage cooperation in the area of competition policy and implementation of competition law.

The agreement was signed by Mr. Theodor Thanner, Director General of the Austrian Federal Competition Authority, and Ms. Lindita Milo (Lati), Chairwoman of the Albanian Competition Authority, in the presence of the Albanian Ambassador to Austria, Mr. Roland Bino, and Mr. Alexander Italianer, Director General for Competition, European Commission.

In the memorandum both institutions agree to encourage and strengthen cooperation in the area of competition law and policy in line with the national legislation of the state parties, with the goal to establish favourable conditions for bilateral cooperation based on the principles of equality and mutual benefits and underlining the competition role in the real and effective development of the market economy.

In the mutual interests of both authorities, the cooperation will be carried out in the following fundamental lines of action: (a) Exchange of information on legislative developments; (b) exchange of experience in investigating into the violation of competition rules, while respecting the provisions of the relevant legal framework in force in both countries; and (c) exchange of experience in relation to the relationships with competition authorities and national regulators.

In addition, the Albanian Competition Authority participated in the two-day Competition Conference on Best Investigation Practices and Independence and Structures of National Competition Authorities in the European Context, moderated by Mr. Hassan Qaqaya, Head of UNCTAD Competition and Consumer Policies Branch, and Mr. Alexander Italianer, Director General for Competition, European Commission, respectively.

## **V. PERSONNEL MANAGEMENT**

The strengthening of the institutional capacities was one of the priorities in 2014, because it was considered as one of the main factors for achieving real independence of the Competition Institution. The novelties in the Civil Service Law were used as tools to build a system for appraising the real performance of all the Authority officers, aiming at increasing their motivation. Some of the investment aspects expected to have direct impact on the strengthening of human capacities and improvement of the level of expertise included the building of an experience management system as materialised in the full documentation of completed cases and the availability of international practice cases in real time.

### ***V.1 COMPETITION AUTHORITY ORGANIZATIONAL STRUCTURE AND FUNCTIONS***

There were no organisational changes in the organisational structure of the Competition Authority in 2014, but there was an increase in the number of staff by one, which was approved by the Albanian Parliament Resolution No. 68/2014 on an addition to Decision No. 7/2012. The total number of staff is 36, of whom 27 are technical staff comprised of economists and lawyers (14 economists, 10 lawyers, two IT experts and one foreign language linguist), in addition to the auxiliary staff.

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. Annex 9 – Competition Authority Structure – shows the organizational chart of the Competition Authority.

#### **Competition Commission:**

The Commission is composed of five members, who are nominally voted by the Parliament. The current Commission members include three economists and two lawyers. Three of the five members are holding their second term, which enables continuity in the institution's decision-making activity. Transparency, impartiality, equality and objectivity have been the basic principles of the Commission operation and decision-making. Constant enhancement through debate and alternative views has characterized the Competition Commission activity in the context of enforcing the Competition Protection Law.

## **Cabinet**

The Cabinet is the unit that assists in the organization and good functioning of the Commission meetings, acts as a liaison office between the Commission and the Secretariat, organizes hearings, maintains relations with the Parliament, the media and internationally, takes care of competition advocacy and culture tools, etc.

## **Secretariat**

The Competition Authority Secretariat is the administrative body charged by the law with the monitoring and investigation activities to ensure free and effective competition in the market. The Secretariat has three Departments and an Analysis Unit.

The Market Investigation and Supervision Department does the surveillance and investigation of the market behaviour of undertakings pursuant to the Competition Protection Law and the National Competition Policy. The Department has three units corresponding to the three main pillars specified in the Law: the Abuse of a Dominant Position Unit, the Anti-Cartel Unit and the Merger Unit.

The Legal, Investigation and Procedures Department prepares the legal argumentation of the Secretariat's activity products, takes part in the investigation teams in cooperation with the Market Supervision Department, and represents the Authority in court proceedings to defend the Commission decisions in lawsuits initiated by affected parties.

The Human Resources and European Integration Department is that part of the Competition Authority structure that mainly deals with the competition law approximation with the EU law, and the management of human resources in line with the requirements and procedures laid down in Law No. 8549 of 11 November 1999 "Civil Servants' Status," and plans the development of capacities through training by using all possible resources such as OECD, ICN, RCC, ITAP, Tirana University, etc. Another line of action in the activity of the Department is the management of the Authority finances and having full responsibility for the preparation and management of budget funds in accordance with the legislation on the management of the Albanian State Budget.

The mission of the Market Research and Analysis Unit is to carry out monitoring exercises in various markets pursuant to the tasks laid down in the Competition Commission, in addition to monitoring the conditions in the market and carrying out economic analyses.

## **V.2. ADMINISTRATIVE CAPACITY BUILDING**

Administrative capacity building and strengthening is a constant challenge for the Competition Authority. There is a total of 35 employees in our institution, out of which two employees hold a professorship, two are assistant professors, four member of staff in doctoral studies, 15 members of staff with master's degrees (one of them in progress), three members of staff hold master's degrees from schools abroad, and two members of staff have graduated abroad.

A great number of training events for the Competition Authority staff were conducted in 2014. The following trainings were conducted at the OECD Competition Centre in Budapest in 2014: The seminar on European Competition Law for judges in relation to abuse of dominant position cases, the workshop on concentration practices and procedures, the seminar on bid rigging and public procurement, the seminar on competition issues in retail markets, and the seminar on the evidence in the abuse of dominant position cases.

The trainings were conducted in UNCTAD, the European Competition Forum, the Global Competition Forum, the Italian and Austrian Competition Authorities, the Energy Treaty, SETTO in the Railway Transportation, etc.

## **V.4 FINANCIAL MANAGEMENT**

In 2014 the Competition Authority duly complied with the requirements of Law No. 185/2013 "On 2014 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.

94% of the 2014 budget was executed. Annex 10 "Actual Budget of the Competition Authority, 2014" gives detailed information. The 6-percent-execution gap mainly resulted from the funds left over from procurement procedures that were carried out in 2014.

## **VI. PRIORITIES FOR 2015**

The priorities for this year were set taking into account the continuation of the cases started in 2014, the reaction to market concerns referred in the complaints submitted by market operators or consumers or reported by the media, and the recommendations of the Competition law and policy implementation and Competition Authority operation evaluation report that was prepared by UNCTAD.

### ***VI.1. COMPETITION LAW IMPLEMENTATION STRENGTHENING***

The Competition Authority started its work for 2015 with a clear agenda of the priority sectors that needed intervention in order to restore free and effective market completion. The trend of complaints is expected to continue at least at the same pace, which will enable us to intervene and take penalising and regulatory measures in those markets or industries where the behaviour of one or several operators has harmed market competition.

The main industries include the electronic communications, energy and gas, agriculture, financial services (banking, credit), etc. A number of procedures are expected to be opened on the basis of complaints submitted by undertakings in various markets and industries. For 2015 a monitoring has been carried out in the egg production and selling market, and after finding an immediate sharp increase in the egg price, the decision was made to open a preliminary inquiry.

In addition, based on an MLEX methodology, the Authority is monitoring the interest rates of banking products (overdraft/consumer loans) in order to compare the interest rates that banks apply to overdrafts and consumer loans with the interest rates of deposits, treasury bills and the Bank of Albania basic interest rate.

The gas import and wholesale market monitoring will continue due to the individual dominant position held by a company in that market.

### ***VI.2 LEGISLATION APPROXIMATION***

Enhancement of the legal and regulatory framework by drafting or amending laws and regulations and increased degree of approximation with EU directives and international competition standards and principles will continue to be in the focus of the Competition Authority in 2015. The Authority has identified the needs for further legislative improvements in the area of competition, which were also included in the National European Integration Plan.

The secondary legislation of the Competition Authority will be completed with two additional bylaws in 2015: the Guideline on the assessment of vertical restrictions, and the Guideline on the Commission measures in the case of concentrations.

### ***VI.3. DEVELOPMENT OF A NEW COMPETITION POLICY DOCUMENT***

In 2014 the Competition Authority was involved in revising the National Competition Policy, which will be finalised in 2015.

The purpose of the Policy revision is to encourage undertakings to ensure innovation, efficiency and more extensive choices enabling consumers to purchase the goods and service they want at the best price possible. In addition, this process is based on the institutional coordination and cooperation between central institutions and regulators and the Competition Authority, because the National Competition Policy is an integral output of all the factors in order to ensure growth of the national competitiveness in the quest for improving the competitive process and ensuring that consumers feel the benefits from this process.

### ***VI.4 COOPERATION WITH JUDICIARY***

This section describes the cooperation between the Competition Authority and the judicial system, which is the institution that reviews that Competition Commission decisions, and the needs for training with judges from administrative courts so that they make more objective review based on the law and the bylaws issued by the Competition Commission.

In the framework of this process, we have started cooperating with the School of Magistrates, which was willing to cooperate with the Authority for conducting the trainings through that school and to include the respective topics provided for in the Competition Protection Law, such as prohibited agreements, abuse of a dominant position and the procedures carried out during investigations by the Authority. In this context, the training will also include commissioners from the Competition Authority, who will impart knowledge on the process carried out in the Competition Authority up to the final decision-making, thus presenting the best practice for the administrative court system.

### ***VI.5 ADMINISTRATIVE CAPACITY BUILDING AND STRENGTHENING***

Administrative capacity strengthening through planned trainings as per various department requests and European Commission Progress Report recommendations will be carried out through participation in training seminars organized by OECD RCC, ICN, etc. The 2015 State Budget Law approved an additional member of staff for the Authority, which has been submitted for approval to the Albanian Parliament in the form of a draft staffing structure with an additional position as an inspector at the

Investigation and Legal Procedure Department. In this way, the organisational structure is completed in line with the increasing needs and the suggestions given in the European Commission Progress Report.

The Competition Authority staff will take part in workshops or conferences organised by international competition networks or the UNCTAD technical assistance, which will address the needs that were identified in the Authority capacity assessment needs, with the purpose of protecting free and effective market competition through prevention and detection of anti-competitive practices.



# ANNEXES

**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	Interim Measures	Conditions and obligation	Other decisions
2004	13	2				6	1	-			4
2005	17	-				2	3	1			12
2006	14	4				-	1	1			9
2007	25	9	1	3		4	2	5			6
2008	29	11	1		1	4	5	-			7
2009	36	8	1	2	1	2	10	2			12
2010	34	6	3	2	-	7	5	2			11
2011	43	10	2	2	-	6	5	1			18
2012	48	9	2	2	1	5	5	7			24
2013	42	13	0	1	1	3	1	2	1		22
2014	42	8	3	7	1	2	4	2	0	1	14
<b>Total</b>	<b>343</b>	<b>80</b>	<b>13</b>	<b>19</b>	<b>5</b>	<b>41</b>	<b>42</b>	<b>23</b>	<b>1</b>	<b>1</b>	<b>139</b>

## ***Annex 2: List of Competition Commission decisions***

1. Decision No. 302 of 14 January 2014 “Preliminary inquiry into the tobacco product importing, manufacturing and wholesale and retail selling market”;
2. Decision No. 303 of 16 January 2014 On concluding the in-depth investigation into Vodafone Albania SHA in the retail mobile telephony market, and recommendations for the Electronic and Postal Communications Authority;
3. Decision No. 304 of 27 January 2014 Amending Decision No. 292 of 16 September 2013 On opening a preliminary inquiry into the fuel importing, production and wholesale selling market to determine any potential competition restrictions;
4. Decision No. 305 of 14 February 2014 Amending Competition Commission Decision No. 330 of 6 December 2013 On initiating a preliminary inquiry into the insurance market in relation to potential competition restrictions in the motor third party liability insurance;
5. Decision No. 306 of 19 February 2014 On initiating a preliminary inquiry into the market of private security procurement in the Region of Dibra;
6. Decision No. 307 of 21 February 2014 Approving the Annual Report on the Competition Authority activity in 2013 and main goals for 2014;
7. Decision No. 308 of 21 February 2014 Recommendations on increasing competition in the air transport market;
8. Decision No. 309 of 6 March 2014 Authorising the concentration through indirect control acquisition in Beralb SH.A., in the form of transferring 50% of the shares in Nesko Metal Sanayi Ve Ticaret AS, from Ekin Maden Ticaret Ve Sanayi AS to companies Jiangxi Copper Company Limited, Beijing Meal Challenge Global Trading Co.LTD and CRM International (Beijing) Co.LTD;
9. Decision No. 310 of 31 March 2014 On initiating the in-depth investigation into the compulsory motor third party liability (MTPL) insurance market;
10. Decision No. 311 of 17 April 2014 Request for submission of the financial data of Anika Enterprises S.A.;
11. Decision No. 312 of 18 April 2014 Recommendations on the functioning of the vehicle technical inspection market;
12. Decision No. 313 of 30 April 2014 Authorising the concentration through control acquisition of the ACE brand business by Fater S.p.A. through the purchase of assets from The Procter & Gamble;
13. Decision No. 314 of 18 May 2014 On concluding the preliminary inquiry into the tobacco product importing, manufacturing and wholesale and retail selling market;
14. Decision No. 315 of 13 May 2014 On initiating an in-depth investigation into the fuel importing, manufacturing and wholesale and retail selling market;
15. Decision No. 316 of 23 May 2014 On initiating a preliminary inquiry into the market of International maritime transportation of passengers and vehicles;
16. Decision No. 317 of 23 May 2014 On concluding the preliminary inquiry into the market of private security procurement in the Region of Dibra;

17. Decision No. 318 of 2 June 2014 On imposing a fine on Heaney Assets Corporations for failing to submit information within the time-limit laid down in the Commission Decision;
18. Decision No. 319 of 13 June 2014 Recommendations in relation to the concessionary agreement on funding, establishing and operating the service of scanning containers and other vehicles in the Republic of Albania and the scanning service fee;
19. Decision No. 320 of 24 June 2014 Reviewing the application submitted by undertakings KASTRATI SHA and KASPETROL SHA for revocation of Competition Commission Decision No. 315 of 13 May 2014 On initiating an in-depth investigation into the fuel importing, manufacturing and wholesale and retail selling market;
20. Decision No. 321 of 1 July 2014 Reviewing the application submitted by undertaking Rapidsan Systems ICN for revocation of Competition Commission Decision No. 319 of 16 June 2014 Recommendations in relation to the concessionary agreement on funding, establishing and operating the service of scanning containers and other vehicles in the Republic of Albania and the scanning service fee;
21. Decision No. 322 of 3 July 2014 Adopting the Regulation on the categories of agreements and concerted practices in the maritime transportation of goods sector;
22. Decision No. 323 of 8 July 2014 Reviewing the complaint submitted by Pelikan Security Sh.p.k. in relation to the public procurement of physical security services;
23. Decision No. 324 of 30 July 2014 Imposing conditions and obligations on insurance companies in order to restore competition in the compulsory motor third party liability (MTPL) insurance market;
24. Decision No. 325 of 30 July 2014 Recommendations to the Financial Supervisory Authority on promoting competition in the compulsory motor third party liability (MTPL) insurance market;
25. Decision No. 326 of 8 September 2014 On initiating a preliminary inquiry into the market of electricity import for purposes of covering losses in the distribution network;
26. Decision No. 327 of 8 September 2014 Reviewing the administrative complaint submitted by the Financial Supervisory Authority for the revocation of Competition Commission Decision No. 325 of 30 July 2014;
27. Decision No. 328 of 11 September 2014 Authorising the concentration through the control acquisition by Alpha Bank S.A. of the assets owned by CitiBank International PLC pertaining to the retail banking services in Greece and of Diners Club of Greece Finance Company S.A.;
28. Decision No. 329 of 29 September 2014 Amending Decision No. 316 of 23 May 2014 On initiating a preliminary inquiry into the market of International maritime transportation of passengers and vehicles;
29. Decision No. 330 of 3 October 2014 Authorising the concentration through acquisition of full control of Oltan Group companies by Ferrero International S.A.;

30. Decision No. 331 of 7 October 2014 Authorising the concentration achieved by the transfer of 76% of the shares in CEZ SH.A. from CEZ A.S. to the Ministry of Economic Development, Trade and Entrepreneurship;
31. Decision No. 332 of 9 October 2014 Guidelines on the assessment of dominant position and abuse of dominant position;
32. Decision No. 333 of 21 October 2014 On initiating a preliminary inquiry into the procurement of the construction of the Outer Ring Road of Tirana—the northeast section from Kthesa e Saukut to Bregu i Lumit—Lots 1, 2 and 3;
33. Decision No. 334 of 31 October 2014 Recommendations on increasing competition in the market of procuring electricity for purposes of covering losses in the distribution network;
34. Decision No. 335 of 31 October 2014 Authorising the concentration through acquisition of full control of Stream Oil & Gas Ltd by Trans Atlantic Petroleum Ltd;
35. Decision No. 336 of 11 November 2014 On initiating a preliminary inquiry against Vodafone SH.A. in the mobile telephony market;
36. Decision No. 337 of 11 November 2014 Recommendations in relation to the concessionary agreement on the designing, financing, production and establishment of a system for issuing, distributing, tracing and monitoring of fiscal stamps and medicament control stamps;
37. Decision No. 338 of 11 November 2014 On granting individual exemption from prohibition of the template agreement between Digitalb SH.A. and television operators;
38. Decision No. 339 of 24 November 2014 On monitoring the implementation of Competition Commission Decision No. 324 of 30 July 2014 in relation to the conditions and obligations imposed on the insurance companies in order to restore competition in the MTPL insurance market;
39. Decision No. 340 of 27 November 2014 Authorising the concentration in the form of the establishment of CMA CGM Albania sh.p.k., by undertakings CMA CGM Agencies Worldwide and Pelikan sh.p.k.;
40. Decision No. 341 of 27 November 2014 Imposing a light fine on Pelikan Sh.p.k. for failing to comply with the time-limit for notifying the concentration with CMA CGM Agencies Worldwide for the establishment of joint venture CMA CGM Albania Sh.p.k.;
41. Decision No. 342 of 27 November 2014 On initiating a preliminary inquiry into the cigarette importing, manufacturing and wholesale selling market;
42. Decision No. 343 of 4 December 2014 Authorising the concentration achieved through the acquisition of 100% of the share capital in Landeslease SH.A. by Union Bank SH.A.

**Annex 3: Execution of fines imposed by the Competition Commission, as of 31 December 2014**

<b>Fines imposed by CA</b>	<b>Amount (in ALL)</b>	<b>Share of total<sup>3</sup></b>
Total fines	<b>1,037,199,298</b>	100
Fines collected by Judicial Enforcement Services	<b>259,831,233</b>	25. %
Fines in the process of collection by Judicial Enforcement Services	<b>45,711,419</b>	4.5%
Fines for which no court order has been issued yet (no EO)	<b>731,656,646</b>	70.5%

**I. Total fines collected and transferred to the State Budget**

Execution of fines imposed by the Competition Commission

No.	Undertaking	Amount (ALL)	Status
1	AMC SH.A	211,552,000	Suspended by Supreme Court order
2	Media Vizion	100,000	Dismissed as executed
3	Vodafone	242,633,000	Dismissed as executed
4	Intersig Sha	664,000	Dismissed as executed
5	Alban Tirana Co	447,915	Completely paid
6	Ferro Beton & Konstruksion	436,959	Completely paid
7	Shkodra Beton	396,974	Completely paid
8	Classic sh.p.k	25,712,000	Voluntary liquidation
9	Hyundai Auto Albania	5,383,000	Voluntary liquidation
10	Geci	100,000	Litigation
11	Albanian Airline	2,600,000	Mandatory execution
12	Viloil	100,000	Mandatory execution
13	Ultra Motors	1,517,000	Mandatory execution
14	Kajo Hallka	30,000	Transferred to Fier Judicial Enforcement Office
	Total	491,672,848	

**II. Fines imposed in 2014**

<sup>3</sup> Percentages are rounded.

a) HEANEY ASSETS  
b) PELIKAN SHPK  
**Total**

ALL 100,000  
ALL 100,000  
**ALL 200,000**

**Annex 4: List of decisions coupled with enforcement orders**

No.	Commission Decision	Court Enforcement Order	Debtor
1	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
2	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
3	No. 67 of 24 December 2007 "Individual sanction against Mr Kajo Hallka"	Decision No. 3356 of 10 December 2010	Kajo Hallka
4	No. 123 of 8 September 2009 "Fine against Albanian Airlines MAK SHPK"	Decision No. 3355 of 12 November 2010	Albanian Airlines MAK SHPK
5	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
6	No. 154 of 1 October 2011 (only for the part pertaining to Hyundai Auto Albania sh.p.k.)	Decision No. 1611 of 10 February 2012	Hyundai Auto Albania sh.p.k.
7	No. 349 of 26 July 2012 "Fine against Media Vizion"	Decision No. 9772 of 9 October 2012	Media Vizion
9	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
10	No. 154 of 1 October 2011 (only for the part pertaining to Classic sh.p.k and NOTI SHPK)	Decision No. 2384 of 19 April 2013	Classic sh.p.k and NOTI SHPK
11	No. 265 of 05.02.2013 On imposing a fine on Viloil Sh.A.	Decision No. 7677 of 20 December 2013	VILOIL SHA
12	No. 221 of 11.04.2012 On imposing a fine on Romano Port Sh.A.	No. 703 of Register of 23 May 2014	ROMANO PORT SHA
13	Decision No. 318 of 2 June 2014 "On imposing a fine on Heaney Assets Corporations"	No. 934 of Register of 10 September 2014	HEANEY ASSETS CORPORATION

### **Annex 5: Notified and Authorised Concentrations**

<b>No.</b>	<b>Concentration case</b>	<b>Relevant market</b>	<b>Decision No.</b>	<b>Authorisation Date</b>	<b>Procedure</b>
1.	50% of shares of Beralb SH.A./ Nesko Metal Sanayi Ve Ticaret AS/ Ekin Maden Ticaret Ve Sanayi AS/ Jiangxi Copper Company Limited, Beijing Metal Challenge Global Trading Co. Ltd and CRM International (Beijing) Co. Ltd.	Copper extraction and enrichment and copper concentration production, and copper and copper by-product exports	309	06.03.2014	First Phase/simplified notification form
2.	ACE / Fater S.P.A /The Procter & Gamble.	Detergent additives	313	30.04.2014	First Phase/simplified notification form
3.	Alpha Bank s.a., / CitiBank International PLC / Diners Club of Greece Finance Company S.A.	Banking services for individuals, deposits and account services, loans	328	11.09.2014	First Phase/simplified notification form
4.	Ferrero International S.A, / Oltan Group.	Procurement and selling of hazelnuts, the market of sweets containing chocolate (chocolate sweets) and the market of chocolate spread	330	03.10.2014	First Phase/simplified notification form
5.	76% of the shares of CEZ SH.A. / CEZ A.S. / Ministry of Economic Development, Trade and Entrepreneurship.	Distribution of electricity and electricity supply and sale	331	07.10.2014	First Phase/simplified notification form
6.	TransAtlantic Petroleum Ltd, / Stream Oil & Gas Ltd.	Natural gas and petroleum exploration and extraction	335	31.10.2014	First Phase/simplified notification form
7.	CMA CGM Albania sh.p.k., / CMA CGM Agencies Eördëide and Pelikan sh.p.k.	Maritime container shipping (import/export)	340	27.11.2014	First Phase/simplified notification form
8.	100% of share capital of Landeslease SH.A. / Union Bank SH.A.	Financial leasing	343	04.12.2014	First Phase/simplified notification form



## **Annex 6: Parliament Resolution on the Competition Authority activity**



**REPUBLIC OF ALBANIA  
THE PARLIAMENT**

**APPROVED  
SPEAKER  
ILIR META**

### **RESOLUTION**

#### **ON THE EVALUATION OF THE COMPETITION AUTHORITY ACTIVITY IN 2013**

##### **The Parliament of the Republic of Albania finds that:**

The activity of the Competition Authority has been carried out in compliance with the requirements of Law no. 9121 of 28 July 2003 "On Competition Protection," as amended by Law No. 9499 of 3 April 2006.

##### **The Parliament evaluates the Competition Authority activity towards:**

- Increased confidence, as indicated by the number of complaint cases submitted to the Competition Authority;
- Increased efficiency, as indicated by the number of cases handled by the Competition Authority;
- Consolidation of its public profile, as an institution that protects business interests through the implementation of the Competition Law;
- Ongoing work for approximating the legal framework with the European Union law;
- Ongoing work for improving the legal framework in the area of competition;
- Ongoing work for increasing market monitoring;
- Development of the new Competition Policy paper, in cooperation with domestic and international institutions, the business community and consumer associations;
- The goal to increase the Competition Authority staff capacities, in order to have a more proactive role in respect of addressing such issues as prohibited agreements, anticompetitive practices and abuse of monopolistic position.

##### **The Parliament requires that the Competition Authority shall improve its work in 2014 towards:**

1. Focusing its activity on more priority industries where market concentration under specific operators has resulted in market functioning distortion, such as:

###### *Mobile telephony market.*

- The mobile telephony market has demonstrated problems in the form of the presence of an anticompetitive phenomenon that is related to the accentuated differences between prices of on-net calls and off-net calls applied by operators that were established in the market, regardless of the fact that the costs are approximate. This phenomenon, which dictates consumer behaviour

and negatively affects the free competition, has resulted in a number of on-net calls that is the highest in the world (with 97 percent of the calls being within the network, with Kenya coming second with 96 percent), and in a market concentration with a single company having about 50 percent of the market and the two top companies have about 90 percent of the market. In order to address this situation, which creates market barriers and prevents effective competition, the Parliament requires that the Competition Authority intensifies its cooperation with the Electronic and Postal Communications Authority.

*Insurance Market.*

- In this market, the rapid fall in prices to uncompetitive and too low levels following the liberalisation, which was identified as an issue by both market players and the competent supervisors, has not been resolved by product diversification under the proposed Bonus-Malus model, but rather in the form of concerted price increase.

*Energy.*

- The implementation of previous decisions in this industry, which recommended an increase in the number of market players in order to increase competition and reduce costs for consumers, should be ensured.

The market of liquefied gas and issues in other markets, which were disclosed by operators, show the fragility of competition in Albania.

2. Investigating and resolving the issues related to services operated under concessions in the form of monopolies by the Government and the Parliament, resulting in increased costs for citizens to levels that are higher than other countries in the region, such as:

- Vehicle technical inspection service;
- Fiscal stamp provision service;
- Fuel marking service;
- National Lottery;
- Container scanning service at the Port of Durres terminal.

3. Increasing the cooperation between the Competition Authority and the Government, Supreme State Audit Institution and other responsible bodies.

- As of 31.12.2013, the judiciary has not issued any decisions with regard to 71.2 percent of the fines imposed by the Competition Authority.

- We note that the Competition Authority opinion has not been considered in decisions affecting market competition.

- In order to avoid any reoccurrence of such issues, the Parliament requires of the Competition Authority and executive and judicial bodies of all levels to exchange the information necessary for market monitoring, investigation into practices that distort the competition, and standing consultations in the process of preparing and adopting laws and regulations.

4. Increasing the transparency of the Competition Authority towards the Parliament, the Government and the general public.

Adopted on 29 May 2014

## **Annex 7: Chapter 8: Competition policy, European Commission Progress Report**

*In the area of anti-trust and mergers, in November, the Albanian Competition Authority adopted a decision providing guidance on the assessment of horizontal agreements. The authority received 34 complaints, compared with 19 in the same period last year, which led to the opening of investigations in the areas of insurance, public transport services, the hydrocarbon sector and the maritime transport market. It also initiated and concluded investigations in the telephony, tobacco markets and the private security services.*

*It issued five decisions on anti-competitive agreements, one decision on abuses of dominant market positions, and four decisions authorising mergers. The authority also issued three decisions and exempted one restrictive agreement. It adopted three legal acts, issued five recommendations and initiated nine administrative procedures. No fines were imposed in 2013, compared with seven in 2012.*

*In June, the Competition Authority imposed a fine to a company for procedural delays. It also issued recommendations to the regulator for telecommunications, the Authority for Electronic and Mail Services, the Financial Supervisory Authority and to the government for two concession.*

*As regards court cases, the Competition Authority lost one case before a first instance court, on which it submitted an appeal. It won two out of three appeal cases. Most of the fines imposed by the authority in the past have not yet been collected, as many court appeal decisions are pending. Its new structure has yet to be approved by parliament. Training for judges in competition policy needs to be further improved.*

### **Conclusion**

*Some progress was made in the area of competition policy, mainly in anti-trust and mergers, where the Competition Authority continued to build its enforcement record. Overall, preparations in the area of state aid remain at an early stage.*

### Annex 8: Recommendations Issued by the Competition Commission in 2014

No.	Subject-matter:	Initiative:	Competition Authority evaluation	Response to the Recommendation
1.	Evaluation of the application submitted by Vodafone M-PESA sh.p.k. to the Bank of Albania for a licence to operate as a non-banking financial entity/electronic money institution—requested by the Bank of Albania.	Letter No. 2821 Prot. of 09.10.2014 (CA No. 440 Prot. of 13.10.2014) from the Bank of Albania.	<p>The Competition Authority, in its Letter No. 440\1 of 24.11.2014 “Reply”, stated that:</p> <p><i>“- The Competition Authority is of the opinion that the ex-ante procedures for licensing Vodafone M-Pesa sh.p.k should also be assessed from the perspective of Law No. 9121 of 28 July 2003 “On Competition Protection”, providing recommendations for them not to contain any exclusionary clauses for customers, as written in the applications, which stated that the service “would only be provided to VF Albania customers” because that would be in conflict with the principles of free and effective market competition. The discussion with Bank of Albania experts showed that the subscribers of the other three companies—other than Vodafone—can only be passive (receiving) customers and not active (sending) customers in terms of money operations; however, they are required the same documents and are opened e-money accounts just like the active customers. From that perspective we understand that the removal of this discrimination is possible without forcing the subscribers of other mobile companies to port their number to Vodafone or to take a new Vodafone Albania number.</i></p> <p><i>- The Competition Authority is of the opinion that in this case there are affected markets between financial services and mobile telephony, and, because of this, we would like to bring to the attention of the Bank of Albania Decision No. 303 of the Competition Commission, which determined a dominant position of Vodafone Albania in the retail mobile telephony market. Therefore, we recommend that an evaluation should assess whether the applicant would fulfil the obligation to provide the technical possibility (“interoperability”) of this service for all the customers owning a post-paid or prepaid mobile number, regardless the company that is licensed to provide mobile telephony services in Albania. This would avoid the discriminatory clause which would allow the service to be offered only to Vodafone customers, and would enable the provision of the service to the customers of other mobile telephony companies as well.</i></p> <p><i>- The receiving of the service provided by M-Pesa is linked to the having a specific type of technology, which is the mobile telephony, and since the entity</i></p>	The Bank of Albania has not stated its position on this application, yet, but it has intensively cooperated with the Competition Authority in relation to all its concerns and recommendations on this application.

			<p><i>applying for an e-money licence plans to restrict the access to that service by limiting it to its customers—which means that one needs to a customer of a specific company in order for him to receive the M-Pesa service—there is a potential for the creation of new barriers to number portability, which is one of the instruments for increase free and effective competition in the market. This clause prevents portability, and customers lose the opportunity of receiving the service if they stop being a customer of the specific telephone company, despite being happy with the M-Pesa service.</i></p> <p><i>- In order to eliminate any barriers to market entry, we suggest that the licensing be made in line with Directive 2007/64/EU, applying the same conditions to the providers of these services. Since the Bank of Albania has informed us that it is in the process of revising the regulatory oversight framework on non-banking financial entities, we would consider as very important, inter alia, to suggest that the revision also took account of Directive 2007/64/EU and that the licensing decision explanatory report also included a clarification on the degree of application of the Albanian legislation with the Acquis Communautaire in the electronic money and financial services markets.</i></p> <p><i>- The Competition Authority recommends that the Bank of Albania assess the impact from the operation of similar systems in EU Member States with a consolidated history of the banking system. The Competition Authority states its willingness to cooperate with the Bank of Albania in the ex-post monitoring with a view to ensuring free and effective competition in the respective markets.”</i></p>	
<b><u>2.</u></b>	Opinion on the Draft Regulation on the SEE CAO Capacity Allocation Auction (Auction Regulation).	Letter No. 671/1 Prot. of 22.10.2014 (CA No. 453 Prot. of 22.10.2014), from ERRE.	<p>The Competition Authority, in its Letter No. 453/2 of 31.10.2014 “Reply to ERRE”, stated that:</p> <p><i>“The assessment of the Draft Regulation on the auction for the allocation of SEE CAO capacities, pursuant to Articles 69 and 70 of Law No. 9121 of 28 July 2003 “On Competition Protection”, showed that, for the purposes of that Law, the draft Regulation does not restrict competition among the undertakings taking part in the auction for the cross-border electricity interconnection capacities. ”</i></p>	No recommendations were given because the act was in line with the Competition Protection Law.
<b><u>3.</u></b>	Legal assessment of the Draft Law on Value Added Tax, requested by advertising agencies.	Letter No. 04 Prot. of 11.12.2013 (CA No. 478 Prot. Of 11.12.205) from the Albanian Association of Advertising Agencies.	<p>The Competition Authority, in its Letter No. 478/1 Prot. of 06.01.2014 informed the Association that, pursuant to Article 69 and 70 of the Competition Protection Law, as amended, it would make the relevant assessment of the Draft VAT Law when that draft law would be made available to it officially. Upon receiving the draft law, in addition to its general findings, the assessment found that, unlike the older 1995 Law (Article 25/3), the new draft (which was later adopted and became effective on 1 January 2015) provided that the supply of advertising services would no more be exempt from VAT but would be subject to the universal 20% VAT rate for all market operators, and that did not cause</p>	

			any discrimination in terms of competition.	
<b>4.</b>	Assessment of the Bank of Albania Regulation on licensing and operation of non-banking financial institutions, following a request from UNIONI FINANCIAR TIRANE SHPK.	Letter No. 663 Prot. of 13.05.2014 from UNIONI FINANCIAR TIRANË SHPK;	The Competition Authority, in its Letter No. 228/2 of 31.07.2014 "Reply to Unioni Financiar", stated that: <i>"After contacting the Bank of Albania for an interpretation of the relevant Regulation, the Commission assessed the Regulation on licensing and operation of non-bank financial institutions, and came to the following conclusion:  The Competition Commission recommended to the Bank of Albania that the supervised entities be taken into consideration while ensuring non-discrimination or non-differentiated treatment among them in the markets or services where those entities are competitors, and ensure observance of the basic principles of transparency, non-discrimination and equal treatment of operators both in the licensing process and when the entities operate in the market."</i>	The recommendations were taken into account by the Bank of Albania, and meetings at expert level were held with the goal to integrate the recommendations in the final draft of the act.
<b>5.</b>	Assessment of telecommunication legislation in the course of investigating the respective market.	The in-depth investigation against Vodafone Albania SHA in the retail mobile telephony market	Competition Commission Decision <b>no. No. 303 of 16 January 2014</b> On concluding the in-depth investigation into Vodafone Albania SHA in the retail mobile telephony market, and recommendations for the Electronic and Postal Communications Authority, decided: "II. To recommend to the Electronic and Postal Communications Authority that it should 1. take interim and immediate measures, prior to the conclusion of the analysis of the retail mobile telephony market, in order to enforce the market regulation solutions for preventing market exits that would have a long-term impact on competition; the Electronic and Postal Communications Authority should especially (a) modify the BU-LRAIC model by significantly reducing the cost of termination for smaller operators towards larger operators in the market, in order to increase free and effective competition in the respective market; (b) enforce the real reduction of the difference between off-net and on-net calls within and off specific tariff packages and plans for those operators holding a dominant position. 2. carry out an analysis of the retail mobile telephony market to address the competition concerns in that market by taking specific regulatory measures for reducing the emphasized differentiation between on-net call tariffs and off-net call tariffs applied by Vodafone; 3. monitor, in its regulatory role, the fulfilment of Vodafone Albania's public commitment to equalize the tariffs within Vodafone Club and towards off the	The recommendations were taken into account by the Electronic and Postal Communications Authority in its analysis of the mobile telephony market. A remaining problem is the implementation of the Electronic and Postal Communications Authority market regulatory decisions, and that is why both that Authority and the Competition Authority have received complaints from Plus and AT. In Letter No. 64 of 29 January 2015, the Competition Authority requested information from the Electronic and

			Vodafone network (terminating in landline, AMC, Eagle and Plus networks) in order to reduce to elimination the tariff differentiation for on-net and off-net calls, as well as the units included in the optional national communications packages (weekly, monthly and annual offers and packages)."	Postal Communications Authority on the implementation status of the market regulatory decisions.
<b><u>6.</u></b>	Assessment of legislation in the air transport services market	Monitoring of the air passenger transport market	Competition Commission Decision <b>no. 308 of 21 February 2014</b> "Recommendations on increasing competition in the air transport market" decided: "1) <i>To recommend the following to the Authorised State Body:</i> <i>(a) Under Paragraph 19.2(a) of the International Airport Concession Contract, the Authorised State Body, in cooperation with the concessionary company, should revise the airport service charges every three years.</i> <i>(b) Given the position of the concessionary company as a single international passenger transport service provider, the Authorised State Body should draft and adopt a methodology/regulation for airport fee setting, with fees being cost-oriented."</i>	No response in relation to these recommendations has been received from the Ministry of Transport.
<b><u>7.</u></b>	Assessment of the concession on the service of compulsory technical inspection of motor vehicles and trailers in the Republic of Albania.	Monitoring of the exclusive service of vehicle technical inspection	Competition Commission Decision no. <b>312 of 18 April 2014</b> "Recommendations on the functioning of the vehicle technical inspection market" decided the following: "1. <i>Recommend the following to the Ministry of Transport and Infrastructure:</i> 1.1. <i>In the short run, ask the Concessionary SOCIETE GENERALE DE SURVEILLANCE S.A. to establish more than one consumer choice options for the annual compulsory vehicle technical inspection in the city of Tirana.</i> 1.2. <i>In the long run, consider the provision of vehicle technical inspection service by several operators.</i> 1.3. <i>Solicit the Competition Authority opinion pursuant to Articles 69 and 70 of the Law after receiving the market research study from the concessionary in relation to the method of operation of the compulsory technical inspection service.</i> 1.4. <i>Take into account the new EU Directive on the new rules on concessions based on the principle of transparency, and apply the criterion of the "best economic advantage of the bid" during the procurement procedures, where public authorities should pay attention to the quality, environmental impact, social considerations or novelties, and based on the price and life cycle and cost of what is being procured in terms of granting any exclusive or special rights."</i>	The Ministry of Transport is in the process of revising the exclusive right.

<p><b>8.</b></p>	<p>Assessment of the concessionary agreement on funding, establishing and operating the service of scanning containers and other vehicles in the Republic of Albania and the scanning service fee</p>	<p>Monitoring of the concessionary agreement on funding, establishing and operating the service of scanning containers and other vehicles in the Republic of Albania and the scanning service fee</p>	<p>Competition Commission Decision <b>no. 319 of 13 June 2014</b>  “Recommendations in relation to the concessionary agreement on funding, establishing and operating the service of scanning containers and other vehicles in the Republic of Albania and the scanning service fee” decided to:  “1. <i>Recommend the Ministry of Finance and the Council of Ministers to revise the concessionary agreement on funding, establishing and operating the service of scanning containers and other vehicles in the Republic of Albania and the scanning service fee.</i>  2. <i>Public institutions should observe the provisions of Law No. 9121 “On Competition Protection” and ask in advance the Competition Authority to make a legal assessment of the adoption of acts having as their purpose or consequence the granting of exclusive rights or quantitative restrictions in various markets or industries.</i>  3. <i>The revision of Law No. 125/2013 “On Concessions and Public Private Partnerships” should take into consideration the new EU Directive (32014L0023; Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts; OJ L 94, 28/03/2014, p. 1–64) in order to clearly separate markets from public services, with the latter being left to the state as obligations that cannot be transferred from the state to the private sector since they would have additional costs for businesses and consumers and eliminate the possibilities of choice for businesses and consumers since the provide is a single (exclusive) provider.</i>  4. <i>The legal instrument for revising the concessionary agreement is the process of revising the Customs Code, as well as the process under Article 18.2.1 of Law 123/2013 “On Approving the concessionary agreement”.</i>  5. <i>The following wording of the agreement is recommended: “The Ministry of Finance may, in view of the specifics of the customs service in the context of fighting contraband and tax evasion, contract the single concessionary only for the purchase of equipment, with the services being rendered by the customs authorities”.</i></p>	<p>No response to the Authority's recommendations has been received from the Ministry of Finance. In the meantime, Rapiscan Systems ICN applied for the revocation of Competition Commission Decision No. 319 of 13 June 2014, but the Competition Commission decided to refuse the application for decision revocation.</p>
<p><b>9.</b></p>	<p>Assessment of the legislation on the compulsory motor third party liability (MTPL) insurance market, during investigation proceedings into that relevant market.</p>	<p>In-depth investigation into the compulsory motor third party liability (MTPL) insurance market</p>	<p>Competition Commission Decision <b>no. 325 of 30 July 2014</b>  “Recommendations to the Financial Supervisory Authority on promoting competition in the compulsory motor third party liability (MTPL) insurance market” decided to:  “1. <i>Recommend the Financial Supervisory Authority to take the following regulatory measures for ensuring that the compulsory MTPL insurance market functions efficiently and that there is competition among insurance companies:</i>  1.1. <i>Make implementable the legal provision on claim handling by direct insurers pursuant to Law No. 10076 of 12 February 2009 “On Compulsory</i></p>	<p>The Financial Supervisory Authority took an administrative recourse for revoking Competition Commission Decision No. 325 of 30 July 2014. Competition Commission Decision</p>



			<p><i>Insurance in the Transport Sector";</i></p> <p><i>1.2. Approve individualised risk premium tables based on risk assessment in accordance with the portfolios of insurance companies, product characteristics and insurance structure for each insurance company;</i></p> <p><i>1.3. Inform the Competition Authority periodically on the operation of the Bonus-Malus project until the full implementation of the risk premium individualisation project based on the track record of the claims of the insured, the drivers' age, residence and vehicle engine power;</i></p> <p><i>1.4. Cooperate with the Competition Authority in the framework of the World Bank assistance project on the revision of the MTPL regulatory framework with special emphasis on the techniques used for the calculation of MTPL insurance claims provisions.</i></p> <p><i>1.5. Publish the report and the financial data of the insurance companies in order to ensure fair competition in the insurance market, pursuant to the Guidelines on the rules of data disclosure by insurance companies and brokerage companies in the context of public transparency and consumer protection, adopted by Financial Supervisory Authority Board Decision No. 11 of 8 February 2007, and ensure that "Insurance companies publish their annual reports where they include their annual financial report and other data contained in the Guidelines. The report shall be published within six months from the end of the calendar year."</i></p>	<p>no. 327 of 8 September 2014</p> <p>"On the review of the administrative appeal of the Financial Supervisory Authority" decided to refuse the appeal.</p> <p>Nevertheless, in relation to some of the recommendations, e.g. the Bonus-Malus system and the individualised risk premium tables, the Financial Supervisory Authority is in the process of implementation with assistance from World Bank and FSVC projects.</p>
<b><u>10.</u></b>	<p>Assessment of legislation in the electricity sector, and especially of the rules and procedures of electricity purchase by CEZ SHA/OSHEE;</p>	<p>Monitoring of the market of electricity import by CEZ SHA for purposes of covering losses.</p>	<p>Competition Commission Decision no. <b>334 of 31 October 2014</b></p> <p>"Recommendations on increasing competition in the market of procuring electricity for purposes of covering losses in the distribution network" decided the following:</p> <p>"I. In order to ensure good functioning of the electricity market and increased competition in the relevant market of purchasing electricity, recommend the following to the Regulatory Entity of the Electricity Sector:</p> <p>1. Given the changed conditions, revise the monthly and annual electricity purchase procedures for OSHEE, based on the following principles:</p> <p>(a) Encourage participation in the energy purchase procedures;</p> <p>(b) Promote competition among buyers;</p>	<p>In the hearing at the Competition Commission on 5 February 2014, OSHEE stated that the bylaws are a power of ERE, and that the recommendations that were feasible within the existing regulation would be taken into account</p>

			<p>(c) Ensure equal and non-discriminatory treatment of all participants in the energy purchase procedure;</p> <p>(d) Ensure integrity, public trust and transparency for the electricity purchase procedures and the lowest costs possible for this type of transactions.</p> <p>2. In the short run (given that tenders are monthly) until a new regulation on the electricity purchase by the Electricity Distribution Operator is adopted, revise ERE Decision No. 30 of 23 March 2001 “Approving the rules and procedures for electricity purchase by KESH sh.a.”</p> <ul style="list-style-type: none"> <li>- by changing Article 13(4) so that the acceptance, evaluation and negotiation of bids is made in the presence of bidders, thus increasing confidence in the process and competition among bidders;</li> <li>- by changing Article 7 of the Regulation, which currently excludes from the tender procedures the licensed domestic producers, by opening up the market and allowing all market players to participate in the tender procedures thus making the process more competitive.</li> </ul> <p>3. When drafting the energy purchase rules for the Distribution Operator, also take into account the provisions of Decision No. 30 of 23 March 2011 “Approving the rules and procedures for electricity purchase by KESH sh.a.”, particularly Article 9/2 (Invitation publication), Article 11 (Bid evaluation criteria based on the lowest price/unit), Article 19 (Publication of purchase procedures on the official website).</p> <p>In addition, adapt the method of determining the winning bid to Ministry of Finance Regulation No. 31 of 27 December 2013 “On bond issuance”, Article 13(6) of which specifies that “competitive bids shall be accepted as winning ones starting with those which have the lowest price until the required amount of energy has been reached.”</p> <p>4. Given that currently in Albania all public procurement procedures are carried out electronically on online platforms, this should also be provided for in the rules on the purchase of electricity.</p> <p>5.</p> <p>In order to increase the transparency and reduce any possibility of abuse, ERE should monthly and annually publish the quantity and average price of imported electricity.</p> <p>Pursuant to Articles 69 and 70 of the Law, ERE and the Ministry of Industry and Energy must, prior to adopting any laws or regulations on the functioning of the energy market, submit them for comments to the Competition Commission, because that would help the energy market develop and be more competitive.”</p>	<p>and be tested in the future purchases of electricity for the purpose of covering losses.</p>
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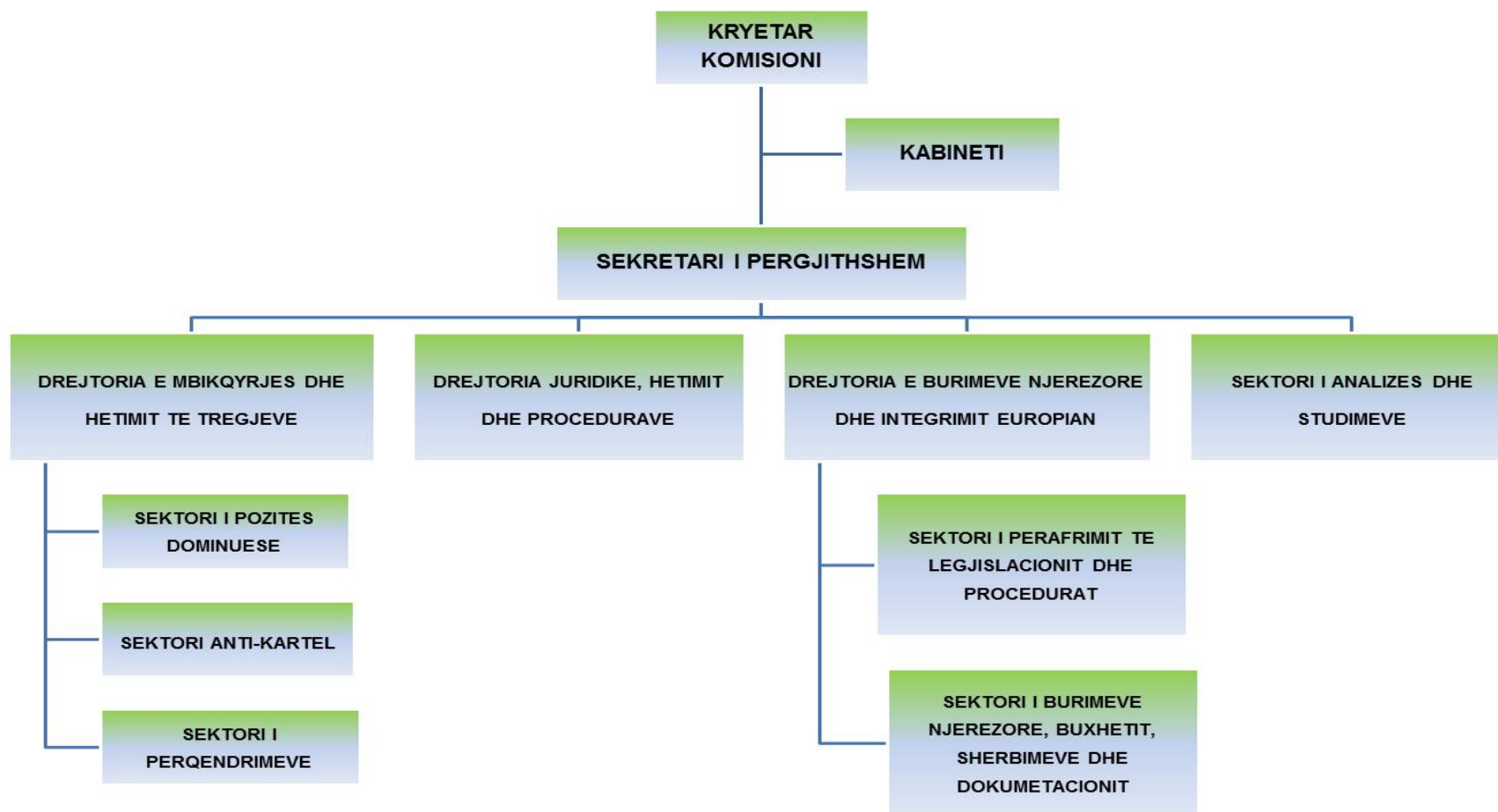
<b><u>11.</u></b>	Assessment of the concessionary agreement on the designing, financing, production and establishment of a system for issuing, distributing, tracing and monitoring of fiscal stamps and medicament control stamps	Upon own initiative of the Competition Authority, following the business community concerns that were presented on the media constantly	<p>Competition Commission Decision <b>no. 337 of 11 November 2014</b></p> <p>“Recommendations in relation to the concessionary agreement on the designing, financing, production and establishment of a system for issuing, distributing, tracing and monitoring of fiscal stamps and medicament control stamps” decided to:</p> <p><i>“1. Recommend that the Ministry of Finance and the Ministry of Economic Development, Trade and Entrepreneurship</i></p> <p><i>1.1. Carry out an economic and technical evaluation of the applicability of the concessionary agreement terms and conditions, and an analysis of the economic justification of the concession that was followed by increased costs to businesses in terms of fiscal stamps.</i></p> <p><i>The evaluation should identify the achievement of the goal for which the concession was granted, such as revenue increase and the fight against evasion and smuggling of excise-tax products;</i></p> <p><i>1.2. Revise that part of the concessionary agreement that deals with medicament fiscal stamps, because their production has not started and would increase the cost of pharmaceutical products that are highly sensitive.”</i></p>	The Ministry of Finance has not advised of any follow-up steps. In the meantime, SICPA submitted to the Competition Authority a letter on 3 February 2015 whereby it applied for the revocation of Decision No. 337 of 11 November 2014. The Competition Commission decided not to revoke the Decision.
<b><u>12.</u></b>	Assessment of the Draft Law “On the Electrical Power Sector”.	Letter No. 403 Prot. of 19.09.2014, from the Ministry of Energy and Industry.	<p>The Competition Authority, in its Letter No. 403/1 of 03.10.2014 “Re suggestions on the Draft Electricity Law”, sent to the Ministry of Energy and Industry, stated that:</p> <p><i>“In general the submitted Draft Law takes into account the basic principles of ensuring sustainable and secure supply of electricity to customers through establishment of an efficient and competitive market, taking into account the third regulatory package and several recommendations on the electricity market issued by the Competition Authority.</i></p> <p><i>Not only is the new Draft Law necessary, but it is also a new element in the regulation and legal framework of this key sector and will have a positive impact on the opening up of, and competition in, the electricity market.</i></p> <p><i>In general terms, it is important for the Law to clearly state the elements of transparency and non-discrimination among operators, and it is necessary to intervene in the key elements of the market model, which will also be the basic elements of the market model that will follow and accompany this Draft Law.</i></p> <p><i>Experts have prepared a paper with article-by-article comments on the Draft Law, which will be further discussed at round tables on the Draft Law.”</i></p>	The Competition Authority recommendations were partly taken into account in the first stage of the Draft Law. After the Draft Law was passed at the Council of Ministers, the Authority stated its views at the Parliamentary Committee on Production Activities again.

<b>13.</b>	Assessment of the draft amendments to the Administrative Procedure Code.	Retrieved on the Albanian Parliament website	The Competition Authority, acting <i>motu proprio</i> , made an assessment of the draft amendments to the Administrative Procedure Code, and found that the draft amendments was not in conflict with Law No. 9121 of 28 July 2003 "On Competition Protection", as amended.	No recommendations were given.
<b>14.</b>	Assessment of the Draft Law on Insurance and Reinsurance	On Authority's own initiative	The Competition Authority, acting <i>motu proprio</i> , made an assessment of the Draft Law on Insurance and Reinsurance, and stated that the Draft Law was not in conflict with Law No. 9121 of 28 July 2003 "On Competition Protection", as amended.	No recommendations were given.
<b>15.</b>	Assessment of, and opinion on, the Sector Strategy for the Digital Agenda 2014-2020.	Letter No. 4614 Prot. of 5.12.2014 from the State Minister for Innovation and Public Administration.	The Competition Authority, in its Letter No. 526/1 of 19.12.2014 "Comments on the crosscutting strategy on the Digital Agenda 2014-2020", sent to the Minister of State for Innovation and Public Administration, after reviewing the documentation and the Secretary-General's Report, stated that: - <i>The Strategy is in line with Law No. 9121 of 28 July 2003 "On Competition Protection", as amended.</i> "	No recommendations were given.
<b>16.</b>	Assessment of the Draft Decision amending the Regulation on licensing and operation of banks and branches of foreign banks in the Republic of Albania.	Letter No. 416 Prot. of 29.09.2014 from the Bank of Albania	The Competition Authority, in its Letter No. 416/1 of 01.10.2014 "Re the Draft Decision amending the Regulation on licensing and operation of banks and branches of foreign banks in the Republic of Albania", sent to the Bank of Albania, stated that: <i>"The submitted Draft Decision was not in conflict with the provisions of Law No. 9121 of 28 July 2003 "On Competition Protection", as amended."</i>	No recommendations were given.
<b>17.</b>	Opinion on the 2013 Mobile Telephony Market Analysis	Letter No. 358 of 3.9.2014 from the Electronic and Postal Communications Authority	The Competition Authority, in its Letter No. 358/1 of 23.09.2014 "On the Mobile Telephony Market Analysis", sent to the Electronic and Postal Communications Authority, stated that <i>it did not have any comments or suggestions because it found that the Report had fully addressed the issues recommended by the Competition Commission in its Decision No. 303 of 16.01.2014 and the recommendations in Parliament Resolution No. 251/3 of 03.06.2014 "On the evaluation of the Competition Authority activity in 2013."</i>	The CA has found that the Electronic and Postal Communications Authority took into account its recommendations.
<b>18.</b>	Assessment of the National Lottery Licence agreement	On Authority's own initiative	The Competition Authority, in its Letter No. 515 of 04.12.2014 "Re assessment of the National Lottery Licence agreement", sent to the Ministry of Finance and the Parliamentary Committee on Economy and Finance, stated that: <i>When Law No. 95/2013 of 4.3.2013 "Approving the National Lottery licence agreement between the Ministry of Finance, as the authorized authority, and Oesterreichische Lotterien Gmbh, through Olg Project sh.p.k." was adopted, account was taken of the principle and experience of almost all the countries</i>	There are no developments regarding this exclusive right.

			<p><i>that a single licence should be issued for the games in which the Lottery has exclusive rights.</i></p> <p><i>With regard to the holding of exclusive rights by the State or their transfer to a private entity on a concession, the practice suggests that both methods are used, and the Competition Authority, therefore, concludes that it is up to the Ministry of Finance to decide whether to leave the monopoly of the national lottery games to Oesterreichische Lotterien Gmbh through OLG Project sh.p.k. or to return it to the Albanian State.</i></p> <p><i>From the perspective of the Competition Protection Law this monopoly dominant position is not prohibited by the provisions of Article 8 of the Law; however, the Competition Authority will monitor the behaviour of that undertaking under Article 9 of the Law.”</i></p>	
<b>19.</b>	Opinion on the application of new energy tariffs for KESH, OST and OSHEE	Letter no.453 3, of 19.11.2014, from ERE	<p>The Competition Authority, in its Letter No. 524 of 10.12.2014 “Opinion on the application of new energy tariffs for KESH, OST and OSHEE”, sent to ERE, recommend the following: take into account the tariff-setting principles of regulated markets, such as transparency, fairness and competition, in order to ensure electricity security and the functioning of free and effective competition in the electricity market. Now that OSHEE has been reclaimed under public ownership and management, it is recommended that KESH and electricity producers should be involved in the monthly and annual electricity purchase procedures for the purpose of covering OSHEE losses.</p> <p>In 2015 ERE is to approve an averaged distribution tariff weighted by the ultimate tariff of consumer tariff that is oriented to real cost and equal treatment of households, business and public institutions.</p>	ERE has taken this into account in the decision-making on the new energy tariffs.
<b>20.</b>	Proposals on amending the VAT Guideline in relation to fuel and cigarettes	Investigation into the fuel and cigarettes market	<p>The Competition Authority, in its Letter No. 7 Prot. of 6.1.2015 “Re repeal of Guideline 17/2008”, sent to the Minister of Finance, reiterates to the Ministry of Finance in its CC Decision No. 118 of 29 May 2009 whereby it that the Ministry should take into account its Decision in the development of the new VAT Guideline.</p> <p>More specifically, the following was proposed in relation to fuel and cigarettes:</p> <ul style="list-style-type: none"> <li>- Wholesalers should only use the wholesale price in the invoices issued to retailers;</li> <li>- Retail companies/individuals should be free to set the retail prices themselves and the tax burden (VAT) should be calculated as the difference between both prices (retail-wholesale).</li> </ul>	Upon entry into force on 1 January 2015 of the new Law No. 92/2014 On VAT, all previous implementation regulations were repealed. Therefore, the Minister of Finance adopted Guideline No. 6 of 30 January 2015 On VAT in the Republic of Albania, which takes away from large importers the right to set the market fuel price,

				<p>which now will be set through competition by retailers, in observance of the Competition Authority.</p> <p>With regard to cigarettes, the special scheme (Paragraph 4.2) is still applied, under which the retail price of cigarettes is still set by the main supplier.</p>
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**Annex 9: Competition Authority Structure**



**Annex 10: Competition Authority actual budget, 2014**

	<b>Approved</b>	<b>Actual</b>	<b>Difference</b>	<b>In %</b>
<b>Personnel expenses</b>	44,500,000	42,672,000	1,827,461	96%
<b>Social insurance contributions</b>	7,000,000	6,207,557	792,8330	89%
<b>Operational expenses</b>	10,300,000	9,246,598	1,053,402	90%
<b>Investment</b>	1,000,000	952,812	47,188	95%
<b>Total:</b>	<b>63,402,206</b>	<b>59,682,206</b>	<b>3,720,494</b>	<b>93.4%</b>