



**AUTORITETI I  
KONKURRENCËS**

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**2015 ANNUAL REPORT**

**AND**

**MAIN GOALS FOR 2016**

**Competition Authority**

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## INTRODUCTION BY THE COMMISSION CHAIR

PROF.DR. LINDITA MILO (LATI)

Academics and politicians often refer to economic freedom as one of the crucial tools for economic growth in our country, while the business community and consumers refer to fair competition as a source for increasing their wellbeing.

Economic growth, employment, increased investment and innovation technology, as well as increased competitiveness of our economy are the ingredients of strategies of any government; however, benefits from the specific policies are not always the intended ones. A reason for distortion is how the strategies, policies and laws are implemented. Therefore, the system of law provides the tools to protect the public interest.

This has been at the core of the Competition Authority activity. Its 12-year experience has shown that distortions in the market are caused by failures in the systems, and an institution is only one of the links in the system and cannot serve as a substitute for the entire system.

Therefore, efficient implementation of the Competition Policy and Law requires not only an independent competition institutions, but also good functioning of the rest of the system of law in Albania that is responsible for enabling functioning markets.

Our interventions in both regulated and liberalized markets have identified the constant challenges faced by the supervisors of the market activities of undertakings, in their efforts, *inter alia*, for detecting and stopping any anticompetitive practices.

A constant challenge is to ensure cooperation with sector regulators and the executive branch of power, which should observe the Law and the Parliament's Resolution and solicit in advance an assessment by the Competition Authority for any draft law or regulation intending to, or resulting in, quantitative or qualitative competition restrictions in the market.

The Competition Authority is not a mere name in the list of other regulatory and public institutions, but it is a crucial part of the system ensuring the implementation of the Constitution in providing for business freedom and market economy. Therefore, the real impact of market interventions by this Institution needs cooperation with other government institutions and regulators, as well as underlining the need for its decisions and recommendations to be taken into consideration by politicians, government agencies and regulators.

## **I. COMPETITION AUTHORITY – KEY DEVELOPMENTS**

The economic system in the Republic of Albania is based on a market economy and on freedom of economic activity, as provided for in its Constitution. In this context, competition is present in this economic system, guaranteeing the economic benefits resulting from the market economy. The legal framework, consisting of the Competition Policy and Competition Law, was built as an indisputable value in promoting and protecting competition and ensuring fair competition. The institutional framework was also built, composed of the Competition Authority and the institutions ensuring equal treatment of market players, consumer protection, protection of intellectual property ownership rights, etc.

The Competition Authority is an independent public institution operating pursuant Law No. 9121 of 28 July 2003 “On Competition Protection,” as amended, (hereinafter referred to as the “Law”) and the National Competition Policy, which provide the legal tools that facilitate the addressing and resolution of free and effective market competition restrictions, distortions and obstructions. The Competition Institution also operates in accordance with the best norms and practice of public administration and European competition law.

The Competition Authority acts to ensure free and effective market competition pursuant to the Law, based on several main pillars that guarantee competition promotion and its protection against anticompetitive practices, including prohibited agreements in the form of cartels or concerted behaviour and abuse of a dominant position. In addition, the competition institution should ensure competition promotion through control of concentration of undertakings in order to prevent the creation or strengthening of a dominant position in the relevant markets, assess exclusive and special rights, and advocate for competition by providing recommendations for amending laws and regulations in the context of promoting free and effective competition in the market.

Through its activity, the Competition Authority aims at ensuring a functioning and objective market, which cannot be achieved unless all market players and factors have been involved. From this perspective well-functioning markets involves both taking care of consumer wellbeing and making markets more competitive and more accessible to new entrants. This feature of the Competition Law has always characterized the Competition Institution activity, which is carried out in constant cooperation with the Parliament, central and local agencies, other regulators, businesses and their organisations and consumer protection associations.

### **I.1 Summary of Main Developments**

In 2015 the Competition Institution activity continued to be carried out pursuant to the Competition Law and Policy, carefully addressing any received complaints, since they are the key input to detecting the issues affecting the various markets, pursuant to the Parliament Resolution on the Competition Authority activity in 2014, and the tasks identified in the progress reports issued by the European Union.

The multifaceted activity of the Competition Authority in 2015 was also reflected in the 51 decision taken by the Competition Commission on cases addressing prohibited agreements, abuse of a dominant position, control of concentrations, recommendations

on exclusive rights and draft laws and regulations, and in the reviewed complaints and in the procedural activity of the Authority. More specifically, in relation to anticompetitive behaviour six decisions were taken on prohibited agreements, and three decisions on abuse of a dominant position; one decision on provisional measures against an undertaking; 11 decisions on concentration control; 11 decisions with recommendations resulting from assessments of laws and regulations issued by other public institutions and regulators; three decisions adopting competition regulations; one decision on exemption of agreements, and 15 decisions on procedures.

The number of complaints submitted to the Competition Authority in 2015 was 50, from 33 complaints filed in 2014, which provided for more opportunities of identifying market issues, in addition to showing increased business and consumer trust in the Institution as a guarantor of economic freedom.

The legal and institutional approach to handling without delay every complaint falling in the scope of the Law and the cooperation with other institutions to address issues identified in the markets have resulted in increased public confidence in the Competition Institution translated into a series of acts and decisions for restoring free and effective competition in the market. By sector, the highest number of complaints was in the **electronic communications market**, with 22 complaints from operators in that market, mainly in relation to regulatory issues.

What was new last year related to the complaints in the **subscription audio-visual media sector**, mainly in relation to the obligation of television operators to broadcast free of charge on digital or cable platforms; in that respect, the Competition Authority began to monitor the market in order to take the relevant decisions for opening up the market to competition and removing exclusive rights to broadcasting national and local television networks in order to provide a level playing ground for all operators.

**Public procurement area** remains a concern from the competition point of view, where the issues are related to the procurement of physical security operators, the size of lots, and the specific criteria in procurement procedures.

Public institutions also requested intervention by the Competition Authority in cases of suspected competition restrictions in the market. The proactive stance of the Supreme State Audit Institution should be noted here. It referred a potential bid rigging case in the procurement of the Tirana new ring road construction works. There were also two complaints from the Directorate General of Taxation in relation to the public procurement of e-taxation service and the procurement of physical protection and security services.

Problems were also identified in the functioning of the **electricity sector**, where, in addition to an in-depth investigation into the purchase of electricity by OSHEE to cover electricity losses, there were complaints mainly in relation to differentiated invoicing to businesses supplied with low-voltage and medium-voltage electricity, and dis-balance adjustment issues.

The **telephony market** was again in the focus of investigations by the Competition Authority, which were initiated based on complaints from small market operators in relation to discriminatory fees and offers for on-net and off-net calls. After completion of investigations, the Competition Commission decided to order the undertaking with a dominant position—Vodafone Albania—to comply with the measures for equalizing on-

net and off-net tariffs and packages, and stop applying retail tariffs that discriminate against other national operators in all its marketed offers. The regulator has a crucial role to play in the good functioning of this market.

Based on the monitoring performed by the Competition Authority over the years and the issues identified in the **banking sector**, the Competition Commission decided to carry out a full study on the market, which would enable it to make appropriate recommendations on the functioning of this market which is vital to the Albanian economy.

In 2015, pursuant to the tasks set to it by the Parliament, the Competition Authority continued to make an *ex post* evaluation of the 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. A review and evaluation of all concession agreements showed that in general concession-granting procedures still fail to observe Article 69 of the Law, which requires solicitation of the Authority's assessment when intending to grant exclusive rights. Therefore, the Competition Commission felt it necessary to state its position by means of a decision addressed to the Government in relation to the observance of the abovementioned legal requirement. Pursuant to the decision, last December marked a new development because the Ministry of Transport and Infrastructure submitted to the Competition Authority three draft concession agreements, with a request for the Competition Authority opinion on a potential violation of competition principles. In those cases the Institution performed an *ex ante* assessment of the draft concession agreements and gave the relevant recommendations.

In 2015, 11 concentration cases were reviewed in relation to acquisition of control, mergers or establishment of a new undertaking. The concentrations were reviewed from the perspective of creating or strengthening a dominant position of the concentrated undertakings, and in terms of any positive impact on the market from the perspective of consumers and increased market efficiency, in full compliance with the legislation in force and the EU Directives. The financial market was in the focus of concentration assessments and authorisations.

The **judiciary system** continues to be problematic; according to the EU Progress Report on Albania *"delays in court proceedings are too long and further efforts are needed to increase the availability and quality of training for judges on competition policy."*

To address this issue, which is crucial for the Competition Commission decision impact on the market, two initiatives were taken to train judges with funding from two EU projects in the past and from UNCTAD in late 2015. A problem does remain, however, in terms of the serious delays in court case handling, which significantly diminishes the effects of the Competition Authority interventions to restore free and effective competition in the market.

Thus, in the Administrative Court of First Instance a total of six Competition Commission decisions were heard, of which two cases were decided against the plaintiff, two other cases were dismissed, thus affirming the Competition Authority decisions, and two cases decided for the plaintiff. In the Administrative Court of Appeal out of a total of nine cases were heard in 2015 only one case was heard, with the rest (eight cases) left to be reviewed in 2016. In the Ferlut Case, which was heard in 2015, the Administrative Court of Appeal in Tirana decided for the Appellant against the Competition Commission



decision. In addition, 12 cases were submitted for review to the Administrative Chamber of the Supreme Court in 2015, but none of them were reviewed, which means that they will be part of the backlog in 2016.

In 2015 the Competition Authority continued its efforts for completing the secondary legislation framework in line with the EU law: it adopted the Guideline on the assessment of vertical restrictions, the Guideline on the conditions and obligations in concentration cases, and the new fine leniency programme. The programme was based on the shared experience of similar authorities that have had a fine leniency programme in place for a number of years and have been successful in detecting anticompetitive practices in the area of prohibited agreements by providing full or partial reduction of fines for those undertakings that cooperate with a competition authority.

## **I.2 Implementation of Parliament Resolution in 2015**

In addition to its evaluation, the Parliament Resolution also provided several recommendations, which were reflected in the following:

The investigation proceedings initiated in 2014 were completed in 2015, including the investigation into the public procurement of the construction works for the new ring road in Tirana, the investigation into the fuel importing, production and wholesale selling market, the investigation into the maritime passenger transportation market, and the investigation into the electronic communications market. In each case, the relevant decisions were taken, which gave recommendations for other regulators or imposed obligations on undertakings or ordered provisional measures, depending on the specifics of each case.

The dawn raid tools were improved in 2015, and a number of surprise inspections were carried out. Inspectors were trained in the latest forensic inspection tools. However, the failure in finding direct evidence raises the key issue of increasing expertise not only in the area of investigation, but also in the area of in-depth economic analysis for the purposes of identifying market behaviours of the undertakings.

The training of judges by UNCTAD experts, in cooperation with the School of Magistrates, was another item in the Parliament Resolution, which was performed by the Competition Authority, and is expected to continue in 2016 with UNCTAD assistance.

In 2015 the Competition Authority made a presentation in a special session in the UNCTAD Annual Assembly in Geneva, in which it presented the report on the peer review that had been carried out on the request of the Competition Authority under assistance from UNCTAD. The recommendations of the report will be used to increase inter-institutional cooperation with regulators and other public institutions.

In 2015 Albania received positive evaluation from the international community, as stated in the conclusions of the European Union Progress Report on Albania: "Albania has made moderate progress in the area of competition policy." More specifically in relation to the Competition Authority, the Report noted that "On antitrust and mergers, the Albanian Competition Authority (ACA) adopted guidelines on the assessment and abuse of dominant market position and drafted new guidelines based on the European Commission notice." The administrative capacity of the ACA was positively evaluated as

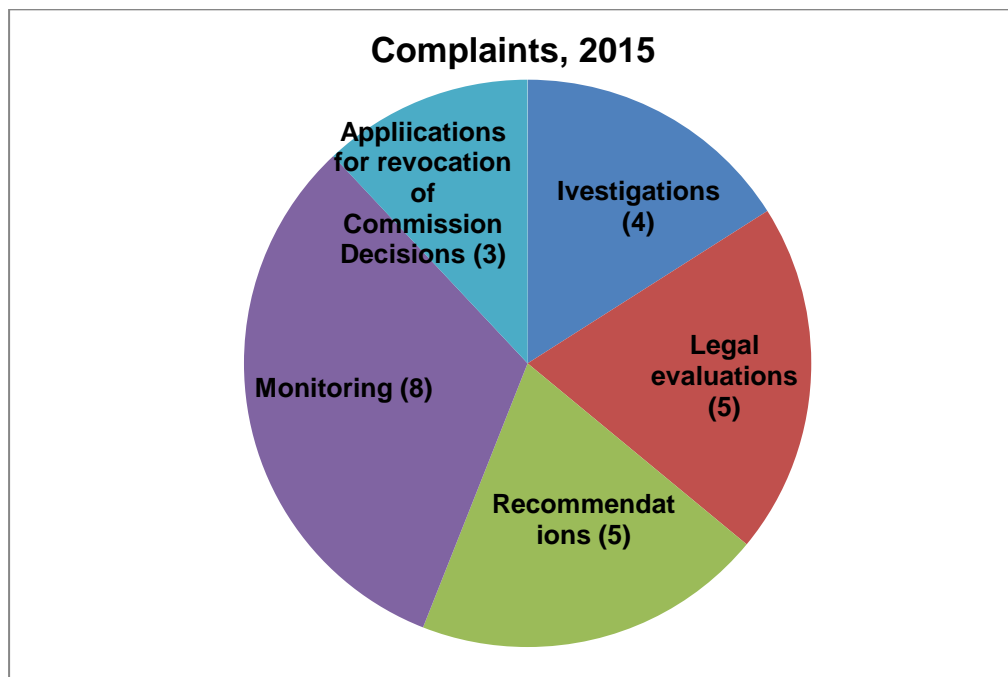
having “a good level of expertise”, which marks progress with regard to the law enforcement capacities of the institution.

## II. COMPETITION LAW IMPLEMENTATION

The Competition Protection Law, which was amended in 2010, includes a special article on handling the complaints that interested parties might submit in relation to actual or alleged competition restrictions, distortions or obstructions. Complaints are handled within the time-limits set in the Rules of Operation of the Competition Authority, while ensuring the anonymity of complainants on their request.

### II.1 Complaint handling

A total of 49 complaints were received in 2015, of which 25 were found to be within the scope of the Law. As the following graph shows, investigations were initiated in four cases, five cases were assessed and concluded with a legal evaluation, five complaints were monitored and recommendations were given on them, monitoring still continues on eight complaints, and three cases were administrative complaints applying for revocation of Competition Commission decisions.



Even in the case of those complaints that were found to be not within the scope of the Law, a proactive approach was taken in order to cooperate with the institutions responsible for addressing the complaints in accordance with the legislation in force.

The following sections list all complaints submitted to the Competition Authority, grouped by the relevant market.

#### II.1.1 Electronic communications market

In 2015 the electronic communications market continued to be one of the markets with the largest number of complaints of a broad range on competition failure, despite being a regulated market. More specifically

1. *Complaints from Plus Communication sh.a. and Albtelecom sh.a. against Vodafone Albania sh.a.* on abuse in the mobile telephony market in Albania through application of differentiated on-net and off-net tariffs under the marketed offers. Based on the complaint from Plus sh.a. the Competition Commission took Decision No. 336 of 11 November 2014 On initiating a preliminary inquiry against Vodafone SH.A. in the mobile telephony market against Vodafone Albania sh.a. The elements of the complaint from Albtelecom in relation to the behaviour of Vodafone Albania in the retail mobile telephony market had also been identified in the report on the preliminary inquiry that had been initiated following the complaint from Plus sh.a., and were covered in the same inquiry. More details on this case are provided in Section II.5.4.

2. *Complaints from Vodafone Albania sh.a and AMC sh.a* in relation to the promotional offers marketed by Albtelecom in the cities of Vlora and Gjirokastra. After a formal review of the complaint, AKEP was requested to review the complaint submitted by Vodafone in relation to the applicability of the obligations set by AKEP in its decisions, in which it stated that Albtelecom SHA had significant landline and mobile telephony market power, and imposed respective obligations in relation to: separation of the accounts of the landline telephony business from the mobile telephony business; transparency obligation; non-discrimination obligation; joint offers among the segments of landline telephony, mobile telephony and internet services. The Authority asked the regulator to monitor the implementation of the obligations.

3. *Complaints from Plus Communication sh.a* on a tendering of granting the rights to use the 1800 MHz frequency band for GSM/LTE/UMTS/WiMAX systems. Plus Communication submitted complaints no. 155 Prot. of 13.02.2015, and no. 196 Prot. of 20.02.2015, whereby it claimed that the requirements laid down in the document of the tender to grant the rights to use the 1800 MHz frequency band for GSM/LTE/UMTS/WiMAX systems were an impediment/barrier to entry of smaller operators in the 4G market.

At the end of reviewing and assessing the concerns raised by Plus Communication SH.A., the Competition Commission took Decision No. 351 of 3 March 2015 “Recommendations on increasing competition in the electronic communications industry in relation to the 1800 MHz frequency band for GSM/LTE/UMTS/WiMAX systems”, whereby it decided to recommend that AKEP granted all mobile telephony operators the right to use the 1800 MHz frequency band for GSM/LTE/UMTS/WiMAX systems and put them on a level playing ground in terms of market competition.

4. *Complaint from Nisatel against AMC sh.a.* in relation to the application of a new international phone call termination fee on the AMC network. As of 1 January 2015 the new AMC termination fee applicable to all international calls from Nisatel to AMC Mobile would be ALL 29.4 per minute. According to Nisatel, this notice was selective, because AMC applied a different fee to other alternative operators with which it had interconnection agreements.

With regard to this complaint, the Competition Authority organised hearings with the relevant parties and the AKEP decision-making board, and found that the parties were in the process of negotiations; therefore, it concluded that an intervention by the Competition Authority was not necessary.

5. *Complaint from Plus Communication sh.a* applying for the revocation of AKEP Decision No. 2614 of 10 September 2015. An assessment of the complaint found that: regarding the use of the frequency band, the competent body assigned by the Law on

Electronic Communications in the Republic of Albania, as amended, was AKEP, which issued the authorisations to use the frequency bands and monitored such use. Regarding competition in the 3G broadband technology market in the electronic communications industry, the Competition Commission had taken Decision No. 161 of 2 December 2010 “Several recommendations on increasing competition in the sector of electronic communications on the 3G broadband technology market”, whereby it had suggested the opening up of that market.

### *Complaints outside the scope of the Law*

6. *Complaint from Vodafone Albania sh.a\_ regarding the use of frequency band for 3G services by PLUS SHA.* A legal assessment of the complaint found that the institution responsible for issuing authorisations to use frequency bands and to monitor such use was AKEP; therefore, in its Letter No. 248/1 of 27.05.2015, the Competition Authority referred the case to AKEP, as the competent body for addressing the questions and concerns raised by Vodafone Albania. After that the Regulator explained the legal basis of the authorisation.

7. *Complaints from Albtelecom sh.a, against AMC sh.a and Vodafone Albania sh.a,*

8. *Complaints from Albtelecom sh.a. and AMC sh.a against Vodafone Albania sh.a.*

9. *Complaint from Plus Communication sh.a. against Telekom Albania sh.a. and Vodafone Albania sh.a.*

The three complaints related to the provision of the 4G service by those undertakings. The assessment of those complaints found that, in relation to the use of frequency bands, AKEP was the competent body designated by the specific law, to which the complaints were referred for administrative proceeding.

10. *Complaint from Albtelecom sh.a. against AMC sh.a.* on the marketing of promotional monthly plans called AMC Super Universal and AMC Universal. An assessment of the complaint found that it was not in the scope of the Competition Protection Law, because the regulator—AKEP—which oversees the fulfilment of obligations set by a decision of its Governing Board, and, in case of operators’ failure to fulfil those obligations, it is AKEP the body to take the measures specified in the respective law.

11. *Complaint from Albtelecom sh.a.* claiming unfair competitions in behalf of the Albanian Mobile Communication *sh.a*, by changing its company name into *Telekom Albania sh.a.* and serious competition distortions arising in the Albanian telephony market. The assessment of the complaint found that it was not in the scope of the Law.

12. *Complaint from AMC sh.a. and complaint from Albtelecom sh.a.* in relation to the possibility of granting two available rights to use the 2100 MHz frequency band to Plus under an instalment arrangement by AKEP. Its assessment showed that AKEP was performing the procedures provided for in laws and regulations in relation to the granting of the rights to use 1900-1980 MHz and 2110 – 2170 MHz frequency bands (IMT band). The concern of AMC sha was raised on the basis of unofficial data, and the regulator—AKEP—had solicited the opinions of all interested undertakings through a public consultation process and no decision had been made yet. Based on the above, the complaint was found to be outside of the scope of the Law, since the body competent to grant the rights to use frequency bands was AKEP.

13. *Complaint from a customer of Albtelecom sh.a. against that undertaking* in relation to the price of ALL 690 applied to a package offered by that undertaking. The assessment found the complaint to be outside the scope of the Law, and the behaviour of Albtelecom sh.a. could be a misleading practice, for which, the competent body designated by Law No. 9902 of 17 April 2008 “On Consumer Protection” was the Consumer Protection Commission, to which the complaint was referred.

14. *Complaint from Telekom Albania sh.a. against Albtelecom sh.a.* in relation to launching the 4G service by that undertaking in the 1800 MHz band. The assessment found the complaint to be outside the scope of the Law. The competent body for issuing authorisations to use frequency bands and monitoring such use is AKEP, while the competent body for reviewing complaints on misleading business practices is the Consumer Protection Commission.

15. *Plus Communication sh.a. submitted for assessment and consideration its Administrative Complaint No. Prot. 359 of 26 March 2015 to the Electronic and Postal Communications Authority (AKEP).* The review of the complaint found that the Competition Authority had stated its opinion several times and had asked AKEP to implement its decisions taken based on the analysis of the mobile telephony market as soon as possible. This was an administrative complaint and, as specified by the Ministry of Innovation and Public Administration, AKEP is the competent body designated for reviewing such an administrative complaint and taking a final decision.

#### *Pending complaints*

16. *Complaints from Plus Communication sh.a. and Albtelecom sh.a. against Vodafone Albania sh.a.* in relation to MyClub 300 and ClubEntry 300 plans. The Complainants applied for immediate measures to be taken in order to stop the provision of those plans by Vodafone and open administrative proceedings against Vodafone on those offers. Hearings were carried out with the complainants, and a preliminary evaluation by AKEP was requested, to determine whether Vodafone offers were in compliance with AKEP Decision No. 2523 of 6 November 2014 specifying Vodafone Albania sh.a. as an operator with significant market power for termination of calls in the Vodafone public mobile telephony network and imposing regulatory measures, as amended by Decision No. 2542 of 13 March 2015. After the AKEP preliminary opinion is received, we will complete the review of the complaints.

17. *Complaint from Plus Communication sh.a.* for taking immediate measures to affirm the current asymmetrical interconnection fee applicable to PLUS and other operators even after 1 January 2016. In relation to this, the Competition Authority Secretariat first organised hearings with representatives from PLUS, Vodafone and AKEP. AKEP is monitoring the market, and will take a final decision, which it will also submit to the Competition Authority.

18. *Complaint from Telekom Albania sh.a. against Albtelecom sh.a.* on its offer marketed offer called “Paketat festive” (Holiday Plans). With regard to the complaint, we decided to organise a hearing with the complainant (Telekom), and we sent a request to AKEP to give its opinion on the complaint and to advise whether the complaint was in compliance with AKEP Decision No. 2526 of 6 November 2014 specifying Albtelecom sh.a. as an operator with a significant market power for termination of calls in the Albtelecom public mobile telephony network and imposing regulatory measures, as amended by Decision No. 2542 of 13 March 2015 amending AKEP Governing Body

Decisions Nos. 2522, 2523, 2524, 2525 and 2526 of 6 November 2014. After conducting the hearing and receiving the AKEP opinion on the complaint, we will complete our review and evaluation of the complaint.

### *Complaints applying for revocation of Competition Commission decisions*

19. Application from Vodafone Albania sh.a. for revocation as absolutely invalid of Competition Commission Decision No. 356 of 31 March 2015 On taking provisional measures against Vodafone Albania SHA in the retail mobile telephony market. The assessment of the Vodafone's application and of its views stated in the hearing organised on 8 April 2015 on the Competition Commission Decision No. 356 of 31 March 2015 showed that: (a) Vodafone did not submit any facts or evidence of changes to the grounds of the Competition Commission Decision occurring after that decisions had been taken; (b) Vodafone did not submit any claims that the information that the Competition Authority collected prior to taking its decision was inaccurate or invalid.

Since none of the requirements laid down in Article 46 of the Law were not met, the application for revocation and invalidation of Competition Commission Decision No. 356 of 31 March 2015 On taking provisional measures against Vodafone Albania SHA in the retail mobile telephony market was refused.

#### *II.1.2 Audio-visual media market*

Three complaints were submitted in the audio-visual market, of which one complaint led to a monitoring process; one complaint was legally assessed; and one complaint was found to be outside of the scope of the Law. More specifically:

20. *Complaint from Abcom sh.p.k. against Digitalb sh.a.* on some concerns in the audio-visual media market. In order to collect information on all the issues in this very important market for the pluralism of the media, a working group was established with the task of monitoring the market, which is still ongoing.

21. *Complaint from Tring sh.a. against national television networks Top Channel and Klan TV, and against platform Digitalb,* on a refusal to broadcast its advertisement. Based on the complaint, a hearing was organised with the complainant on 27 October 2015, in order to identify what evidence was available proving its claim in relation to the refusal to broadcast its advertisements by other television networks. The complainant was asked to fill in the complaint form, with its claims of potential competition restrictions or violations, and a description of the facts it refers to, such as the reasons for the refusal, advertisement price lists of other television networks, agreements with other television networks, etc. Tring, in its Letter No. 471 Prot. of 09.11.2015 submitted additional information in relation to its claims. The assessment showed that market relations between Digitalb and the rest of the operators were governed by an agreement that was exempted by the Competition Commission<sup>1</sup> under a transparent process and after taking the opinion of all market players. The agreement was to expire on 31 December 2015. Thus a decision was made to monitor the market in order to determine the behaviour of undertakings with market power.

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<sup>1</sup> This agreement exemption case was reported in the 2014 Competition Authority Report.



22. *Complaint from TV Kabllor Udënishti in relation to its business and the inspections, warnings and heavy fines received from the Audio-Visual Media Authority.* An assessment of the complaint found it to be outside the scope of the Law.

### II.1.3 Electricity Market

Three complaints were submitted in the electricity market, of which two complaints resulted in legal assessments and recommendations; and one was an application for revocation of a CC decision.

23. *Complaint from Fix Pro Sh.p.k. against Operatori i Shpërndarjes së Energjisë Elektrike (OSHEE – Electricity Distribution Operator)* in relation to incorrect billing of that undertaking at low voltage electricity (at measuring point), while it is supplied with medium voltage electricity, given that the electrical cabin was its investment. In reviewing the abovementioned complaint, the Competition Authority requested the necessary information from OSHEE and ERE, and organised a hearing with the complainant, ERE and OSHEE. In conclusion the Competition Commission took Decision No. 385 of 3 December 2015 on recommendations to ERE on the issues related to the billing of customers connected to the medium voltage at low voltage rates, where it gave the following recommendations to ERE: find a final solution for the costumers connected to the medium voltage network, by approving a special tariff for each customer category, in order to put them in non-discriminatory conditions and on a level playing ground in terms of competition; make an evaluation of the tariff applied by OSHEE in order to determine whether it is above the approved tariffs and provide for the relevant compensation of costumers in line with the legal provisions in force.

24. *Complain from the Electricity Suppliers Association* in relation to the electricity purchase agreement between KESH sha and OSHEE, approved by ERE Decision No. 12 of 6 February 2015. At the end of the assessment, the Competition Commission decided for excluding the agreement as a prohibited agreement. All the detailed procedures are discussed in Section II.4.

25. *Complaint from GEN-I Tirana sh.p.k. applying for revocation of Competition Commission Decision No. 355 of 20 March 2015 On initiating an in-depth investigation into the market of electricity import for purposes of covering losses in the distribution network.* After reviewing the complaint, the Competition Commission took Decision no. 363 of 14 May 2015 refusing the GEN-I Tirana shpk application for revocation of Competition Commission Decision No. 355 of 20 March 2015 On initiating an in-depth investigation into the market of electricity import for purposes of covering losses in the distribution network.

### II.1.4 Public procurement market

Four complaints were submitted in the public procurement market, of which in one case an investigation was opened; one case resulted in market monitoring; one case resulted in a legal assessment; and one case was outside the scope of the Law.

26. *Complaint from the Directorate General of Taxation* in relation to the procurement of security services for the premises of the Tax Administration, divided into 13 lots, claiming that during the evaluation of the tender bids, especially in the Tirana Lot six economic operators submitted equal bids. The Competition Commission decided to



open an inquiry in order to determine whether there were indications of competition restriction in the inquiry period. A more detailed discussion can be found in Section II.3.6.

27. *Complaint from the Directorate General of Taxation* in relation to two procurement procedures to purchase support infrastructure for the new E-Taxation system and to purchase electronic e-filing and D.I.S. equipment, where several economic operators had not submitted any bids, leading to the conditions in which the winning operator was left alone in the competitive procedure. According to the Directorate General of Taxation, the failure to submit bids raises doubts that there could be a bid-rigging practice among those operators. In order to assess the market, the Authority started monitoring it, which is still ongoing.

28. *Complaint from Trezhnjeva against Korporata Elektro-energjetike Shqiptare sh.a.* in relation to the public procurement of private security of KESH sh.a. facilities. Based on the information received from the Contracting Authority, the complaint submitted by Trezhnjeva and the other complainant undertakings had been reviewed by the Contracting Authority, which had decided for them in part and had made the relevant modifications in the documents of that procurement procedure. As KESH informed, Trezhnjeva had been awarded contracts for four of the lots in question.

29. *Complaint from Intersig sh.a. against the Ministry of Defence* in relation to the public procurement of insurance for aircraft (helicopters) in use by the Armed Forces. In response to the Competition Authority request, the Contracting Authority clarified that the complaint had been reviewed and had been referred to the Public Procurement Commission, which is the highest body in the area of public procurement and reviews complaints on procurement procedures.

#### II.1.5 International maritime transport market

30. *Complaint from Gerverni sh.p.k. against Porti Vlorë sh.a.* Gerverni complained that Porti Vlore sh.a. wanted to unilaterally terminate the current contract between them and the travel schedule for the ferryboat line of that undertaking between Vlora and Brindisi, and set a new travel schedule under which its ferryboat would make the journey every other day. According to the complainant, this planned to open up the way for the introduction of a new ferryboat in the same route, which meant that half of the market would be given to the new entrant automatically. After reviewing the complaint and conducting hearings with the complainant, the Ministry of Transport and Infrastructure (Port of Vlora did not attend the hearing), the Competition Commission took Decision No. 369 of 2 July 2015 imposing compulsory measures in the international maritime transport market in the Republic of Albania, in which it decided to prohibit the division of the international maritime transport of passengers and vehicles by Porti Vlora SHA; order Porti Vlorë SHA to observe and allow the operation of all the operators operating in the Port of Vlora terminal at equal conditions, ensuring favourable competition conditions in the area of international maritime transportation of passengers and vehicles and enabling operators to compete with each other on the same day.

#### II.1.6 Other markets

Out of the complaints in other markets in two cases inquiries were initiated; one case resulted in a legal assessment; two complaints were outside the scope of the Law; and one was an application for revocation of a CC decision.

31. *Complaint from Geci Sh.p.k.*, in relation to their concern on some "frozen and fixed prices in the hospitality industry, and some concerted practices in setting prices and sharing the market of these services". Based on the complaint form and the assessment of it, the Competition Commission approved the opening of an inquiry into that market, in order to determine whether there were any indications of competition restriction. At the end recommendations were given. A more detailed discussion of the case can be found in Section II.3.4.
32. *Complaint from Intesa SanPaolo Bank* on the illegal stance taken by several local immovable property registration offices. A legal assessment of the complaint showed that the procedures for registering immovable property, the registration of mortgage and the order of such records was regulated by the relevant provisions in the Civil Code and the Law on the Registration of Immovable Property. Since the Competition Authority had already started a general inquiry into the banking sector in the form of a market study, a proposal was made to take the concern raised by Intesa Sanpaolo Bank Albania into consideration during that market study.
33. *Complaint from Infood* in relation to an exclusive rights agreement concluded by All Balkans Corporation sh.a. on exclusive rights to distribution of Campina Yogurt products in Albania. An assessment of the agreement in question found that All Balkans Corporation sh.a. had a distribution agreement with Freisland Campina Hellas domiciled in Greece on selling fruit yogurt, and an assessment of the provisions of that agreement did not find them to be against Article 4 of the Law.
34. *Complaint from the Association for Protecting Merchants and the Market (Shoqatës së Mbrojtjes së Tregtarëve dhe Tregut)* against *EKMA Albania Sh.p.k.* in relation to the anticompetitive effects of that undertaking's actions. Based on the data collected during the monitoring, the information submitted by the Association for Protecting Merchants and the Market and other decisions made by the Prefect of Tirana and other institutions designated by the law to perform market surveillance, we found that those are the institutions the law specifies to supervise, regulate and licence markets in the Republic of Albania. After a hearing session, the Competition Commission concluded that the issue was outside the scope of the Law, but in order to enable increased competition in the provision of trade services, a recommendation was made to the Municipality of Tirana to enable the operation of alternative marketplaces.
35. *Complaint from Lunxhëria sh.p.k.* in relation to the quality and standards of selling a product locally called "trahana". An assessment of the complaint showed that the issue raised by Lunxhëria was outside the scope of Law No. 9121 of 28 July 2003 "On Competition Protection", and therefore could not be reviewed.
36. *Application from SICPA* for revocation of 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". The review of the SICPA application for revocation of the Competition Commission Decision and of the submitted arguments showed that the requested revocation was not justified. Therefore, the Competition Commission decided to refuse the application submitted by SICPA and reaffirm the Competition Commission decision.

## **II.2. General Inquiry into the Banking Sector**

The concerns raised on the media in relation to the banking market and application of high interest rates on loans compared with very low interest rates on deposits in commercial banks led to the Competition Authority starting a monitoring of the banking service market, the scope of which was to assess whether the (overdraft and consumer) loan market, interest rates (prices) on the relevant products and a comparison of deposits, yield and basic interest rates.

The methodology was based on several studies published by the Bank of Albania and on various literature on the banking system in the countries in the region and MLEX.

The analysis of the overall indicators of the banking sector and of the behaviour of commercial banks in the relevant market—overdraft and consumer loans—concluded that the banking market was concentrated at an average level, with none of the commercial banks having significant market power. Banks apply different rates to the three analysed banking products. The spread between loan interest rates and deposit interest rates and between overdraft interest rates and deposit interest rates were very high across the banking sector. Compared with the eight countries in the region with regard to the spread between loan interest rates and deposit interest rates, Albania came fourth, leaving behind Montenegro, Kosovo, Serbia and Bulgaria (in 2011-2013), which had smaller spreads.

In the past few years, the Competition Authority has monitored the Albanian banking market, and has given several recommendations on it. Based on the issues found by the monitoring, the Competition Commission, pursuant to Article 41 (1) of the Law, took Decision No. 373 of 16 September 2015 whereby it opened a general inquiry into the banking sector.

In its essence, this is an overall market study, which the Law recognizes as a general inquiry into a sector. The study aims to assess the level of competition in the banking sector, identify any issues that might result in competition restriction, and provide recommendations, if necessary, for improving competition in this market which is crucial to the Albanian economy.

The methodology is based on the best European practices, and will be assisted by a banking expert. The competition analysis will evaluate the substitutability of banking products (deposits, loans, overdraft, etc.) with the products of non-bank institutions and savings and credit unions, which provide similar products. In addition, the general study on the banking market will evaluate the behaviour of commercial banks in relation to their commissions, applied interest rates on various products such as opening bank accounts, deposits, loans, bank transfers, etc., and compare them, in addition to looking at loan insurance.

## **II.3. Prohibited Agreements**

In their activity, public or private undertakings may conclude agreements among themselves in writing or orally, in accordance with the legislation in force. But undertakings should keep in mind that certain agreements or concerted behaviours are prohibited by the Competition Protection Law, as amended, therefore the agreements have to be reported to the Competition Authority and be assessed by the Competition Commission in relation to their effects on the market.

The Competition Law prohibits all agreements which have as their subject-matter or effect the prevention, restriction or distortion of competition in the market. In particular the Law prohibits those agreements which (i) set, directly or indirectly, purchase or selling prices, or any other trading conditions, (ii) restrict or control production, markets, technical development, or investment, (iii) share markets or sources of supply, etc.

The undertakings have to pay attention not to be parties to prohibited agreement, whether in writing or not, because the Competition Protection Law provides for heavy fines of up to 10% of their turnover, while it also provides for fine leniency if an undertaking cooperates with the Competition Authority. This instrument aims to encourage undertakings involved in agreements violating the Law to cooperate with the Authority in order to detect such agreements.

### II.3.1 Investigation into the procurement of the construction of the outer section of the Tirana Greater Ring Road—from Sauk to Bregu i Lumit

As it was reported in the 2014 Report of the Competition Authority, 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 an inquiry period of January-December 2013.

The inquiry did not find any direct evidence of concerted practices among the undertakings participating in the tender procedures. It did find, however, that their bids were very close to the limit fund. Given the doubts, the Competition Commission decided (by Decision no 346 of 16 February 2015) to order an in-depth investigation 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—against undertakings Gener 2, Albavia, Gjoka Konstruksion, consortium of Albavia, Favina and Alpin SRL and consortium of Gjoka Konstruksion and Gjiguria, extending the investigation period to 2014.

During the investigation, on-site inspections were conducted and an analysis of the submitted documentation was made to determine whether the companies executed the contracted works relying on their own technical capacities or subcontracted other companies for various works. In the end, the analysis of the actual documentation found no subcontractors.

The process of the preparation, harmonisation and coaction of public procurement procedures between the contracting authority and the undertakings submitting bids under those procurement procedures is a combination of many factors, not all of which fall in the scope of, and can be addressed by, the Competition Law and the Competition Authority.

The public procurement process might have resulted in distortions in the form of unfair competition, which might be due to human behaviour beyond the scope of the Competition Protection Law. The Competition Authority verifications in relation to Lot III found that the Albanian Road Authority had not requested any economic and financial documentation for both operators of the consortium Gjoka shpk & Gjiguria shpk, and there was lack of information on the annual turnover for the last three years for Gjiguria shpk and the financial statements of 2009 for Gjiguria shpk although the Albanian Road Authority had signed the contracts.

In the documentation review and the inquiry dawn raid inspections in all the undertakings under investigation and the investigation on-site verifications no elements of collusion between the winning undertakings and other undertakings were found, but it was the Contracting Authority behaviour the one that makes the process suspicious in terms of potential bid rigging, and it was on the basis of those suspicions that Tirana Prosecution Office began criminal proceedings.

Based on the above, Competition Commission Decision no. 358 of 16 April 2015 concluded the in-depth investigation 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, against undertakings: Gener 2 Sh.p.k, Albavia sh.p.k, Gjoka Konstruksion Sh.a, the consortium of companies Albavia, Favina and Alpin Srl (JV) and the temporary consortium of companies Gjoka Konstruksion & Gjiguria, and the temporary consortium of companies Albavia & Favina & Alpin Srl (JV).

In addition, the Competition Commission decided to recommend that the Albanian Road Authority (a) should not, when dividing procurement lots, create any possibilities for market division based on the volume of works among competitors and division of geographic markets; (b) should make a full evaluation of the economic and financial criteria for all bidders or bidder consortia in order to ensure equitable and non-discriminatory treatment among bidding undertakings; (c) should avoid any forms of predetermination and preferential evaluation among the various undertakings, which restricts competition.

### II.3.2 Investigation into the Cigarette Importing and Wholesale Selling Market

The cigarette importing and wholesale selling market was under investigation from November 2014. The economic analysis of the collected data during the investigation showed that the five cigarette importing and wholesale selling undertakings had not behaved in a concerted manner in terms of setting market prices. Their price increase had reflected the increased taxes which occurred in late October 2014. Furthermore, the prices had been increased at different moments by the various undertakings, therefore they could not be considered as concerted prices and they are not economic evidence that can be used to prove a concerted practice with indirect evidence.

Therefore, the Competition Commission decided to close the inquiry by its Decision No. 5 March 2015, because it did not find any violations of Article 4 of Law No. 9121 of 28 July 2013 “On Competition Protection”.

### II.3.3 Inquiry into the Egg Production and Wholesale Selling Market

In November-December 2014 there was an increase in the price of eggs in the market. On the basis of the egg production and wholesale market monitoring findings, the Competition Commission, with proposal from the Secretariat, decided to initiate an inquiry into that market by Decision No. 344 of 2 February 2015 On opening an inquiry into the egg production and wholesale market, in order to determine whether there were any indications of competition restriction.

In order to assess the behaviour of the undertakings under the inquiry, dawn raid inspections were conducted in the main undertakings operating in that market. Given that the inspections did not find any direct evidence of collusion among the competitors,

economic analyses were carried out in order to identify any concerted behaviour among competitors in terms of direct or indirect price fixing.

The analysis of the average monthly prices applied by the undertakings in every product category found that the undertakings applied different prices and that they were changed in different manners, which means that there were no indications of price fixing or collusion in terms of increasing or reducing those prices. In addition, an analysis of the average daily prices of the largest undertakings in November-December 2014 showed that the pace of price increase and change was not the same for all of them, and the prices applied by the undertakings to the same category of product were different in the same periods.

The analysis found no collusion among the undertakings in terms of price fixing, and the increase in the price of eggs was the result of reduced supply of this product in the market.

In conclusion, the inspections showed no indications of collusion among the undertakings under investigation, and the analysis of undertaking behaviour and economic price and supply analysis did not find any potential competition restrictions as specified in Article 4 of the Law. Therefore, Competition Commission Decision No. 362 of 14 May 2015 closed the preliminary inquiry into the egg production and wholesale market, because that inquiry did not find any indications of competition restriction in that market in the period under inquiry.

#### II.3.4 Investigation in the hospitality industry

Based on the complaint from Geci Sh.p.k., according to which a few hotels in Tirana and Saranda and other cities had violated the Competition Protection Law, as amended, by incorporating the words "Tirana Hotel" in their names, and that those hotels had applied fixed prices and had been involved in concerted practices in terms of price fixing and market sharing, the Competition Commission, pursuant to the Law, took Decision No.361 of 11 May 2015 On starting a preliminary inquiry in to the hospitality market, in order to see whether there were any concerted practices in terms of price setting or fixing in that market, with the inquiry period being January-December 2014. In order to assess the behaviour of the undertakings under the inquiry, dawn raid inspections were conducted in order to find any direct or indirect evidence of a potential agreement between competitors on fixing the prices of hospitality services. Investigative methods were used to look for indications of exchange of data or statistics on the number of unoccupied rooms, the number of customers or the current daily prices for unoccupied rooms or referral of customers to hotels in the same geographic area. The inspections did not find any direct evidence that would prove such an agreement or collusion under the Law.

In order to identify any concerted behaviour among the competitors in terms of direct or indirect price fixing in the provision of hospitality services, economic analyses were conducted in relation to the prices of those services to assess whether undertakings of the same category had applied identical prices in the period under inquiry. After assessing the entire documentation collected during the inspections in the undertakings under inquiry and the economic analysis of the data, no direct evidence of collusion among the undertakings under inquiry was found.

In conclusion the Competition Commission took Decision No. 371 of 4 September 2015 whereby it concluded the preliminary inquiry into the hospitality market since there were no indications of competition restriction. In addition, the Commission decided to



recommend that AKEP should diversify hotel domains in order to enable symmetrical information for customers who book their rooms online, and to avoid any overlapping caused by the similarities between those domains.

### II.3.5 Inquiry into the public procurement of upgrading and refreshing of vertical and horizontal signing and signalling of national roads and improving road safety

Based on a concern raised in the printed media in relation to the potential absence of competition in the market of road signing and signalling services, the Competition Authority requested information from the Albanian Road Authority (ARA) in relation to the procurements conducted on 7 and 9 September 2015, the subject-matter of which was: "Upgrading and refreshing of vertical and horizontal signing and signalling of national roads and improving of road safety—continued, Lot 1 and Lot 2."

The review of both procurement lots found that the undertakings that had been awarded the procured contracts at bids that were very close to the limit fund had not submitted bids in both lots, and they might have used the bid rotation scheme in order to share the market (and benefit nearly equal shares of the limit fund).

Based on the monitoring report, the Competition Commission took Decision No. 376 of 10 October 2015 whereby it opened a preliminary inquiry into the public procurement of upgrading and refreshing of vertical and horizontal signing and signalling of national roads and improving of road safety—continued, Lot 1 and Lot 2, in order to determine whether there were any indications of competition restriction.

Following the procedures, based on the preliminary inquiry report, the Competition Commission took decision 386 of 14 December 2015 whereby it opened an in-depth investigation into the public procurement of upgrading and refreshing of vertical and horizontal signing and signalling of national roads and improving of road safety, in order to identify the factors that might have had an impact on the potential competition restriction.

The in-depth investigation is still going on, and, in addition to the public procurement of upgrading and refreshing of vertical and horizontal signing and signalling of national roads and improving road safety—Lots 1 and 2—its scope will also include other procurement procedures in the market under investigation.

### II.3.6 Investigation into the public procurement of facility security services for 2015

The Directorate General of Taxation (DGT) referred to the Competition Authority the issues identified by the Supreme State Audit Institution in relation to the procurement by DGT of the facility security services for 2015, divided into 13 lots. Available information showed that when the economic operators' bids had been opened, especially in the lot for Tirana, six bidders had submitted bids of identical amounts. Those identical bids led one to think that there could have been a prohibited agreement among those operators, which would violate the Competition Protection Law, as amended.

The Competition Commission took Decision No. 380 of 2 November 2015 to open a preliminary inquiry into the public procurement of facility security services for 2015, divided into 13 lots that was organised by the Directorate General of Taxation, in order to determine whether there were any indications of competition restriction.

In order to assess the behaviour of undertakings the investigation looked at the data collected during the inspections at the undertakings, the documentation submitted by the undertakings in the procurement procedure, and the documentation received from the contracting authority, as no evidence of collusion in the preparation of bids for public procurement was found in the dawn raids at the undertakings that had participated in the said procurement.

The review of the inquiry report showed that one factor that might have led to identical bids was the recommendation given by the Public Procurement Agency (PPA) and the Public Procurement Commission (PPC) on 1 April 2015 on how to conduct public procurement of private security services. That guidance specified the minimum value to be taken into account by contracting authorities when procuring private security services. The value of bids submitted by economic operators was almost the same for all operators, identical with the value specified by PPA and PPC.

Meeting at technical level were, therefore, organised with the PPA and the PPC to recommend solutions to the issues identified in the procurement of security services, which is the market with the largest number of complaints in the area of public procurement.

#### **II.4. Exemptions from the Prohibition of Agreements – Electricity Purchase Agreement between KESH and OSHEE**

Pursuant to Articles 5 and 6 of the Law, the Competition Commission may grant an exemption from prohibition if an agreement is not a prohibited agreement (in accordance with Article 4 of the Law), and contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit.

The Competition Authority was informed of the existence of a bilateral agreement between KESH and OSHEE by the complaint from the Albanian Association of Electricity Suppliers. The Complainant claimed that the electricity purchase agreement between KESH and OSHEE, which was approved by the ERE Board Decision No. 12 of 6 February 2015, restricted competition and participation in the electricity trade market of the undertakings that are licensed by the Energy Regulatory Entity (ERE) and that it should be declared as an agreement being against the Albanian Government policy.

Upon the Authority request the Energy Regulatory Entity submitted the electricity purchase agreement between KESH and OSHEE applicable to electricity surplus, including any surplus generated in situations of large flows, in order to cover losses in the distribution system for 2015, and ERE Board of Commissioners Decision No. 12 of 6 February 2015 approving that agreement. In addition, OSHEE sh.a. and KESH sh.a. submitted the completed Notice of Agreement Form to the Competition Authority. Under the agreement, OSHEE would purchase electricity from KESH sh.a. to cover losses. KESH sh.a. is a state-owned enterprise, which will sell electricity in situations of high flows at HUPX exchange prices. The parties argued that the transactions would benefit public interest and efficiency.

The agreement could result in potential competition restriction for the rest of electricity suppliers, which are traders, independent electricity producers and small electricity



producers that intend to sell electricity to OSHEE to cover losses in its distribution network. The following were considered as reasons for exemption from prohibition:

- 1) The agreement contributes to the national security and the issues related to social problems arising from dam lake discharges and the relevant floods affecting the respective areas.
- 2) The agreement contributes to maximum exploitation and the optimisation of electricity production and selling by KESH sh.a., which is the company responsible for managing the Drin River Cascade and its electricity hydropower plants in situations of high water flows or surplus of electricity, in emergencies, and when it is not possible to export electricity due to limited interconnection capacities.
- 3) The agreement ensures reduced costs for tariffed consumers, because it ensures the partial covering of losses in the electricity distribution network with electricity produced by KESH sh.a. in situations of surplus and high water flow, satisfying OSHEE demand at a price lower than the imported electricity price, based on the available historical evidence.
- 4) It results in essential benefits for tariffed consumers, given that the cost of purchasing electricity to cover distribution network losses are included in the retail prices for tariffed consumers.
- 5) Thus, the agreement benefits the public interest and the market efficiency in situations of high water flows.

Based on the above, Competition Commission Decision no. 367 of 4 June 2015 decided to exempt from prohibition the electricity purchase agreement between KESH and OSHEE applicable to electricity surplus, including any surplus generated in situations of large water flows, in order to cover losses in the distribution system for 2015.

## **II.5. Abuse of a Dominant Position**

“Dominant position” means the economic power held by one or more undertakings in a market giving them the ability to act, in terms of supply or demand, independently from the rest of market players, such as competitors, customers or consumers.

The dominant position held by one or more undertakings is assessed by taking into account: (a) the relevant market share(s) of the undertaking(s) under review and other competitors; (b) the entry barriers in the relevant market; (c) the potential competition; (d) the economic power of the undertakings; (e) the economic dependency of suppliers and buyers; (f) countervailing buyer power; (g) development of the distribution network of the undertakings, and possibilities of product source use; (h) economic relations with other undertakings; (i) other characteristics of the relevant market, such as product homogeneity, market transparency, cost and undertaking size uniformity, stability of supply and free production capacities.

The Competition Protection Law prohibits abuse of market power. The following can be considered as abuse of a dominant position: (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; (b) limiting production, markets or technical development; (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive

disadvantage; (d) making the conclusion of contracts subject to acceptance of supplementary obligations by the other parties; (e) under-cutting of prices or other conditions which have as their object or effect the prevention of entry or the expulsion from the market for specific competitors or one of their products; (f) refusal to deal or refusal to license; (g) refusal to allow another undertaking access to its own networks or other infrastructure facilities of undertakings with a dominant position, against adequate remuneration, provided that without such concurrent use the other undertaking is unable to operate as a competitor of the undertaking with a dominant position.

### II.5.1 Investigation into the Fuel Importing and Wholesale Selling Market

One of the investigations from 2014 was the 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, Porto Romano Oil SH.A, Bolv Oil SH.A, Genklaudis SH.A, Everest Oil SH.A, Taci Oil International SH.A. and Armo SH.A., in order to see whether there were any potential competition restrictions in the relevant market.

The in-depth investigation report showed during the period under investigation no evidence that would prove the existence of a prohibited agreement or abuse of collective dominance among the undertakings under investigation was found.

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.

Therefore, the Competition Commission took Decision No. 345 of 12 February 2015 whereby it concluded the in-depth investigation into the fuel importing and wholesale selling market and recommended the following to the Albanian Government, the Ministry of Energy and Economy and the Ministry of Economic Development, Trade and Entrepreneurship:

- 1) Revise Law no. 8450 of 24 February 1996 “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; (b) maintain their product identity and compete through their respective logos in the retail segment, which would encourage effective competition in the market;
- 2) Establish 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, for any changes to wholesale prices;

- 3) 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;
- 4) Establish instruments to control frequent entries and exits within one financial year of undertakings operating in the fuel wholesale market, which generates unfair competition.

#### II.5.2 Investigation into the market of electricity purchase for purposes of covering losses in the distribution network by OSHEE

At the end of the preliminary inquiry into the purchase of electricity for purposes of covering losses in the distribution network, which had been started in 2014, in February 2015 the working group submitted the inquiry report the findings of which showed that there was no direct or indirect evidence of horizontal agreements among the undertakings operating in the electricity purchase market. Prior to taking its decision, the Competition Commission held hearings with the interested parties. The Energy Community Secretariat, too, had received a complaint with concerns in relation to the electricity purchase market for distribution purposes, and referred that concern to the Authority, accompanying it with consultancy and expertise.

At the end of the procedure, the Competition Commission took Decision No. 355 of 20 March 2015 On initiating an in-depth investigation into the market of electricity import for purposes of covering losses in the distribution network, in order to determine whether there were any horizontal agreements.

A hearing was organised during the procedure, in the form of a conference call between the Energy Community Secretariat, the Italian expert and the Authority working group. At that stage, information was made available on the issues and concerns in the electricity market in Albania, and the Competition Commission recommendations. Then experience was exchanged, and there was a discussion on the aspects of the in-depth investigation procedure. The in-depth investigation focused on the possibility of horizontal agreements among the undertakings participating in procurement procedures, and the possibility of a vertical agreements between the participating undertakings and OSHEE. During the in-depth investigation the procurement time schedules were calculated, and the respective correspondence was checked, but no signs of vertical or horizontal communication were found.

At the end of the investigation, the expert send his suggestions and opinion on the case, which were reflected in the in-depth investigation report. The in-depth investigation conclusions mainly consisted of market issues which were related to the market model and the regulatory bylaw basis on purchasing electricity.

Competition Commission Decision no. 388 of 14 December 2015 decided to conclude the in-depth investigation into the market of electricity purchase for purposes of covering losses in the distribution network, and to give the following recommendations to the Energy Regulatory Entity and the Electricity Distribution Operator:

Recommendation for the Energy Regulatory Entity and the Ministry of industry and Energy and the Electricity Distribution Operator (OSHEE):

(a) in the context of completing the secondary legal framework in accordance with the provisions of Law No. 43/2015 “On the Electricity Sector”, and the Market Model and the special rules on electricity purchase by OSHEE to cover losses, the repeated Competition Authority recommendations on the competition and transparency principles and implementation of auction rules in line with the best practices made available by the Energy Community Secretariat and member states should be taken into account;

(b) related undertakings belonging to the same group, or having related shareholders, should not be allowed to submit separate bids in the procurement of electricity.

In the in-depth investigation proceedings, one operator under the investigation filed a complaint/application for exemption from the in-depth investigation.

After reviewing the application, the Competition Commission took Decision no. 363 of 14 May 2015 refusing the GEN-I Tirana shpk application for revocation of Competition Commission Decision No. 355 of 20 March 2015 On initiating an in-depth investigation into the market of electricity import for purposes of covering losses in the distribution network.

### II.5.3 Inquiry into the Liquefied Petroleum Gas Importing and Wholesale and Retail Selling Market

In the past few years, the Competition Authority has constantly monitored the liquefied petroleum gas import and wholesale selling market because that market showed high indicators of concentration in the entire period for which there were available data. 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.

Based on the monitoring carried out by the Secretariat, in order to assess the behaviour of the undertaking with a dominant market position and its effects on other competitors, the Competition Commission took Decision No. 360 of 4 May 2015 to open a preliminary inquiry into that market.

For the first time the Competition Authority Secretariat carried out in-depth economic analyses to determine whether there was an anticompetitive behaviour of an undertaking with a dominant position. The assessment was made pursuant to the Dominant Position Guideline and the best OECD methodologies on abuse of a dominant position. Three tests were applied during the analysis to assess the margin squeeze; (a) *An efficient competitor test*, in which the selling prices of the undertaking integrated at the next trading level are compared with the selling prices of the closest competitor at the same level; (b) *analysis of the cost and selling prices* of the undertaking holding a dominant position at other trading levels; and (c) the *analysis of profitability* of the undertaking holding a dominant position and the vertically integrated undertaking.

The assessment then focused on the elements of anticompetitive behaviour with high prices, through an analysis of the financial indicators, and on determining whether there were any elements of predatory prices. The analysis of predatory prices consisted of a comparison of variable costs and total costs with the product selling prices, which showed that in short periods of time the undertaking holding a dominant position had

sold at prices under the total cost, a behaviour which could drive other competitors out of the market where that undertaking operates.

During the preliminary inquiry dawn raid inspections were carried out at the undertakings under investigation, which did not find any direct or indirect evidence of agreements or concerted behaviours that would be against the Competition Protection Law. In addition, the inquiry team focused on making an assessment of abuse of a dominant position in relation to Articles 8 and 9 of the Law and the best practices. The analysis did not find any direct or indirect evidence of abuse of market power through market squeeze through prices. The preliminary inquiry did not find any practices that could be considered as a refusal to provide goods or services by the undertaking in a dominant position, either. The analysis concluded that in the LPG import and wholesale market there is almost the same dynamic between purchase and selling prices. Selling prices in the retail market could not be determined because of a widely dispersed network of distribution and points of sale. The undertaking holding a dominant position had the same trend of selling and purchase prices. The selling price in that undertaking fell by more than 30% in January-April 2015.

At the end, after reviewing the entire documentation collected during the inquiry into the liquefied petroleum gas import and wholesale and retail selling market, the inquiry found no violations within the meaning of the Law, and the Competition Commission took Decision No. 390 of 21 December 2015 whereby it concluded the preliminary inquiry into that market.

In the context of ensuring better functioning of the market under inquiry, based on the inquiry findings the Competition Commission decided to recommend that the Ministry of Energy and Industry, should, in cooperation with the Ministry of Finance:

- (a) take the necessary actions for the good functioning of the LPG import and wholesale and retail selling market in accordance with Articles 14, 15 and 16 of Law No. 8450 of 24 February 1999 "On processing, transportation and trading of oil, gas and their by-products", as amended;
- (b) prohibit LPG wholesalers from retail selling to end users who are not included in Article 14 of Law No. 8450;
- (c) prohibit LPG retailers from selling their product to other entities intending to resell that product under the provisions of Article 16 of Law No. 8450. LPG retailers should only sell their product to end consumers.

#### II.5.4 Inquiry into the mobile telephony retail market

In November 2014, based on a complaint from Plus Communication SHA, the Competition Commission took Decision No. 336 of 11 November 2013 whereby it decided to initiate a preliminary inquiry into the retail mobile telephony market against Vodafone Albania SHA, in order to determine whether there were any indications of competition restriction. The preliminary inquiry showed that Vodafone Albania sh.a. held an individual dominant position in the market under inquiry, and there was a risk of causing serious and irreparable damage to competition in that market.

Therefore, Competition Commission Decision no. 356 of 31 March 2015 took provisional measures against Vodafone Albania SHA in the retail mobile telephony market, in order to restore free and effective competition in the market. More



specifically: Vodafone Albania Sh.a. was prohibited from applying retail tariffs having a discriminatory effect on other national mobile telephony operators. (a) The amount of Vodafone Albania on-net minutes that are included in an offer/fixed payment plan must not be bigger than the amount of off-net minutes towards other national mobile operators; (b) The prohibition applied to all standard tariff plans, offers, baskets, options and discounts offered to subscribers.

Vodafone submitted its views in relation to the provisional measures to the Competition Commission, and stated its opinion on the proactive position in order to address all the Competition Authority concerns. According to Vodafone, based on the conclusions laid down in Decision No. 303 of 16 January 2014, it was constantly and proactively taking initiatives in the mobile telephony market in order to address the Competition Authority concerns. As a result, Vodafone Albania considered that their collaborative behaviour, in addition to their support and guidance for the regulators, essentially contributed to the achievement of the common goal of ensuring efficient and fair competition that benefits end users with no need for repeated interventions and investigations.

After reviewing the position of Vodafone Albania sh.a. in relation to Decision No. 356 of 31 March 2015 and the Report on the preliminary inquiry into the retail mobile telephony market, the Competition Decision took Decision No. 386 of 4 June 2015 whereby it ordered Vodafone Albania to comply with Competition Decision No. 356 of 31 March 2015 on the compulsory measures for equalizing on-net and off-net tariffs and packages, and stop applying retail tariffs that discriminate against other national operators in all its marketed offers.

The Competition Authority Secretariat, pursuant to the Competition Commission Decision, monitored the market and found that Vodafone Albania had complied with the Competition Commission Decision.

Vodafone Albania took the Competition Authority to court with an application for siding Decision No. 356 of 31 March 2015 On taking provisional measures, and siding Point I of Decision No. 366 of 4 June 2015 On ordering Vodafone Albania to apply the compulsory measures for reaching equal levels of on-net calls and off-net calls. It was Vodafone itself that, after AKEP took a decision on equalizing on-net and off-net call tariffs, requested that the case was stopped, and the court, therefore, dismissed the case.

## **II.6. Control of Concentrations**

Concentration of undertakings is related to those cases where there is a sustainable change in control resulting from (a) a merger of two or more undertakings or parts thereof that are independent from each other; (b) acquisition by one or more natural persons who simultaneously control at least one or more other undertakings, of (direct or indirect) control of one or more undertaking or parts thereof through the purchase of shares or assets, a contract or any other lawful means; (c) direct or indirect control of one or more undertaking or parts thereof; and (d) the establishment of a joint venture that does not include in its objects, or does not have as a consequence, the coordination of competitive activities between two or more independent undertakings.

A concentration falls in the scope of Competition Authority review—i.e. it is notified to the Authority for authorisation—only if the conditions laid down in Article 12 (1) of the

Law are satisfied. Concentration are notified for authorisation to the Authority if, in the previous financial year preceding the concentration:

(a) the combined worldwide turnover of all participating undertakings is more than ALL 7 billion and the domestic turnover of at least one participating undertaking is more than ALL 200 million; (b) the combined domestic turnover of all participating undertakings is more than ALL 400 million and the domestic turnover of at least one participating undertaking is more than ALL 200 million.

Any concentration meeting the abovementioned conditions (article 12 (1) of the Law) has to be notified within 30 days from conclusion of the merger or control acquisition agreement or the joint venture agreement.

The number of concentration cases notified to the Competition Authority increased in 2015. The change was the result of the dynamics in the domestic market and the transactions among foreign companies that make revenues in the domestic market, too, and are therefore classified as cases to be notified to the Competition Authority.

In addition, in the context of market oversight, the Competition Authority reviewed the entire National Registration Centre share transaction database and started *ex officio* to review all those cases that met the legal requirements for authorisation by the Competition Commission that had not been notified by the parties to the transactions.

#### II.6.1 Authorized concentrations

In 2015, 11 concentration cases were reviewed in relation to takeovers, mergers or establishment of a new undertaking. The concentrations were reviewed from the perspective of creating or strengthening a dominant position of the concentrated undertakings, and in terms of any positive impact on the market from the perspective of consumers and increased market efficiency, in full compliance with the legislation in force and the EU Directives.

##### *II.6.1.1 Merger of two or more undertakings or parts thereof that are independent from each other*

Among the concentrations approved by the Competition Commission there was one case that was a merger of two undertakings.

Concentration between Credins Bank SH.A and Credins Leasing SH.A: Competition Commission Decision no. 378 of 2 November 2015 authorised the concentration through merger by acquisition of Credins Leasing SH.A. by Banka Credins SH.A. The relevant market in that case was the financial lease market. The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position.

##### *II.6.1.2 Acquisition of (direct or indirect) control of one or more undertakings or parts thereof*

In its Decision No. 354 of 19 March 2015 the Competition Commission authorised the concentration through acquisition of partial control of Archer Daniles Midland by Olam International Limited. The relevant market in that case was the cocoa grain procurement

and trading market and the production and selling of convenient cocoa products such as cocoa drinks, cocoa butter and cocoa power. 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. 357 of 2 April 2015 the Competition Commission authorised the concentration through acquisition of control of 76% of the shareholder capital of the Sicred Pension Fund Management Company, owned by Sicred sh.a., by Credins Bank sh.a.. The relevant market in that case was the voluntary pension fund market. The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position.

Competition Commission Decision no. 365 of 4 June 2015 authorised the concentration through acquisition of control by Tranzit sh.p.k. of 100% of the share capital of Credit Agricole Albania Bank SH.A., owned by IUB Holding. The relevant market in that transaction was the market of providing retail and corporate banking services. The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position.

Competition Commission Decision no. 370 of 21 July 2015 authorised the concentration through acquisition of single control of Alcatel – Lucent by Nokia Corporation. The relevant market in the transaction was that of equipment and electronic and telecommunication parts and related professional service solutions. The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position.

Competition Commission Decision no. 372 of 4 September 2015 authorised concentration through acquisition of control by Raiffeisen Leasing SH.A. of the finance lease portfolio of Tirana Leasing SH.A. The relevant market in that case was the finance lease market. The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position.

Competition Commission Decision no. 375 of 8 October 2015 authorised the concentration through acquisition of control of Cogemat S.p.A. by SNAI S.p.A. The relevant market in that transaction was the market of hydropower plant construction, renovation and restoration. The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position.

Competition Commission Decision no. 384 of 3 December 2015 authorised the concentration through acquisition of control of Air Liquide Hungary Ipari Gaztermelo Kft by Messer Hungarogaz Kft. The relevant market in that case was the industrial gas market. The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position.

Competition Commission Decision no. 393 of 29 December 2015 authorised the concentration through acquisition of joint control of Costa Edutainment s.p.a. by companies Venice European Investment S.p.a and Priora S.r.l. The relevant market in that transaction was the market of hydropower plant construction, renovation and restoration. The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position.

Competition Commission Decision no. 394 of 29 December 2015 authorised the concentration through acquisition of control of Kastrati SH.A. by Auto Star Albania



SH.A. The relevant market in that case was the wholesale and retail trade of vehicles (cars, passenger vehicles, trucks) and automotive spare parts. The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position.

#### *II.6.1.3 Establishment of a joint venture*

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 2015. Competition Commission Decision no. 364 of 27 May 2015 authorised the concentration through establishment of an independent joint venture by undertakings Magyar Telekom Nyrtó and MET Holding AG. The relevant market in that case was the market of retail and wholesale distribution (supply) of natural gas and the market of retail and wholesale selling and generation of electricity. The transaction did not indicate any signs of competition restriction in the market or a part thereof due to established or strengthened dominant position.

#### *II.6.1.4 Reviewed Cases not Considered as Subject to Authorization by the Competition Commission*

Four transaction cases were submitted to the Competition Authority in 2015. They were not considered to be subject to authorisation 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.

##### *ABCCom Sh.p.k - New CableTV Sh.p.k*

The notified transaction was the acquisition of ownership share, and, therefore, of control, by ABCCom Sh.p.k of New Durrës CableTV Sh.p.k. Since the newly established company served as a vehicle to transfer ownership shares, the transaction of transferring assets of the members of the new company to ABCCom Sh.p.k did not create the conditions for a sustainable change in control of the undertaking in question, did not result in a concentration and, therefore, under Article 56 of the Law, was not subject to authorisation by the Competition Commission.

##### *AMC SH.A, - Cosmote Mobile Telecommunications S.A - Cosmoholding Albania S.a,*

The Competition Authority was informed by AKEP of the merger of the main shareholders of AMC SH.A. Thus, the merger between Cosmote Mobile Telecommunications S.A (“Cosmote”), which held 14.757% of the shares in AMC, and Cosmoholding Albania S.a (“CHA”), which held 85% of the shares in AMC. The operation was intended to be in the form of takeover between the shareholders of AMC SH.A—the Greek company Cosmote and CHA—through which Cosmote S.A was to acquire 100% of Cosmoholding Albania S.A. Both companies involved in the takeover were member companies of the OTE S.A Group and were directly and indirectly controlled by the parent of that Group. The potential merger of two companies that are members of the same group in the form of a takeover did not result in a qualitative change in control of AMC SH.A which continued to be controlled by OTE S.A and indirectly by Deutsche Telekom A.G, and, therefore, it was not classified as concentration under Article 10 (1) (b) of the Law.

### *Comverse INC - Amdoc Limited*

The proposed transaction consisted of the takeover of the assets and support systems of Comverse Inc. by Amdocs Limited. As a result, the latter acquired direct single control of the business assets (ferryboat) of Comverse Inc. A review of the financial statements of the involved parties showed that the parties to the transaction, while meeting the condition of Article 12.1 (a) in relation to the international turnover, did not meet the condition of Article 12.1 (b) in relation to the domestic turnover in the previous accounting year, and therefore the concentration was not considered as being subject to authorisation by Competition Commission.

### *Food Trade Sh.p.k - Conad Al Sh.p.k*

The Competition Authority was notified of the change in the structure of the members of Food Trade sh.p.k. and Conad Al sh.p.k., whose common member is Conad Adriatico Societa Cooperativa. The transactions, which took the form of internal restructuring of undertakings, did not comprise a concentration, and, therefore, pursuant to Article 56 of the Law, it was not subject to authorisation by the Competition Commission.

## **II.7 Review of Exclusive Rights**

In its activity in 2014 and 2015, the Competition Authority focused on a number of exclusive and special rights granted in Albania. The assessment of the 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.

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 the Law because the responsible institutions had not solicited the Authority assessment of the granting of exclusive rights.

In relation to granted concession agreements, the Competition Commission, by its Decision No. 359 of 4 May 2015 On recommendations in relation to the concession agreement on fuel marking and monitoring services, stated its position on the agreement that had been concluded between the Ministry of Finance of the Republic of Albania and the temporary consortium of undertakings Global Fluids International S.A. and Petroleum Consulting Partners A.G. Pursuant to Law No. 9121 of 28 July 2003 “On Competition Protection”, as amended, a decision was made to recommend that the contracting authority demanded correct implementation of the concession agreement on imported and domestically produced fuel and crude oil marking and monitoring, and that it made an *ex post* full analysis of the results of the first phase of the monitoring completed at the end of 2014 in an appropriate period of time.

The phenomenon of information on exclusive and special rights given on the media was also present in 2015. For that reason, based on the assessment of the concession on the of hydrocarbon loading and unloading pier in Porto Romano, the Competition Commission took Decision No. 377 of 22 October 2015 On the need for preliminary decisions to be taken by the Competition Authority in cases where exclusive or special rights are granted under concession agreements. The Decision required that the

Council of Ministers and the Concession Treatment Agency observe Article 2 (1) (c) and Article 69 of Law No. 9121 “On Competition Protection”, as amended, and solicit a legal evaluation by the Competition Authority for every draft regulation that could result in competition restriction in the relevant markets.

Competition Commission Decision no. 383 of 11 November 2015 On recommendations in relation to the BOT (build, operate and transfer) concession agreement on a MBM-type port in Porto Romano, Durrës, concluded between the Ministry of Transport and Infrastructure and Concessionaire Porti MBM (Multi Buoy Mooring) recommended that the Ministry of Transport and Infrastructure and the Ministry of Finance approve the fee setting methodology for the port services provided by Concessionaire Porti MBM (Multi Buoy Mooring, prior to the implementation of the concession project; specify the general fee setting methodology for every concession under an unsolicited proposal procedure, within the most optimal period; in concessions under an unsolicited proposal procedure, approve initially the relevant specific fee setting methodology, and only after this has been done the relevant concession approving law should be adopted.

An additional recommendation was given in relation to the Rules of Operation for the MBM Port, which was suggested to clearly specify: the method of operation for ships on a first-come first-served basis; the obligation for Concessionaire Porti MBM to observe the equal rights of companies performing their services through this port, by setting equal terms for same transactions; and the obligation for the Concessionaire to provide its services to all companies at equal technical and financial terms. Another recommendation referred to the fee methodology for the port services provided by Concessionaire Porti MBM (Multi Buoy Mooring), in the setting of which consideration should be given to the fact that the fees should be cost-oriented, public and transparent.

There were new developments in December 2015. The Ministry of Transport and Infrastructure submitted to the Competition Authority three draft concession agreements, with a request for the Competition Authority opinion on a potential violation of competition principles. In those cases the Institution performed an *ex ante* assessment of the draft concession agreements and gave the relevant recommendations.

The assessment of special and exclusive rights will continue in 2016, too, on a case-by-case basis, and respective opinions and recommendations will be given.

## **II.8. Market Monitoring**

### **II.8.1 Monitoring of fuel import and trade market**

Competition Commission Decision No. 345 of 12 February 2015 On closing the in-depth investigation into the market of production, importing and wholesale selling of fuels against undertakings Kastrati SH.A, Kasp petrol SH.A, Europetrol Durrës Albania SH.A, Porto Romano Oil SH.A, Bolv Oil SH.A, Genklaudis SH.A, Everest Oil SH.A, Taci Oil SH.A. and Armo SH.A. and on giving recommendations on the good functioning of this market instructed the Authority Secretariat to monitor the behaviour of the undertakings in the fuel market after the investigation period. The monitored undertakings included the largest fuel importers and their integrated undertakings at retail level.

The monitoring report showed that the diesel import market was very concentrated, while the petrol import market was in the upper margin of an averagely concentrated market. The market showed clear features of an oligopolistic market with a limited number of undertakings, homogenous products and cost transparency, where there are three major undertakings, each of which, however, apply their policies to own the market. An undertaking competes for expansion in both the domestic and the international market (Kastrati SHA), another one constantly changes its supply sources for profit maximisation purposes (Genklaudis SHA) and the other one (Europetrol SHA) tries to maximise its profit by purchasing at source (foreign exporters) and thus avoiding the costs incurred if it purchased from domestic operators.

An assessment of the selling prices showed that the wholesale undertakings followed the fuel purchase (import) prices and applied low margin prices, while the integrated retail undertakings did not follow the purchase prices and applied high margins, mainly after September 2015. An analysis of the average monthly fuel wholesale and retail buying and selling prices and the average annual margins for the period January-December 2014 and January-September 2015 showed that the implementation of Instruction No. 6 of 30 January 2015 “On VAT in the Republic of Albania” had not had an impact on the fuel market. The market showed frozen retail price dynamics, the limited companies followed the same pricing policy as the joint-stock companies in 2015, which meant that the Instruction had not removed the influence that joint-stock companies have on retail pricing through their integrated undertakings. The analysis of the high prices applied by retail undertakings indicates the need for evaluating their financial indicators, which should be carried out after their financial statements are prepared and issued. For these reasons and in order to use more accurate comparatives, a decision was made for the monitoring to continue in 2016, too.

### II.8.2 Monitoring of the fiscal cash register market

The Competition Authority monitored the fiscal cash register service market in January 2014-September 2015 in order to see whether there were any elements of competition restriction.

In order to assess the relevant market, information was requested in writing from the undertakings operating in that market (five undertakings), the Directorate General of Taxation (DGT) and the Directorate General of Customs (DGC). The fiscal cash register selling price data and the fiscal cash register service fee data collected from the undertakings and the data made available by the DGC showed that the behaviour of the undertakings in the relevant markets did not indicate any signs of competition restriction. The undertakings applied differentiated prices, which were mainly based on the costs and quality of the products they sold.

The assessment of the regulations governing the market showed that an undertaking wishing to enter the market and get the relevant authorisation is required to have an annual turnover in the previous three years of at least EUR 10 million or its equivalent, and deposit a bank security of USD 500,000 for the Ministry of Finance, which are considered as significant entry barriers and impede entry for new undertakings in the market.

After reviewing the report the Competition Commission found that there were no violations of Law no. 9121 of 23 July 2003 “On Competition Protection” in this market, and, with the aim to increase the number of new entrants in the market it recommended

that the Ministry of Finance should revise the economic barriers in terms of annual turnover of EUR 10 million in the past three years and bank guarantee of USD 500,000.

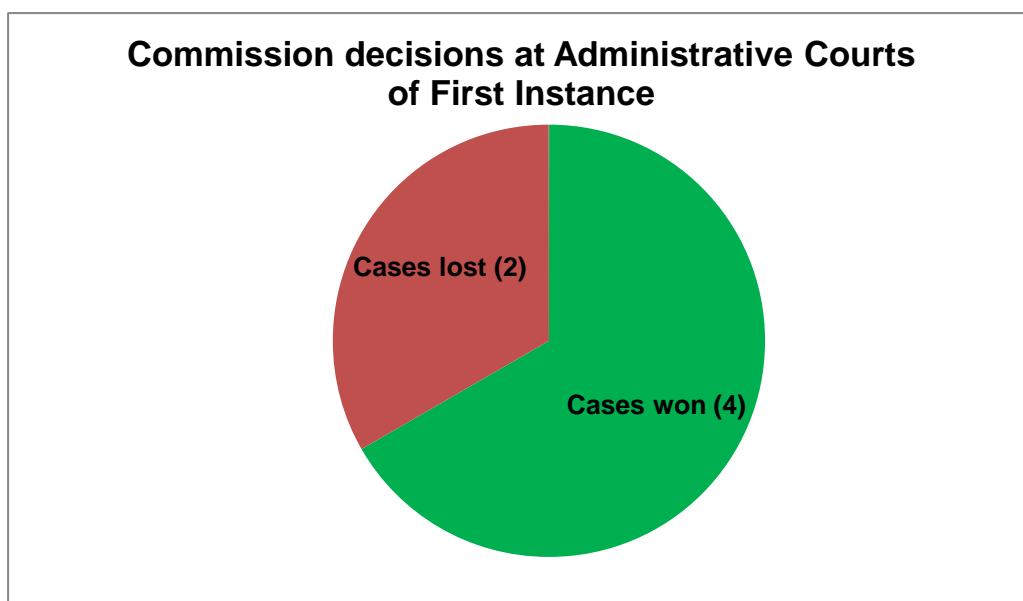
## II.9 Judicial Review of Competition Authority Cases

The Competition Authority has paid special attention to tending to court 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.

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.

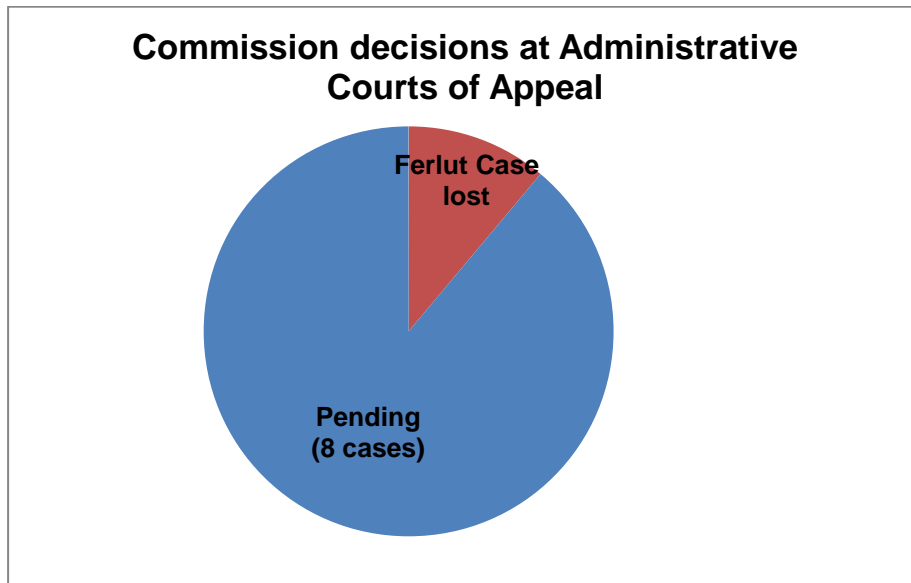
Therefore, any final decisions of the Competition Commission, which are administrative acts, and are, under Law No. 49/2012, subject to judicial review (appeal) at all instances of the administrative judicial division. To that end, the Competition Authority pays special attention to pursuing any appeals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

With reference to the detailed statistics shown in the annexes to this Report, in the Administrative Court of First Instance a total of six Competition Commission decisions were handled in 2015, of which two cases were decided against the plaintiff, two other cases were dismissed, thus affirming the Competition Authority decisions, and two cases decided for the plaintiff. The following graph shows the group of cases heard by the first instance administrative court in 2015.

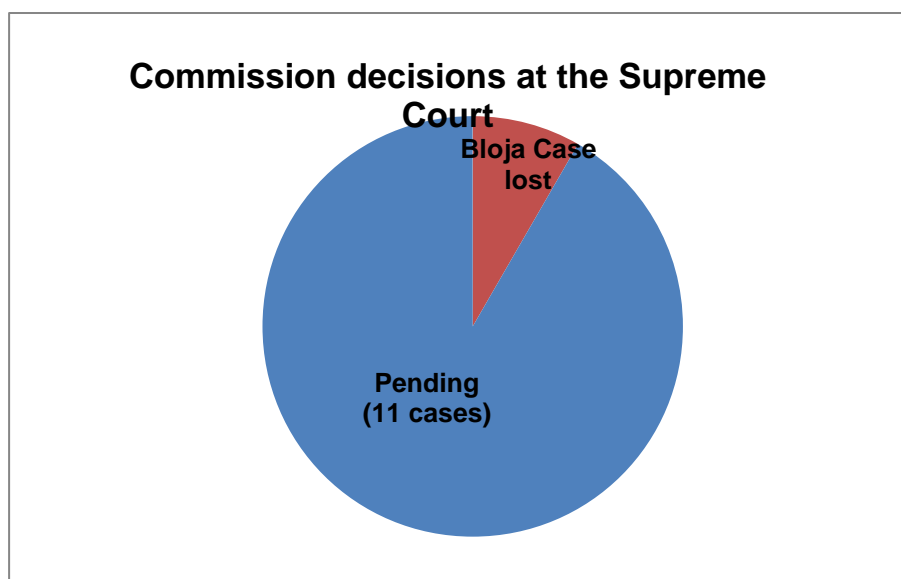


In the Administrative Court of Appeal out of a total of nine cases that were heard in 2015 only one case was finished, with the rest (eight cases) left to be reviewed in 2016.

In the Ferlut Case, which was heard in 2015, the Administrative Court of Appeal in Tirana decided for the Appellant against the Competition Commission decision.



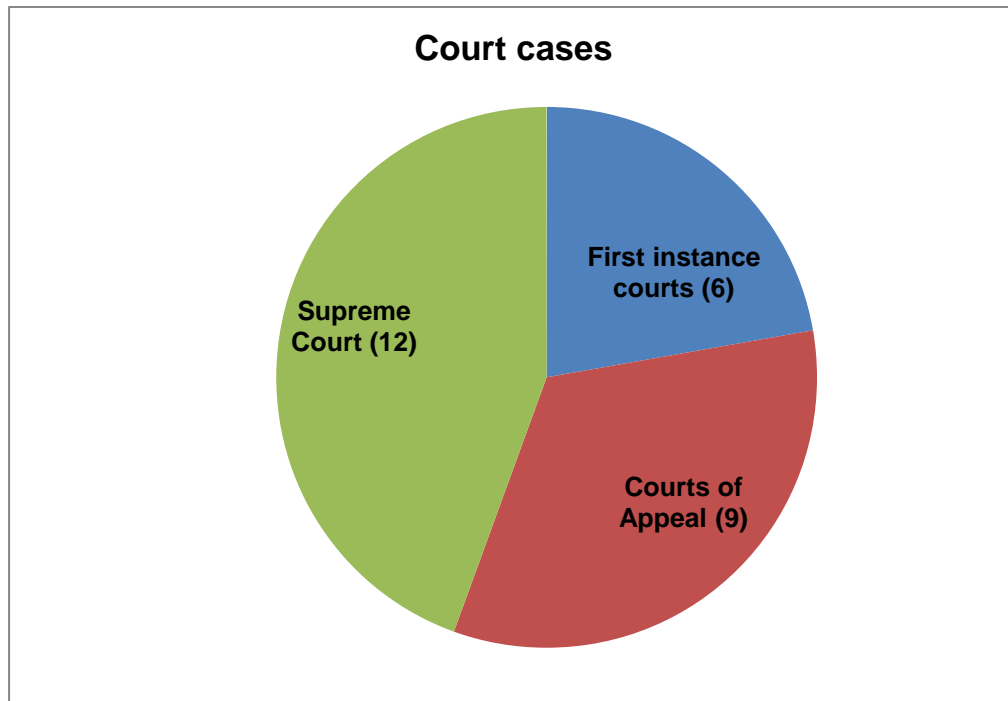
In addition, 12 cases were submitted for review to the Administrative Chamber of the Supreme Court in 2015, of which only the case relating to the wheat import and flour production market was heard, in which the recourse was dismissed, with the 11 other cases pending for review in 2016.



The defence that the Competition Authority makes of its decisions is considered to be a very important aspect of judicial review. This activity focuses on the legal argumentation of the determined violations and the reasoning with evidence and facts, in addition to other clarification elements to make sure that the judicial review is as objective as 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 27 cases were tended to in the judiciary system in 2015, at the three instances of the system, with 16 cases still pending at the end of 2015 (three in the first instance, four in the court of appeal and nine in the Supreme Court) and 11 cases being completed in 2015, with the following provisional results: In first instance courts, 1 in Tirana District Court and 5 in Administrative Court, of which two were lost and four were won.



At the Court of Appeal, one at the Tirana Administrative Court and eight at the Administrative Court of Appeal, of which seven are pending and one is lost.

Twelve cases at the Supreme Court, of which one is dismissed and 11 are pending.

### II.9.1 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 quashes the Competition Commission decision on prohibited agreements, against undertaking Bloja SHA**

The issue in this case was the delay by several years of the transcription of the court judgment, and a long period of six years from the Competition Commission decision to the final judgment of the Supreme Court.

Competition Commission Decision no. 125 of 8 October 2009 On imposing a fine against Atlas sh.a. and Bloja sh.a. due to competition restriction in the wheat import market and bread flour production and selling market, pursuant to Articles 4 (1) (a) and (c) and 74 (1) (a) of Law No. 9121 of 28 July 2003 "On Competition Protection", imposed a fine against the undertakings that were a party to a prohibited agreement.

The Decision was appealed by the parties, and, in its review of the case, the Tirana District Court decided for the plaintiff and set aside the fine imposed by the Competition Commission. The Court took almost two years to transcribe the judgment that set aside the Competition Commission Decision: the judgment bears the number 3198 and was taken on 19 April 2010, but it was transcribed in April 2012 when the Competition Authority and the State's Advocate filed an appeal with Tirana Court of Appeal.

The Court of Appeal reviewed the case in two months and took Judgment No. 1709 of 28 June 2012 which reaffirmed the Tirana Court judgment.

About three years later, the Supreme Court reviewed the case in chambers and took Judgment No. 00-2015-400 of 19 February 2015 whereby it dismissed the recourse filed by the Competition Authority.

### **Competition Authority arguments**

The inspection carried by the Competition Authority Secretariat at the premises of Atlas sh.a. on 22 January 2009 found in its computers files that contained details on the transactions between Bloja sh.a. and Atlas sh.a. The information was printed out from the Finance Office computer and was included in the inspection record.

The inspection at Bloja sh.a. found in the Finance Office computer a file titled *Bloja Atlasi 2008*, which contained a table titled *Summary of Customs Clearing, 2008*, which showed details on imports in 2008, such as quantity, price, amount, customs duties, VAT, customs payments. The information in that table corresponds to the information found in the Atlas sh.a. Finance Office computer. All the evidence collected during the inspections at Bloja sh.a. and Atlas sh.a. was also corroborated by the information received from the Directorate General of Customs.

According to the Commission Decision, during the agreement period Atlas sh.a. and Bloja sh.a. did not behave in a competitive way in the flour production and selling market because: (i) based on the fiscal invoices issued for the period 1-27 February 2008, both undertakings had applied the same selling price for flour; (ii) both undertakings had followed the same flour selling price trend in March-August 2008; (iii) on 25 and 27 February 2008, both undertakings had increase the flour selling prices by the same index of 1.26, as shown in the fiscal invoices that the undertakings themselves submitted.

### **Interpretation by the Court**

At the end of the judicial review, Tirana District Court Judgment No. 3198 of 19 April 2010 decided to accept the lawsuit application on the ground that no informal agreement between the companies had been proven. According to the Court, while "it is true that both companies—Bloja sh.a. and atlas sh.a.—are companies with a long experience in selling flour and importing wheat, and that they account for a large share in the market of those products, just as it is as true that the applied prices were approximate and, in some cases, similar in a small number of invoices, this cannot be considered a prohibited agreement."

*The Court stated that "the Defendant's claim that the found computer files contained accurate and detailed information on common prices, common customs clearing procedures, common VAT at import payment procedures, etc., was not proven. There is*



*nothing in the documents received from the Directorate General of Customs and submitted in the trial that would prove that both companies have cleared the same quantity of wheat through customs jointly or that one of the companies has paid the customs duties, etc.*

*The Court notes that the lending of wheat to each-other to ensure constant supply in the market is not, under Law No. 9121 of 28 July 2003 "On Competition Protection", a prohibited agreement. None of the provisions of the aforementioned Law refers to the exchange of products by companies with similar or identical businesses in a market as a prohibited agreement.*

*The Court justifies the immediate increase in the prices with the developments in the international market, and argues that the "increase in the price of grains in the international market would have an immediate impact on the domestic market, because the Plaintiff would need to purchase again in the international market now at higher prices than before, since it would need to satisfy its contractual obligations towards foreign suppliers"?!*

This is a typical case where the Court interpretation does not take into consideration the evidence and facts listed in the Competition Commission decisions, which have also been discussed at international events with relevant experts and have been considered by them as sufficient proof from the Competition Law perspective.

## **Case 2: The court quashes the Competition Commission decision on prohibited agreements, against undertaking FERLUT SHA**

Competition Commission Decision no. 290 of 23 July 2013 "On imposing fines to undertakings Ferlut SHA, Tirana Lines Shpk, Alba Trans Shpk, Tirana Urban Trans SHA and Parku i Transportit Urban të Udhëtarëve shpk on grounds of restricting the competition in the monthly generic and student ticket market in relation to the public transportation in the city of Tirana", pursuant to Articles 4 (1) (b) and (c), 45 (1) and 74 (1) (a) of Law No. 9121 of 28 July 2003 "On Competition Protection", imposed a fine against the undertakings that were a party to a prohibited agreement.

FERLUT SHA lodged an appeal against the aforementioned Decision with the Administrative Court of First Instance in Tirana, which, after reviewing the case, decided for the Plaintiff. The Competition Authority appealed the judgment at the Administrative Court of Appeal in Tirana, which decided to reaffirm the judgment issued by the Administrative Court of First Instance in Tirana. The Defendant (Competition Authority) took recourse to the Supreme Court against the Appeal's judgment. The adjudication date is yet to be set.

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 suits have always consisted of arguments on the merits of competition violations determined by the Competition Commission, but those 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.

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.10. Legislation Approximation in the area of Competition**

The obligation and commitment to approximate the Albanian legislation with the European Competition Law are stipulated in Articles 70, 71 and 72 of the Stabilisation and Association Agreement. The Competition Authority considers as crucial not only the legislation approximation process but also the degree of implementation of the relevant rules and provisions. In that perspective, the Competition Institution has paid attention to perfecting its regulatory tools through secondary legislation enhancement by completion and updating.

In 2015, the Competition Authority continued the completion of the secondary legislation, mainly in the form of guidelines, which is a product that reflects the experience of the institution.

Guideline on the assessment of vertical restrictions, which was adopted by Decision No. 352 of 3 March 2015, lays down the principles of assessing vertical agreements under Article 4 of the Law and the Regulation on block exemption of the categories of vertical agreements and concerted practices. The Guideline was developed in line and approximation with the Commission Notice - Guidelines on Vertical Restraints (52010SC0411) (2010/C 130/01). It is an important guideline for the Institution work and activity, but it also provides the business community and law firms with the possibility of making an assessment of cases and types of vertical agreements, their economic efficiency and their positive effects that outweigh their anticompetitive effects. The process of developing the Guideline was transparent; it was discussed with the stakeholders and it was sent for comments to law firms, and the draft text was posted on the official website of the Competition Authority. The relevant comments reflected in the final version.

The Guideline on the conditions and obligations in concentration cases, which was adopted by Decision No. 374 of 8 October 2015 in line with the EU Notice on Acceptable Measures under Council Regulation (EC) No. 139/2004 and Commission Regulation No. 802/2004” (52008XC1022(01), (OJ C 267, 22.10.2008, p.1-27). The

purpose of the Guideline is to lay down the rules and remedies on the commitment assumed by the undertakings interested in changing and authorising a concentration. Remedies are changes and modifications that are made to a concentration, as proposed by the parties thereto, with the aim to eliminate any competition issues and concerns that have been identified by the Competition Authority in the concentration control procedure. The Guideline was adopted pursuant to the legal provisions in force, and was made available to third parties, law firms and other stakeholders by publishing it on the Institution website. It was also officially sent for comments, which were incorporated in its final version.

The Fine Leniency Programme was adopted by Competition Commission Decision No. 382 of 17 November 2015, and was based on the ECN Model Leniency Programme. The programme was based on the common experience of homologue authorities that have applied leniency programmes for a number of years and have been successful in detecting anticompetitive practices and prohibited agreements. The purpose of the leniency programme is not only to assist the Authority in its efforts for fighting and prohibiting such agreements and punish their participants, but also to reward those undertakings that cooperate with the Authority in the context of detecting cartels. The Fine Leniency Programme is an important tool in the fight against prohibited agreements, since it encourages undertakings to provide the Competition Authority with information on potential competition violations. The Fine Leniency Programme allows the Competition Authority to provide full immunity or reduction of fines which would otherwise have been imposed on a participant in a prohibited agreement, in exchange for the voluntary disclosure of information regarding that prohibited agreement and cooperation with the Competition Authority. Given the “secret” nature of prohibited agreements, this fine leniency policy aims to detect cartels and strengthen competition rules. The Fine Leniency Programme was discussed within the Competition Authority Secretariat and was sent for comments to interested third parties and law firms, which submitted their comments on the Programme.

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

Competition advocacy is the fourth pillar of the Law, which, given the degree of Competition Law and Policy implementation in our country, is of crucial importance. The Competition Authority activity under this pillar of the Law was focused on two key lines of action: (a) assessment of draft legislation developed by other public institutions and regulators pursuant to Articles 69 and 70 of the Law; and (b) interventions in the markets under investigation or monitoring proceedings by the Competition Institution through regulatory recommendations, as a legal tool to ensure implementation of the Law.

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

In 2015 the Institution reviewed, with the request of initiating institutions or *ex officio*, a number of pieces of legislation or draft legislation in order to assess them for alignment with the Competition Protection Law, as amended.

1. Draft Law amending Law No. 10076 of 12 February 2009 "On Compulsory Insurance in the Transport Sector". Competition Commission Decision no. 379 of 2 November 2015 "Recommendations on the Draft Law amending Law No. 10076 of 12 February 2009 "On Compulsory Insurance in the Transport Sector"" recommended that the Ministry of Finance should reflect the necessary changes in the Draft Law in reference to Articles 11 and 12 of the Law, so that in all cases damaged parties are enabled claim handling by the direct insurers so that there is increased competition among insurance companies and improved service quality provided to the insured.
2. Draft Law amending Law No. 9374 of 21 April 2005 "On State Aid", as amended. Competition Commission Decision no. 389 of 14 December 2015 On the need for soliciting a preliminary evaluation by the Competition Authority in relation to the Draft Law amending Law No. 9374 of 21 April 2005 "On State Aid", as amended, asked that the Council of Ministers and the Albanian Parliament observed Article 69 of Law No. 9121 "On Competition Protection", as amended, and solicit a legal evaluation by the Competition Authority for every draft regulation that could result in competition restriction in the relevant markets.
3. Concession Agreement on fuel marking and monitoring services. Competition Commission Decision no. 359 of 4 May 2015 On recommendations in relation to the concession agreement on fuel marking and monitoring services, recommended that the contracting authority demanded correct implementation of the concession agreement on imported and domestically produced fuel and crude oil marking and monitoring. It also recommended that the contracting authority made an *ex post* full analysis of the results of the first phase of the monitoring completed at the end of 2014 in an appropriate period of time
4. Electricity purchase agreement between KESH sha and OSHEE, approved by ERE Decision No. 12 of 6 February 2015. Competition Commission Decision no. 367 of 4 June 2015 decided to exempt the electricity purchase agreement between KESH and OSHEE applicable to electricity surplus, including any surplus generated in situations of large water flows, in order to cover losses in the distribution system for 2015 from the prohibition provide for in Article 4 of Law No. 9121 of 28 July 2003 "On Competition Protection", as amended. The prohibition applied to the electricity purchase agreement between KESH and OSHEE applicable to electricity surplus, including any surplus generated in situations of large water flows, in order to cover losses in the distribution system for 2015 for an exemption period from entry into force of that Decision till 31 December 2015; it also recommended the adoption of the electricity market model as soon as possible in line with the specificities of the Albanian market; and notifying agreements and amendments thereto to the Competition Authority in order to assess individual exemptions of agreements.
5. Draft electricity distribution service agreement between OSHEE SHA and the electricity Suppliers. Competition Commission Decision No. 381 of 9 November 2014 "Evaluating the draft electricity distribution service agreement between OSHEE SHA and the Suppliers" stated that the Draft Agreement was not in conflict with Law No. 9121 of 28 July 2003 "On Competition Protection," as amended.
6. Draft Law on Production, Transportation and Trading of Biofuels and Other Renewable Fuels Used for Transport. The Competition Authority, in its Letter No.

458/1 prot of 30.12.2015, stated that the Draft Law on Production, Transportation and Trading of Biofuels and Other Renewable Fuels Used for Transport was not in conflict with Law No. 9121 of 28 July 2003 "On Competition Protection," as amended.

7. Draft Guidelines on the conditions, procedures and validity periods for the licences required in the area of maritime transport and the grounds and procedures for suspending or revoking those licences. The Competition Authority, after evaluating the Draft Guidelines, in its Letter No. 185 Prot. of 03.04.2015, stated that the recommendations given in Competition Commission No. 349 of 19 February 2015 had been taken into consideration by the Ministry of Transport and Infrastructure. In addition, the Competition Authority suggested that the Draft Guidelines should specify that: "The schedule of transportation line hours and itineraries and maximum ticket fares for all categories, inclusive of taxes, shall be attached to the Licence." The pricing methodology will be based on the data that will be submitted by the undertakings, and the Guideline will include an additional paragraph requiring more detailed submission of all real costs of the services they provide.
8. Draft rules on the procedures for issuing, modification, partial or full transfer, renovation and revocation of licences in the electricity sector. The Competition Authority, in its Letter No. 303/1 Prot. of 22.07.2015 to ERE, stated that the submitted draft rules were not in conflict with the Competition Protection Law, and suggested that the procedures for licensing the operators participating in the electricity market should be conducted in line with the electricity market model.
9. Draft regulation on the procedures for certification of the Electricity Transmission System Operator. The Competition Authority, in its Letter No. 304/1 Prot. of 22.07.2015 to ERE, stated that the draft regulation was not in conflict with the Competition Protection Law. Since OST plays a key role in the good functioning of the electricity market from the competitive perspective, the electricity market model should be developed and adopted first and then be completed with the relevant acts.
10. Draft rules on the ERE organisation, operation and procedures. In its Letter No. 305/1 Prot. of 22.07.2015 to ERE, the Competition Authority stated that the draft rules were not in conflict with the Competition Protection Law. Based on the experience so far, it would benefit the energy market and prevent anticompetitive behaviours if the provision of Article 20 "Licence Application Processing" required the Competition Authority opinion be taken in consideration in relation to new or existing operators to be licensed in the various segments of the energy market.
11. Draft amendments to the Regulation on the approval of new connections with the distribution system. In its Letter No. 167/1 Prot. of 09.04.2015 to ERE, the Competition Authority stated that under the Competition Protection Law the draft amendments were in conflict with the Law because they introduced a restriction of the number of providers of services in the distribution network which would result in competition restriction in the relevant market and in the restriction of consumer choice.

In order to avoid the restriction, the Competition Commission recommended that, in the proposed amendments to the Regulation on the approval of new connections with the distribution system, ERE should not introduce a restriction on the number of providers in all types of services to be carried out in the

distribution network; all the procedures for the services requested by OSHEE on new connections with the distribution network should be transparent and published, in order to not restrict the number of providers of that type of service; the approval of the licensees to provide service in the distribution network should be granted by the ERE or licensing institutions and be notified to OSHEE.

12. "Analysis of fixed telephony market: Retail market of public access/calls to public telephony networks from landline locations and retail and wholesale markets of call termination, transit and origination in public telephony networks from landline location". The Competition Authority stated its no-objection, and noted that the document correctly addressed competition issues and that Albtelekom's market share had decreased due to competition from other operators.

### III.2. Recommendations on good functioning of markets

In its investigation and monitoring cases initiated after complaints were submitted by market operators, the Competition Authority assessed the factors affecting competition in the addressed markets. A detailed list of the investigation and monitoring cases was presented in the previous chapter. This section lists a summary of the specific recommendations made in each market assessed by the Competition Institution:

#### III.2.1 Electricity Market

- ✓ Competition Commission Decision no. 388 of 14 December 2015 On concluding the in-depth investigation into the market of electricity purchase for purposes of covering losses in the distribution network and on recommendations to the Energy Regulatory Entity and the Electricity Distribution Operator, recommended that, in the context of completing the secondary legal framework in accordance with the provisions of Law No. 43/2015 "On the Electricity Sector", and the Market Model and the special rules on electricity purchase by OSHEE to cover losses, the repeated Competition Authority recommendations on the competition and transparency principles and implementation of auction rules in line with the best practices made available by the Energy Community Secretariat and member states should be taken into account; related undertakings belonging to the same group, or having related shareholders, should not be allowed to submit separate bids in the procurement of electricity.
- ✓ Competition Commission Decision no. 385 of 3 December 2015 On recommendations to ERE on the issues related to the billing of customers connected to the medium voltage at low voltage rates, gave the following recommendations to ERE: find a final solution to the problems facing the costumers connected to the medium voltage network, by approving a special tariff for each customer category, in order to put them in non-discriminatory conditions and on a level playing ground in terms of competition; and make an evaluation of the tariff applied by OSHEE in order to determine whether it is above the approved tariffs and provide for the relevant compensation of costumers in line with the legal provisions in force.

#### III.2.2 Fuel and liquefied petroleum gas market

- ✓ Competition Commission Decision no. 345 of 12 February 2015 made recommendations on the good functioning of the fuel production, import and

wholesale market. Some of them suggested: revise Law No. 8450 of 24 February 1999 “On processing, transportation and trading of oil, gas and their by-products”; establish 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, 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. The Decision recommended that the undertakings operating in the hydrocarbon market should 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.

- ✓ Competition Commission Decision no. 390 of 21 December 2015 On concluding the preliminary inquiry into the liquefied petroleum gas import and wholesale and retail selling market and on recommendations to the Ministry of Energy and Industry recommended that: the necessary actions for the good functioning of the LPG import and wholesale and retail selling market should be taken in accordance with Articles 14, 15 and 16 of Law No. 8450 of 24 February 1999 “On processing, transportation and trading of oil, gas and their by-products”, as amended. In its Letter No. 6619/2 of 17.11.2015 the Ministry of Energy and Industry stated that it appreciated the report and advised that a Working Group had been established by Order No.200 of 2 September 2015 "On establishment of the Working Group to assess the current legal and institutional situation in the area of LPG trade", and that it would forward the specific results of the work of that group.

### III.2.3 Air and maritime transport market

- ✓ Competition Commission Decision no. 391 of 24 December 2015 On recommendations in relation to the amendment to the Concession Agreement concluded on 15 October 2004 between the Government of the Republic of Albania and Tirana International Airport SHPK recommended: the exclusive right period applicable to international flights should not be extended, regardless the conditions put by the Concessionaire in terms of revising the Agreement; the ground handling services should be liberalised in accordance with the Concession Agreement annexes: (i) ground handling and landing and take-off service charge; (ii) passenger charge; (iii) cargo charge; (iv) aircraft parking charge; and (v) airport lighting charge. The Decision asked that Competition Commission Decision No. 308 of 21 February 2014 Recommendations on increasing competition in the air transport market be implemented: “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.”
- ✓ Competition Commission Decision no. 349 of 19 February 2015 On regulatory actions and recommendations on the international maritime passenger and vehicle transportation market recommended that the Ministry of Transport and Infrastructure



should oblige 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. The data should be accessible at any time for the licensing institutions and market supervisors. The maximum tariffs to be applied under each category of journey for each season, when licensing them should be approved. It also recommended that the Ministry supervise the tariffs applied by the undertakings in comparison with the approved maximum tariffs, and draft a methodology based on the real costs in order to set the level of maximum tariffs for the international maritime transportation of passengers and vehicles.

- ✓ Competition Commission Decision no. 369 of 2 July 2015 On imposing compulsory measures in the international maritime transport market in the Republic of Albania prohibited the division of the international maritime transport of passengers and vehicles by Porti Vlorë SHA; and order Porti Vlorë SHA to observe and allow the operation of all the operators operating in the Port of Vlorë terminal at equal conditions, ensuring favourable competition conditions in the area of international maritime transportation of passengers and vehicles.

#### III.2.4 Electronic and postal communication market

- ✓ Competition Commission Decision no. 351 of 3 March 2015 Recommendations on increasing competition in the electronic communications industry in relation to the 1800 MHz frequency band for GSM/LTE/UMTS/WIMAX systems recommended that the Electronic and Postal Communications Authority granted all mobile telephony operators the right to use the 1800 MHz frequency band for GSM/LTE/UMTS/WIMAX systems and put them on a level playing ground in terms of market competition.

#### III.2.5 Construction/public procurement market

- ✓ Competition Commission Decision No. 358 of 16 April 2015 On concluding the in-depth investigation 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, and providing recommendations to the Albanian Road Authority recommended that when dividing procurement lots, no possibilities for market division based on the volume of works among competitors and division of geographic markets should be created; a full evaluation of the economic and financial criteria for all bidders or bidder consortia should be made in order to ensure equitable and non-discriminatory treatment among bidding undertakings; and any forms of predetermination and preferential evaluation among the various undertakings, which restricts competition, should be avoided.

#### III.2.6 Fiscal cash register market

- ✓ Competition Commission Decision no. 387 of 14 December 2015 On recommendations on the fiscal cash register market recommended revision of the economic barriers in terms of annual turnover of EUR 10 million in the past three years and bank guarantee of USD 500,000 as conditions for licensing undertakings to provide this product.

### III.3 Inter-Institutional Cooperation

The Authority has always considered its real cooperation with sector regulators and central government institutions as indispensable for having as competitive a market as possible. In order to achieve that objective, the Competition Institution has used all the communication and interaction tools so that the recommendations given in Competition Commission decisions were not only on paper but were discussed and implemented.

#### III.3.1. Cooperation with Other Regulators and Public Institutions

The Competition Authority had better cooperation with the Albanian Parliament in 2015, more specifically with the Committee on Production Activities, which requested the Competition Authority opinion on the Law on Energy and Gas. In the hearing it was brought to the attention of the Ministry of Energy that it had failed to submit for comments the Energy Sector Law pursuant to Article 69 of the Competition Protection Law.

As discussed in the first and second parts of this Chapter, the Competition Commission gave numerous recommendations on the markets where issues had been identified. However, it is almost impossible to determine whether they have been taken into account or submitted for discussion with the Competition Commission. This fact can also be noticed in the information shown in column Response to the Recommendation in Annex No. 7. "Matrix of Recommendations, 2015".

#### III.3.2. Cooperation with the School of Magistrates and the judiciary

One of the objectives of the Competition Authority for 2015 was to cooperate with the School of Magistrates in training judges in the specificities of the Competition Law and the European Law practice in this area. Such training and seminars with the judiciary on competition issues is also one of the tasks assigned by the European Commission in the past few years.

Thus, the Competition Authority, in cooperation with UNCTAD experts and the School of Magistrates (under a project among the parties) organised a two-day workshop for about 20 judges on 17-18 December 2015. The participants in the training seminar included judges from administrative and civil courts of both instances of trial across the country, and representatives from the Competition Authority.

The training took place in the School of Magistrates premises. Its main goal was to familiarise its participants, who had a general legal background, with economic issues in the area of competition, primary and secondary legislation, other regulations issued by the Authority and the Competition Policy. At the same time, the legal framework was promoted during the seminar in line with the goals of the competition policy as specified in the Law.

This was the first seminar in a series to be held in 2016 in the framework of this project.

#### III.3.3 Relations with the Ministry of European Integration

In 2015 the Competition Authority continued its cooperation with the Ministry of European Integration, which is the institution coordinating all the efforts in Albania

towards European integration. The Competition Authority prepared reports on the progress made, and gave its contribution to the preparation of the documents that are related to the stabilisation and association process. The Competition Authority took part in the preparation of the National European Integration Plan (NEIP) 2016-2020, on Chapter 8 “Competition Policy”, and in the updating of that plan in 2015. The National Plan is the basis for planning the European integration process in Albania, and specifying the legal framework and planned initiatives for approximation in the framework of the integration process.

Periodic reports were submitted to the Ministry of Integration within the set time-limits on the monitoring of the implementation of the National European Integration Plan (NEIP) 2016-2020, on Chapter 8. In addition, information was prepared and submitted to the European Commission (EC) in the framework of the periodic meetings between Albania and EU, specifically the fourth meeting of the EU-Albania Stabilization and Association Committee and the EU-Albania Subcommittee on Internal Market and Competition including consumer protection and health in March 2015. In the meetings the Competition Authority reported on the activity of the institution, its inquiry and investigation cases, its assessments and the efforts made for protecting free and effective competition in the market.

The Subcommittee meeting of March 2015 evaluated the Competition Authority work and activity as an institution enforcing the law and protecting the principles of free and effective competition in the market. In order to increase the efficiency of Competition Commission decisions, the European Commission Enlargement Unit representatives asked the Ministry of European Integration representatives to prepare an action matrix on the implementation of the Competition Authority recommendations.

As the leading and coordinating institution for Chapter 8 “Competition Policy, the Competition Authority also reported in relation to the *ex ante* and *ex post* evaluation of special and exclusive rights that the Competition Authority has carried out on a case-by-case basis.

#### **III.4. Competition Culture – public and media relations**

Priorities in the Competition Authority work and activity include the strengthening of the competition culture among businesses and consumers through transparency and dissemination of understanding among the public of the rules and procedures that the Competition Institution implements in the framework of protecting free and effective competition in the market. In addition to law enforcement activities, the Competition Authority continued to use all possible instruments for promoting competition advocacy and strengthening the competition culture in 2015.

Organization of regional seminars. The Competition Authority pays a lot of attention to the cooperation with local government and the business community in various counties in Albania. Various regional seminars were organised with local representatives in 2015 with the goal to increase competition culture and awareness. Such a seminar was organised in October 2015. The goal of the seminar was to build a real partnership with the business community, the university and the local government in the County of Korca.

The discussions in the seminar focused on information on various aspects of the Competition Protection Law, the cases handled by the Competition Authority, the

statutory sanctions and the initiatives taken by the Competition Authority to develop a new fine leniency programme for businesses, which aims at ensuring cooperation with the business community in detecting anticompetitive practices.

Such awareness-raising seminars on the Competition Authority work and activity and the presentations on the basic notions of the Law and practices cases the Institution deals with are planned to be conducted in 2016, too.

Public relations are an important link in the Competition Authority activity, both as a fulfilment of its obligation for providing maximum transparency in its decision-making and its effectiveness, and as a means of achieving the constant goal of increasing public confidence in the Competition Commission. In this respect, the Competition Authority pays attention to the interactive communication with the public, considering it a primary issue of a strategic attention, in order to convey its Competition Policy to the public opinion as fairly and understandably as possible. The communication with university law and business students is considered as a tool of increasing competition culture.

Public information: The Competition Authority uses a series of communication channels to inform the public, with the goal to clearly explain its institutional mission and how that mission is fulfilled. They include: press conferences and media interviews that the Competition Authority organises in relation to the most significant decisions taken by the Competition Commission.

Media relations : The Competition Authority considers media communication as a very important element of public information on its decisions and activities in real time. In this respect, the media were constantly informed and sensitised on issues that are related to both investigation proceedings and the situation of competition in specific markets in the Albanian economy.

Publications: The Competition Authority publications provide extensive and up-to-date information on its activity. They also explain the basic concepts of competition, and provide comments on the adoption of the necessary laws and regulations. Thus, they represent a consolidated source of accurate and reliable information for the public. Publications issued in 2015 included: Annual Report, Decision Bulletin, a Collection of Laws and Regulations, a Publication on the Fine Leniency Programme, reissuance of informational brochures on competition, etc.

Website: The Competition Authority provided full transparency in 2015 by publishing on its website information on its activities, the Competition Commission decisions and announcements on its events in real time. Press releases and key Competition Commission Decisions are published also in English.

## **IV. INTERNATIONAL COOPERATION**

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

The granting of the candidate status to Albania on 24 June 2014 was an appreciation of the reforms Albania had embarked upon, and sent a strong signal in relation to the reforms required in the European integration process and took its relationship with the European Union to a new level. The European Commission published its annual report on the progress made by Albania towards the European integration in October 2015, in which it appreciated the efforts made by Albania for fulfilling the Copenhagen criteria and the conditions of the stabilisation and association process.

The Report also covered Chapter 8 “Competition Policy”, in which the European Commission state its positive evaluation of some progress elements in the area of competition. More detailed information is provided in Annex 7: “EC Report on Albania: Chapter 8 “Competition Policy”, in which there is clear evaluation of the level of expertise of the Competition Institution staff.

The Competition Authority plays a main role in Chapter 8 “Competition Policy”, since it is the leading and coordinating institution of the Chapter, which consists of three parts: competition, state aid and liberalisation. As a coordinator of the Chapter, the Competition Authority stayed in touch with other institutions taking part in the Interinstitutional Working Group on European Integration, so that the input to that Chapter is a complete as possible.

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

Competition law and policy are increasingly taking on an international nature, and because of that, international cooperation is both important and indispensable. Cooperation with the OECD continued in 2015, too, through information and experience sharing, discussions on the cases reviewed by the Albanian competition institution, participation in discussions of hypothetical cases designed by international experts in this areas, etc. The trainings provided by the OECD in Hungary are a very important source of training the staff of our institution, since they include discussions and analyses of competition issues and competition rules, which are important in handling specific cases in the daily work of the Authority experts.

### **IV.3. Cooperation with the United Nations Conference on Trade and Development (UNCTAD)**

UNCTAD is one of the international organisations paying a lot of attention to competition policy. One of the key activities of UNCTAD is its assistance to competition authorities in the process of adopting and implementing competition rules through the provision of technical assistance and support for those countries in order to increase their capacities and level of expertise in the area of competition.

Following its voluntary request, the Competition Authority was subject to a peer review carried out by UNCTAD experts, who, at the end of process—as presented in the 2014 Competition Authority Report—prepared a detailed report with conclusions and recommendations addressed to the Competition Authority and the Albanian lawmakers

and Government. A special hearing took place in the Annual International Conference that took place in Geneva in July 2015, in which the Authority activity, the Albanian primary and secondary legislation and the practical implementation of the Competition Law and Policy were reviewed. Various discussions and questions were made and asked by representatives from international competition institutions in the hearing, and interest was shown in the activity of our institution.

At the end of the review process, the Albanian Competition Authority was allocated assistance by various donors under UNCTAD leadership. The funding will be used for various trainings in the area of competition, not only for the Authority staff but also for third parties. The UNCTAD project envisages other activities to strengthen the Competition Authority work, especially, the implementation of those activities that are based on the recommendations issued in the peer review document.

#### **IV.4. Cooperation with the International Competition Network (ICN)**

The International Competition Network is a network of national competition authorities, which was established to address various competition-related issues, focusing on the development of cooperation and establishment of good relations in addressing those issues. The Albanian Competition Authority is a member of that network and, since it considers ICN as an important network, it took part actively in the working group activities of that network in view of experience sharing and providing inputs.

## V. HUMAN RESOURCES

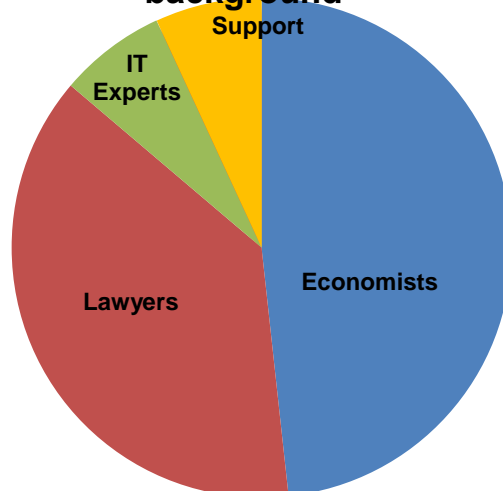
Investment in, and motivation of, human capital was another objective for the Competition Authority in 2015. Objective performance appraisal and the use of tools that encourage employees to improve their performance remains a constant challenge for the competition institution.

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

The Competition Authority organisational structure for 2015 was approved by Albanian Parliament Resolution No. 77/2015. That Resolution, while not changing the mission and tasks of each department, approved the addition of a new position—an inspector at the Market Surveillance and Investigation Department—and the transfer of an IT inspector from the Legal Affairs Department to the Market Surveillance Department. Both the addition and the transfer were done based on the needs and the specific features of the activity processes, which have grown over time steadily.

The total number of staff in 2015 was 35, of whom 25 were technical staff comprised of economists and lawyers (12 economists, 11 lawyers, two IT experts), in addition to the auxiliary staff.

**Technical staff of the Authority, by background**



The Competition Authority is composed of 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 organisational 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 four economists and one lawyer. 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 organisation and good functioning of the Commission meetings, acts as a liaison office between the Commission and the



Secretariat, organises 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 market monitoring and investigation activities to ensure free and effective competition in the market. The Secretariat is headed by the Secretary General, and has three Departments and an Analysis Unit. Secretariat employees are civil servants by their status.

**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 working groups during the investigation proceedings 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. 152/2013 "On Civil Servants" 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 **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 Strengthening

The Competition Authority has constantly paid attention to the strengthening of administrative capacities as a key factor for the real independence of the Institution and the successful implementation of the Law.

In 2015 the Competition Authority staff participated in numerous training workshops, meetings and conferences in the area of competition, where they gave active inputs through discussions of practical cases, experience and information sharing, and innovations in the area of competition.

The Competition Authority staff were trained for about 48 days in 2015 in case handling and in the latest practices in the area of competition. The following graph shows the trainings, by institution organising the training:



### V.3. Financial management

In 2015 the Competition Authority duly complied with the requirements of Law No. 160 of 27 November 2014 “On 2015 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.

94.5% of the 2015 budget was executed. Detailed information is provided in the statement shown in the Annex on the budget execution.

The execution gap of 5.5% mainly resulted from the funds not used after the procurement procedures were carried out, and from the allocated salary fund for the position of one inspector that was vacant from its approval until the hiring competition took place.

The preparation of the draft 2016 budget took into account the institutional growth, in terms of both human resources and investment in information technology. However, the budget allocated for 2016 does not allow full achievement of that objective.

## VI. PRIORITIES FOR 2016

The setting of priorities takes into consideration positive and non-positive experience the Competition Authority has faced in its annual activity under the Competition Policy and Law. The implementation of the peer review report that was submitted by the UNCTAD experts will comprise the key lines of action for the Competition Authority for improving its institutional performance, and will help serve as a cooperation platform with all the other key factors for improving the implementation of the Competition Policy.

As it has been argued in this Report, too, the Competition Commission decision efficiency depends on court judgments and the extent to which the recommendation given to other regulators and public institutions, policymakers and government agencies are taken into account. Therefore, this aspect of the implementation of the Law was in the focus when setting the priorities for this year.

The promotion of a procompetitive environment requires not only the implementation of the Competition Protection Law but also the implementation of the entire Albanian legislation affecting market competition. This is another factor that was taken into consideration in setting the priorities.

Strengthened implementation of the Law, not only vis-à-vis market operators but also market facilitators (public institutions) in the context of protecting free and effective competition in the market; public debate on, and adoption of, the Competition Policy paper; completion of the legal framework; and implementation of technical assistance projects in the context of building and strengthening administrative capacities are the main challenges for the Competition Authority in 2016.

### VI.1. Competition Law Implementation

The completion of the general inquiry into the banking industry based on consolidated market research methodologies and practices remains the key case for the Authority in the first half of 2016. The Authority has already received the data it requested from banks and other non-bank financial entities, and will conduct the assessment of such data to give an answer to the question of what the level of competition in this vital industry for the Albanian economy is.

Completion of investigation and monitoring proceedings and exercises initiated last year, such as those in the road signing and signalling public procurement market; the dairy market; the paid media market, which is a regulated market and where cooperation with AMA will be necessary; the public procurement IT (software and hardware) service market, etc.

In addition, in the context of strengthening the Competition Law implementation and increasing business and consumer confidence, the Competition Institution will handle all complaints from market operators or other factors, using the legal tools and time-limits to restore competition.

## **VI.2 Legislation approximation and enhancement**

Completion and enhancement of the legal and regulatory framework by drafting or amending rules and guidelines to achieve 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 2016.

The needs for further legislative improvements in the area of competition were identified and reflected in the National Plan for European Integration (NPEI) 2014-2020. The secondary legal framework of the Competition Authority for 2016 will be completed with other regulations: the Guidelines on simplified merger procedures, and the Guidelines on engagement procedures, which was also one of the UNCTAD recommendations.

Pursuant to the Personal Data Protection Law, and based on its obligation for the electronic register completion, and entering data on the government database and the needs for taking more accurate electronic data during inspections, the Competition Authority has taken several initiatives to complete the secondary legislation. Those initiatives will be approved in the first quarter of 2016.

## **VI.3. Increased advocacy and institutional cooperation**

The main priority for 2016 is to cooperate with the School of Magistrates on judge training so that they can have a better understanding of the Competition Law specifics and the European law in this area. In addition, cooperation with the Parliamentary Committee on Economy will be a priority in order to transpose the Competition Authority recommendations and the UNCTAD recommendations on having competitive markets into a work plan.

Last year the Competition Authority worked on redesigning the Competition Policy document by extending the markets under the Authority supervision, enhancing investigative tools and cooperating with the market players and institutions, mainly regulators, in order to ensure a functioning competitive market economy. One of the UNCTAD recommendations was to continue the spirit of the National Competition Policy towards EU standards in order to strengthen the procompetitive environment in Albania.

In 2016 priority will be given to the consultations on the draft National Competition Policy document with the academic staff in the university law and business schools, the business community, consumers, regulators, policymakers and the government. Inclusive participation in this public discussion has been considered to be the most efficient tool for strengthening competition advocacy and culture. After the opinion of all stakeholders has been received, the process will be finalised with the adoption of the Competition Policy document by the Competition Commission.

Based on UNCTAD recommendations, in order to increase efficiency in the fight against cartels in public procurement, there will be cooperation with the institutions responsible for public procurement and anticorruption; competition advocacy tools will be strengthened through real cooperation in the form of debate and consultations with regulators and other decision-making institutions; Informational round tables with the

business community in the main counties in Albania will be organised with the aim to increase competition culture and raise awareness of the fine leniency programme and competition policy among economic operators.

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

Strengthening investigative capacities and conducting in-depth economic analyses in the context of assessing the market behaviour of undertakings are constant challenges in the area of Competition Authority institutional capacity building.

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 organised by OECD RCC, ICN, etc.

The Competition Authority staff will take part in seminars and conferences organised by public bodies with the aim to protect free and effective competition in the market and prevent and detect anticompetitive practices resulting from prohibited agreements, abuse of dominant position or merger control.

The HR Department has prepared, in cooperation with department managers, the professional development plan for each officer for 2016, which was also one of UNCTAD recommendations. To that end, individual training schedules were prepared with the necessary topics, to be conducted partly by the Public Administration School, and partly by Albanian university teachers and foreign organisations.

Statistical Data on Competition Commission Decisions

Year	Total number of decisions	Concentrations	Abuse of dominant position	Prohibited agreements	Exempted agreements	Regulations and guidelines	Recommendations to public institutions	Fines	Interim Measures	Conditions and obligations	Other decisions
<b>2004</b>	13	2				6	1	-			4
<b>2005</b>	17	-				2	3	1			12
<b>2006</b>	14	4				-	1	1			9
<b>2007</b>	25	9	1	3		4	2	5			6
<b>2008</b>	29	11	1		1	4	5	-			7
<b>2009</b>	36	8	1	2	1	2	10	2			12
<b>2010</b>	34	6	3	2	-	7	5	2			11
<b>2011</b>	43	10	2	2	-	6	5	1			18
<b>2012</b>	48	9	2	2	1	5	5	7			24
<b>2013</b>	42	13	0	1	1	3	1	2	1		22
<b>2014</b>	42	8	3	7	1	2	4	2	0	1	14
<b>2015</b>	51	11	3	6	1	3	11	0	1	2	15
<b>Total Decisions 394</b>											

*Annex 2. Competition Authority Commission decisions, 2015*

1. Decision no. 344 of 2 February 2015 On opening an inquiry into the egg production and wholesale market
2. Decision no. No. 345 of 12 February 2015 On closing the in-depth investigation into the market of production, importing and wholesale selling of fuels against undertakings Kastrati SH.A, Genklaudis SH.A, Everest Oil SH.A, Taci Oil SH.A. and Armo SH.A. and giving recommendations on the good functioning of this market
3. Decision no. 346 of 16 February 2015 On opening an in-depth investigation 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
4. Decision no. 347 of 16 February 2015 On appointing the Deputy Chair of the Competition Commission
5. Decision no. 348 of 16 February 2015 Approving the Annual Report on the Competition Authority activity in 2014 and main goals for 2015
6. Decision no. 349 of 19 February 2015 On regulatory measures and recommendations in the market of maritime international transport of vehicles and/or passengers
7. Decision no. 350 of 19 February 2015 On reviewing the application submitted by undertaking “Mbi SICPA for revocation of 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”
8. Decision no. 351 of 3 March 2015 Recommendations on increasing competition in the electronic communications industry in relation to the 1800 MHz frequency band for GSM/LTE/UMTS/WIMAX systems
9. Decision no. 352 of 3 March 2015 Adopting the guidelines on assessing vertical agreements
10. Decision no. 353 of 5 March 2015 On closing the preliminary inquiry into the cigarette importing, manufacturing and wholesale selling market
11. Decision no. 354 of 19 March 2015 Authorising the concentration through acquisition of partial control of Archer Daniles Midland by Olam International Limited
12. Decision no. 355 of 20 March 2015 On initiating an in-depth investigation into the market of electricity import for purposes of covering losses in the distribution network
13. Decision no. 356 of 31 March 2015 On taking provisional measures against Vodafone Albania SHA in the retail mobile telephony market



14. Decision no. 357 of 2 April 2015 Authorising the concentration through acquisition of control of 76% of the shareholder capital of the Sicred Pension Fund Management Company, owned by Sicred sh.a., by Credins Bank sh.a.
15. Decision no. 358 of 16 April 2015 On closing the in-depth investigation 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, and providing recommendations to the Albanian Road Authority
16. Decision no. 359 of 4 May 2015 On recommendations in relation to the concession agreement on fuel marking and monitoring services
17. Decision no. 360 of 4 May 2015 On opening a preliminary inquiry into the liquefied petroleum gas importing, wholesale and retail selling market
18. Decision no. 361 of 11 May 2015 On starting a preliminary inquiry in to the hospitality market
19. Decision no. 362 of 14 May 2015 On closing the preliminary inquiry into the egg production and wholesale market
20. Decision no. 363 of 14 May 2015 Refusing the GEN-I Tirana shpk application for revocation of Competition Commission Decision No. 355 of 20 March 2015 On initiating an in-depth investigation into the market of electricity import for purposes of covering losses in the distribution network
21. Decision no. 364 of 27 May 2015 Authorising the concentration through establishment of an independent joint venture by undertakings Magyar Telekom Nyrtó and MET Holding AG
22. Decision no. 365 of 4 June 2015 Authorising the concentration through acquisition of control by Tranzit sh.p.k. of 100% of the share capital of Credit Agricole Albania Bank SH.A., owned by IUB Holding
23. Decision no. 366 of 4 June 2015 On ordering Vodafone Albania to apply the compulsory measures for reaching equal levels of on-net calls and off-net calls
24. Decision no. 367 of 4 June 2015 On exempting from prohibition the electricity purchase agreement between KESH and OSHEE applicable to electricity surplus, including any surplus generated in situations of large water flows, in order to cover losses in the distribution system for 2015
25. Decision no. 368 of 16 June 2015 On correcting a material error in Competition Commission Decision No. 366 of 4 June 2015 On ordering Vodafone Albania to apply the compulsory measures for reaching equal levels of on-net calls and off-net calls
26. Decision no. 369 of 2 July 2015 On imposing compulsory measures in the international maritime transport market in the Port of Vlora
27. Decision no. 370 of 21 July 2015 Authorising the concentration through acquisition of single control of Alcatel – Lucent by Nokia Corporation
28. Decision no. 371 of 4 September 2015 On closing the preliminary inquiry into the hospitality market

29. Decision No. 372 of 4 September 2015 Authorising the concentration through acquisition of control by Raiffeisen Leasing SH.A. of the finance lease portfolio of Tirana Leasing SH.A.
30. Decision No. 373 of 16 September 2015 On opening a general inquiry into the banking sector
31. Decision no. 374 of 8 October 2015 Approving the Guideline on the conditions and obligations in concentration cases
32. Decision no. 375 of 8 October 2015 Authorising the concentration through acquisition of control of Cogemat S.p.A. by SNAI S.p.A.
33. Decision no. 376 of 15 October 2015 On opening a preliminary inquiry into the public procurement of upgrading and refreshing of vertical and horizontal signing and signalling of national roads and improving of road safety—continued, Lot 1 and Lot 2
34. Decision no. 377 of 22 October 2015 On the need for preliminary decisions to be taken by the Competition Authority in cases where exclusive or special rights are granted under concession agreements
35. Decision no. 378 of 2 November 2015 Authorising the concentration through merger by acquisition of Credins Leasing SH.A. by Banka Credins SH.A.
36. Decision no. 379 of 2 November 2015 Recommendations on the Draft Law amending Law No. 10076 of 12 February 2009 “On Compulsory Insurance in the Transport Sector”
37. Decision no. 380 of 2 November 2015 On opening a preliminary inquiry into the public procurement of facility security services for 2015, divided into 13 lots that was organised by the Directorate General of Taxation, in order to determine whether there were any indications of competition restriction
38. Decision no. 381 of 9 September 2015 On evaluating the draft electricity distribution service agreement between OSHEE SHA and the Suppliers
39. Decision no. 382 of 17 November 2015 Approving the Fine Leniency and the Fine Leniency Application Form
40. Decision no. 383 of 17 November 2015 Recommendations in relation to the BOT (build, operate and transfer) concession agreement on a MBM-type port in Porto Romano, Durrës, concluded between the Ministry of Transport and Infrastructure and Concessionaire Porti MBM (Multy Buoy Mooring)
41. Decision no. 384 of 3 December 2015 Authorising the concentration through acquisition of control of Air Liquide Hungary Ipari Gaztermelo Kft by Messer Hungarogaz Kft.
42. Decision no. 385 of 3 December 2015 On recommendations to ERE on the issues related to the billing of customers connected to the medium voltage at low voltage rates, gave the following recommendations to ERE
43. Decision no. 386 of 14 December 2015 On opening an in-depth investigation into the public procurement of upgrading and refreshing of vertical and horizontal signing and signalling of national roads and improving of road safety

44. Decision no. 387 of 14 December 2015 On recommendations on the fiscal cash register market
45. Decision no. 388 of 14 December 2015 On closing the in-depth investigation into the market of electricity purchase for purposes of covering losses in the distribution network, and recommendations to the Energy Regulatory Entity and the Electricity Distribution Operator
46. Decision no. 389 of 14 December 2015 On the need for soliciting a preliminary assessment by the Competition Authority in relation to the Draft Law amending Law No. 9374 of 21 April 2005 "On State Aid", as amended
47. Decision no. 390 of 22 December 2015 On concluding the preliminary inquiry into the liquefied petroleum gas import and wholesale and retail selling market and on recommendations to the Ministry of Energy and Industry
48. Decision no. 391 of 24 December 2015 On recommendations in relation to the amendment to the Concession Agreement concluded on 15 October 2004 between the Government of the Republic of Albania and Tirana Internacional Aeroport SHPK
49. Decision no. 392 of 29 December 2015 Making a change to Decision No. 391 of 24 December 2015 On recommendations in relation to the amendment to the Concession Agreement concluded on 15 October 2004 between the Government of the Republic of Albania and Tirana Internacional Airport SHPK
50. Decision no. 393 of 29 December 2015 Authorising the concentration through acquisition of joint control of Costa Edutainment s.p.a. by companies Venice European Investment S.p.a and Piora S.r.l.
51. Decision no. 394 of 29 December 2015 Authorising the concentration through acquisition of control of Kastrati SH.A. by Auto Star Albania SH.A.

Annex 3 - Execution of fines imposed by the Competition Commission, as of 31 December 2015

<b>Fines imposed by CA</b>	<b>Amount (in ALL)</b>	<b>Share of total<sup>2</sup></b>
Total fines	<b>1,037,199,298</b>	100
Fines collected by Judicial Enforcement Services	<b>522,123,238</b>	50%
Fines in the process of collection by Judicial Enforcement Services	<b>45,381,419</b>	5%
Fines for which no court order has been issued yet (no EO)	<b>469,694,641</b>	45%

**I. TOTAL FINES COLLECTED AND TRANSFERRED TO THE STATE BUDGET**

- a) Previous years ALL 259,831,233  
b) TUT+Classic ALL 2,130,772+ALL330,000 = ALL 262,292,005

**Total collected fines: ALL 522,123,238**

**II. CARRIED FORWARD FINES IN PROCESS OF COLLECTION BY JUDICIAL ENFORCEMENT SERVICES FOR 2015**

- a. Albanian Airlines ALL 2,600,000  
b. Classic ALL 25,382,000  
c. Noti ALL 2,994,000  
d. Bakeries in Vlora ALL 240,000  
e. Ultra Motors ALL 1,517,000  
f. Hyundai ALL 5,383,000  
g. VILOIL ALL 100,000  
h. Media vision ALL 100,000  
i. ROMANO PORT ALL 6,735,419

**Total ALL 45,611,419-ALL230,000(K.Hallka+Heany+Geci) = ALL 45,381,419**

Annex 4 List of decisions coupled with enforcement orders

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

<b>No.</b>	<b>Commission Decision</b>	<b>Court Enforcement Order</b>	<b>Debtor</b>
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. 123 of 8 September 2009 "Fine against Albanian Airlines MAK SHPK"	Decision No. 3355 of 12 November 2010	Albanian Airlines MAK SHPK
4	290 of 23 July 2013 "Fine against TUT"	Decision No. 371 of 18 March 2015	Tirana Urban Trans, ALL 2,130,772
5	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.
6	No. 349 of 26 July 2012 "Fine against Media Vizion"	Decision No. 9772 of 9 October 2012	Media Vizion
7	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
8	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
9	No. 265 of 05.02.2013 On imposing a fine on Viloil Sh.A.	Decision No. 7677 of 20 December 2013	VILOIL SHA
10	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

No.	Concentration case	Relevant market	Decision No.	Authorisation Date	Procedure	Type of concentration
1	Archer Danilesë Olam Internatioal Limited	Procurement and trading of cocoa beans	354	19.03.2015	First Phase/simplified notification form	Partial control acquisition
2	Credins Bank, Sicred Sh.a Pension Fund Management Company	Private Voluntary Pension Market	357	02.04.2015	First Phase/simplified notification form	Control acquisition
3	Magyar Telekom Nyrtöë MET Holding AG	Retail and wholesale distribution (supply) of natural gas and retail and wholesale selling and generation of electricity.	364	27.05.2015	First Phase/simplified notification form	Joint Venture
4	Tranzit Sh.p.kë Crdit Agricole Albania Bank sh.aëIUB Holding	Retail banking and corporate banking market	365	04.06.2015	First Phase/simplified notification form	Control acquisition
5	Alcatel-Lucentë Nokia Corporation	Equipment and electronic and telecommunication parts and related professional service solutions.	370	21.07.2015	First Phase/simplified notification form	Control acquisition
6	Raiffeissen Leasing sh.aë Tirana Leasing sh.a	Finance leasing	372	04.09.2015	First Phase/simplified notification form	Control acquisition
7	Cogemat s.p.aë SNAI s.p.a	Hydropower plant construction, renovation and restoration.	375	08.10.2015	First Phase/simplified notification form	Control acquisition
8	Credins Leasing sh.aë Banka Credins sh.a	Finance leasing	378	02.11.2015	First Phase/simplified notification form	Merger
9	Air Liquide Hungary Ipri Gaztermelo Kftë Messer Hungarogaz Kft	Industrial gas market.	384	03.12.2015	First Phase/simplified notification form	Control acquisition
10	Costa Edutainment s.p.aëVenice European Investment s.p.aëPriora s.r.l	Hydropower plant construction, renovation and restoration.	393	29.12.2015	First Phase/simplified notification form	Control acquisition
11	Kastrati sh.aëAuto Star Albania sh.a	Wholesale and retail trade of vehicles and automotive spare parts	394	29.12.2015	First Phase/simplified notification form	Control acquisition



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**REPUBLIC OF ALBANIA  
THE PARLIAMENT**

APPROVED

SPEAKER

**Ilir Meta**

**Resolution**

**on evaluating the Competition Authority activity in 2014**

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

The Competition Authority activity was carried out in compliance with the requirements of Law No. 9121 of 28 July 2003 "On Competition Protection", as amended.

**The Parliament has evaluated the Competition Authority activity in terms of:**

- Public awareness and increased public confidence in the Authority's role in the protection of competition, as indicated by the number of complaint cases submitted to the Competition Authority.
- Increased number of market interventions and increased types of markets under monitoring and investigation in accordance with the Law.
  - Consolidation of the Competition institution through enhanced level of expertise and strengthened institutional capacities, as one of the key factors to real independence of the Competition institution.
  - Completion and improvement of the legal and regulatory framework, aiming at approximation with international standards in the context of fulfilling the commitments of the institution and Albania under the Stabilisation and Association Agreement with the European Union.

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

- Constantly monitoring priority markets that have been under investigation or monitoring by the Competition Authority previously, such as: the mobile telephony market,



the gas import and wholesale market, the insurance market, the fuel market, the energy market, the air transport market, the international maritime passenger and vehicle transport market, in order to review the behaviour of the undertakings in those markets.

- Constant monitoring is important to enable the specific implementation of the given recommendations in order to reach and maintain free and effective competition in those markets.

- Increased frequency of dawn raids (inspections) on the initiative of the Authority itself in those markets that are sensitive in terms of consumer spending, in order to prevent and detect anticompetitive practices.

- Constant involvement in training the administrative courts at all instances in order to intensify their knowledge in the area of competition law, enable more objective judicial review of Competition Authority decisions in line with the public interest, since competition is a public good and since the efficiency of Competition Authority interventions is significantly affected by the extent of execution of its decisions.

- Further promotion of competition culture and advocacy through proactive cooperation and joint activities with the business community, in order to assess the business perception of the level of understanding and implementation of the competition spirit and law and to ensure that businesses comply with the competition rules.

- Strengthened role of the institution as the defender of citizens' interests through the enforcement of the Competition Protection Law.

### **The Parliament requires that executive bodies of all levels shall cooperate with the Competition Authority:**

- By observing the obligation to solicit in advance a legal evaluation by the Competition Authority of the adoption of acts having as their purpose or consequence the granting of exclusive rights or quantitative restrictions in various markets or industries.

- By constantly consulting in the process of drafting and adoption of laws and regulations.

- By submitting to the Competition Authority on a timely way all the necessary documentation that has been requested in the context of monitoring markets or investigating practices that distort market competition.

Adopted on 30 April 2015

*EU rules protect free competition. They include anti-trust rules against restrictive agreements between companies and abuse of dominant position. EU rules also prevent governments from granting state aid which distorts competition.*

Albania is **moderately prepared** in competition policy. **Some progress** was made particularly as regards antitrust and mergers. In the coming year, the country should in particular:

- increase the operational independence of the State Aid Commission.
- strengthen the administrative capacity of the State Aid Control Unit.

On **antitrust and mergers**, the Albanian Competition Authority (ACA) adopted guidelines on the assessment and abuse of dominant market position and drafted new guidelines on remedies based on the European Commission notice on remedies. The administrative capacity of the ACA is sufficient and its staff has a good level of expertise. However, delays in court proceedings are too long and further efforts are needed to increase the availability and quality of training for judges on competition policy.

On **state aid**, an inter-ministerial working group was set up to improve coordination. The administrative capacity of the State Aid Control Unit in the Ministry of Economic Development, Trade, Tourism and Entrepreneurship remains a concern. The State Aid Control Law is being revised to strengthen the independence of the enforcement authorities, but the law remains only partially aligned with the acquis. The amount of state aid granted in 2014 was EUR 46.4 million, considerably less than the previous year. Access to information on State Aid Commission decisions has improved with the internet publication of those decisions.

As regards liberalisation, an ACA *ex post* evaluation revealed that the contracting authorities had not met their obligation to request ACA assessment when granting exclusive rights.

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<sup>3</sup> <http://www.integrimi.gov.al/al/dokumenta/progres-raporte/progres-raporti-2015&page=1>

Annex 8: Matrix of Recommendations on draft legislation, 2015.

No.	Subject-matter:	Initiative:	Competition Authority evaluation	Response to the Recommendation
1.	Evaluation of the Concession Agreement on fuel marking and monitoring services.	Monitoring of Agreement on fuel marking and monitoring services.	<p>Competition Commission Decision <b>no. 359 of 4 May 2015</b></p> <p>On recommendations in relation to the concession agreement on fuel marking and monitoring services, decided to:</p> <p><i>"1. Recommend that the Contracting Authority:</i></p> <p><i>(a) should demand due performance of the concession agreement on imported and domestically produced fuel and crude oil marking and monitoring;</i></p> <p><i>(b) should make an ex post full analysis of the results of the first phase of the monitoring completed at the end of 2014 in an appropriate period of time."</i></p>	
2.	Evaluation of the electricity purchase agreement between KESH sha and OSHEE, approved by ERE Decision No. 12 of 6 February 2015.	Complaint from the Albanian Association of Electricity Suppliers (AAES) in its Letter No. 3 Prot., of 13.03.2015; our protocol no. 150 port., of 16.03.2015.	<p>Competition Commission Decision <b>no. 367 of 4 June 2015</b></p> <p>On exempting from prohibition the electricity purchase agreement between KESH and OSHEE applicable to electricity surplus, including any surplus generated in situations of large water flows, in order to cover losses in the distribution system for 2015, decided to:</p> <p><i>"1. exempt the electricity purchase agreement between KESH and OSHEE applicable to electricity surplus, including any surplus generated in situations of large water flows, in order to cover losses in the distribution system for 2015 from the prohibition provide for in Article 4 of Law No. 9121 of 28 July 2003 "On Competition Protection";</i></p> <p><i>2. Set the period of exemption of the Agreement from entry into force of this Decision till 31 December 2015;</i></p> <p><i>3. Recommend the adoption of the electricity market model as soon as possible in line with the specificities of the Albanian market;</i></p>	

			<i>4. Request notification of agreements and amendments thereto to the Competition Authority in order to assess individual exemptions of agreements."</i>	
<u>3.</u>	Draft Law amending Law No. 10076 of 12 February 2009 "On Compulsory Insurance in the Transport Sector"	Letter No. 14162ë1 prot, of 16.10.2015 (ACA protocol no. 411 prot, of 21.10.2015) from the Ministry of Finance	Competition Commission Decision <b>no. 379 of 2 November 2015</b> "Recommendations on the Draft Law amending Law No. 10076 of 12 February 2009 "On Compulsory Insurance in the Transport Sector", decided to: 1. Recommend that the Ministry of Finance reflect in the Draft Law amending Law No. 10076 of 12 February 2009 "On Compulsory Insurance in the Transport Sector" the necessary changes in reference to Articles 11 and 12 of the Law, so that in all cases damaged parties are ensured claim handling by the direct insurers so that there is increased competition among insurance companies and improved service quality provided to the insured.	
<u>4.</u>	Evaluation of the draft electricity distribution service agreement between OSHEE SHA and the electricity Suppliers.	Albanian Association of Electricity Suppliers (AAES) letter no. 1ë1 Prot. of 18.09.2015 (CA No. 383 Prot. of 18,09,2015). And ERE Letter No. 620 prot., of 20.10.2015.	Competition Authority Decision <b>no. 381 of 9 September 2015</b> On evaluating the draft electricity distribution service agreement between OSHEE SHA and the Suppliers, decided: "1. <i>The draft electricity distribution agreement between OSHEE SHA and electricity Suppliers, as proposed by the Albanian Association of Electricity Suppliers (AAES) is not in conflict with Law No. 9121 of 28 July 2003 "On Competition Protection," as amended.</i> "	No recommendations were given because the act was in line with the Competition Protection Law.
<u>5.</u>	BOT (build, operate and transfer) concession agreement on a MBM-type port in Porto Romano, Durrës,	On Authority's own initiative	Competition Commission Decision <b>no. 383 of 17 November 2015</b> Recommendations in relation to the BOT (build, operate and transfer) concession agreement on a MBM-type port in Porto Romano, Durrës, concluded	Following this Decision, the Ministry of Transport

	<p>concluded between the Ministry of Transport and Infrastructure and Concessionaire Porti MBM (Multi Buoy Mooring)</p>		<p>between the Ministry of Transport and Infrastructure and Concessionaire Porti MBM (Multi Buoy Mooring), decided to:</p> <ol style="list-style-type: none"> <li>1. Recommend the following to the Ministry of Transport and Infrastructure and the Ministry of Finance: <ol style="list-style-type: none"> <li>1.1 Approve the fee setting methodology for the port services provided by Concessionaire Porti MBM (Multi Buoy Mooring, prior to the implementation of the concession project)".</li> <li>1.2 Specify the general fee setting methodology for every concession under an unsolicited proposal procedure, within the most optimal period;</li> <li>1.3 In any other concessions under an unsolicited proposal procedure, approve initially the relevant specific fee setting methodology, and only after this has been done the relevant concession approving law should be adopted.</li> </ol> </li> <li>2. The Rules of Operation for the MBM (Multi Buoy Mooring) Port should clearly specify: <ol style="list-style-type: none"> <li>(a) the method of operation for ships on a first-come first-served basis;</li> <li>(b) the obligation for Concessionaire Porti MBM (Multi Buoy Mooring) to observe the equal rights of companies performing their services through this port, by setting equal terms for same transactions; and</li> <li>(c) the obligation for the Concessionaire to provide its services to all companies at equal technical and financial terms.</li> </ol> </li> </ol> <p>In setting the fee methodology for the port services provided</p>	<p>submitted the rest of concession agreements for an <i>ex ante</i> opinion</p>
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			by Concessionaire Porti MBM (Multi Buoy Mooring), consideration should be given to the fact that the fees should be cost-oriented, public and transparent.	
<u>6.</u>	Evaluation of the Draft Law amending Law No. 9374 of 21 April 2005 “On State Aid”, as amended	On Authority’s own initiative.	Competition Commission Decision <b>no. 389 of 14 December 2015</b> On the need for soliciting a preliminary assessment by the Competition Authority in relation to the Draft Law amending Law No. 9374 of 21 April 2005 “On State Aid”, as amended, decided to: “1. Ask the Council of Ministers and Concession Treatment Agency to: <i>observe Article 69 of Law No. 9121 “On Competition Protection”, as amended, and solicit a legal evaluation by the Competition Authority for every draft regulation that could result in competition restriction in the relevant markets.”</i>	
<u>7.</u>	Evaluation of the Draft Law on Production, Transportation and Trading of Biofuels and Other Renewable Fuels Used for Transport.	Ministry of Energy and Industry Letter No. 7851 Prot. of 02.12.2015, our protocol no. 458 of 03.12.2015.	The Competition Authority, in its Letter No. 458ë1 prot, of 30.12.2015 stated that: the Draft Law on Production, Transportation and Trading of Biofuels and Other Renewable Fuels Used for Transport was not in conflict with Law No. 9121 of 28 July 2003 “On Competition Protection,” as amended.	
<u>8.</u>	Evaluation of the Draft Guidelines on the conditions, procedures and validity periods for the licences required in the area of maritime transport and the grounds and procedures for suspending or revoking those licences.	Electronic communication by the Ministry of Transport and Infrastructure	The Competition Authority, after evaluating the Draft Guidelines, in its Letter No. 185 Prot. of 03.04.2015, concluded that the recommendations given in Competition Commission No. 349 of 19 February 2015 had been taken into consideration by the Ministry of Transport and Infrastructure, and suggested that the following adjustments were made to the Draft Guidelines: - In Article 5 (5), the second sentence stating, “Licences shall be attached the line schedule and itinerary and the	The recommendations given in Competition Commission Decision No. 349 of 19 February 2015 were taken into account by the

			<p>ticket fares inclusive of taxes”, should be changed in line with Article 7 (j) and Article 10 (4) of the Draft Guidelines into: “The schedule of transportation line hours and itineraries and maximum ticket fares for all categories, inclusive of taxes, shall be attached to the Licence.”</p> <p>In relation to Recommendation 5 on the development of real-cost-based methodology of setting maximum tariffs for international maritime passenger and vehicle transportation, we think that the methodology should be based on the data to be submitted by the undertakings under Recommendations 1 and 3, but we propose that it is necessary to add another paragraph to the requirements imposed on the undertakings in Article 10 of the Draft Guidelines, in relation to mandatory filing of all real costs of the services they provide, which would make the methodology feasible.</p>	<p>Ministry and were incorporated in the Draft Guidelines on the conditions, procedures and validity periods for the licences required in the area of maritime transport and the grounds and procedures for suspending or revoking those licences</p>
<u>9.</u>	Evaluation of AKEP paper “Public consultation – Rules on the provision of universal postal services”			
<u>10.</u>	Evaluation of AKEP paper “Public consultation – Rules on the general authorisation to provide universal postal services”			
<u>11.</u>	Evaluation of the draft rules on the procedures for issuing, modification, partial or full transfer, renovation and revocation of licences in the electricity sector.	ERE Letter No. 498 prot, of 03.07.2015 (our protocol no. 303 prot, of 6.07.2015).	The Competition Authority, in its Letter No. 303ë1 prot, of 22.07.2015 to ERE, stated that: The submitted draft rules were not in conflict with Law No. 9121 of 28 July 2003 “On Competition Protection”, were not in conflict with the Competition Protection Law; however, the procedures for licensing the operators participating in the electricity market should be conducted in line with the electricity market	

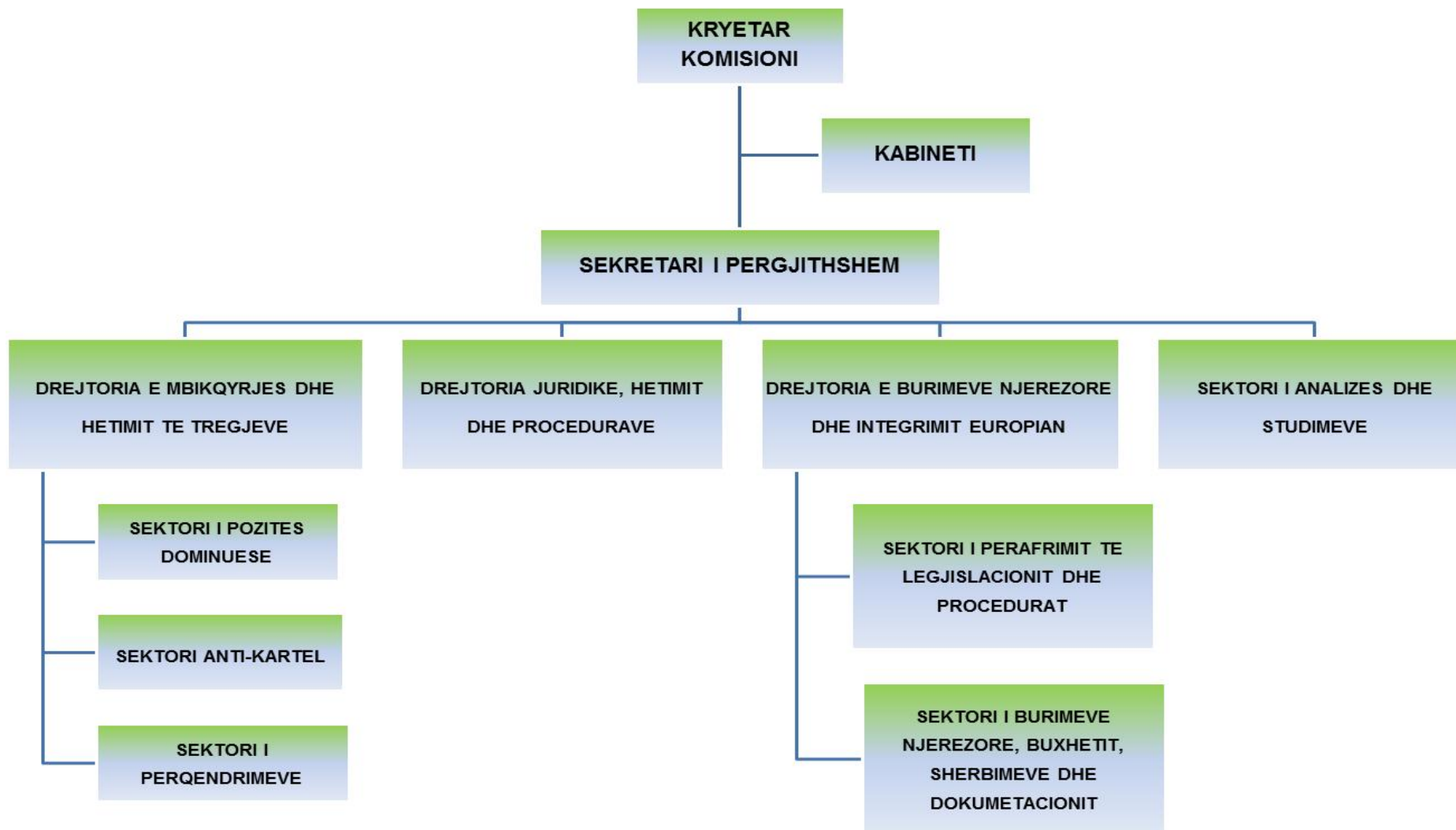


			model, which had not been adopted or released for discussions with the stakeholders, yet. The Competition Authority suggested that the Competition Authority opinion should be taken in consideration in relation to operators that are vertically integrated or operators to be licensed in the various segments of the energy market.	
<u>12.</u>	Evaluation of the draft rules on the procedures for certification of the Electricity Transmission System Operator.	ERE Letter No. 499 prot, of 03.07.2015 (our protocol no. 304 prot, of 6.07.2015);	The Competition Authority, in its Letter No. 304ë1 prot, of 22.07.2015 to ERE, stated that: The submitted draft rules were not in conflict with Law No. 9121 of 28 July 2003 “On Competition Protection”. However, since the Transmission System Operator plays a key role in the good functioning of the electricity market in terms of competition, the Competition Authority stated that it was very important that the rules on the certification procedures be adopted after, or in parallel with, the adoption of the electricity market model.	
<u>13.</u>	Evaluation of the draft rules on the ERE organisation, operation and procedures.	No. 500 prot, of 03.07.2015 (our protocol no. 305 prot, of 6.07.2015)	The Competition Authority, in its Letter No. 305ë1 prot, of 22.07.2015 to ERE, stated that: The submitted draft rules were not in conflict with Law No. 9121 of 28 July 2003 “On Competition Protection”; however, based on the experience so far, it would benefit the energy market and prevent anticompetitive behaviours if the provision of Article 20 “Licence Application Processing” required the Competition Authority opinion be taken in consideration in relation to new or existing operators to be licensed in the various segments of the energy market.	
<u>14.</u>	Evaluation of the Draft Law on the protection of copyrights and related rights			
<u>15.</u>	Opinion on the concession agreement on the management, operation and maintenance of the east			

	terminal in the Port of Durres.			
<u>16.</u>	Evaluation of a draft amendment to the Rules on new connections to the distribution system.	ERE Letter No. 94ë3 prot, of 23.03.2015 (our protocol no. 167 prot, of 24.03.2015).	<p>The Competition Authority, in its Letter No. 167ë1 prot, of 09.04.2015 to ERE, stated that:</p> <p><i>From the perspective of Law No. 9121 “On Competition Protection” (Article 69) the draft amendments to the Rules on new connections to the distribution system were in conflict with the Law because they introduced a restriction of the number of providers of services in the distribution network which would result in competition restriction in the relevant market and in the restriction of consumer choice.</i></p> <p><i>In order to avoid the restriction, the Competition Commission recommended that, in the proposed amendments to the Regulation on the approval of new connections with the distribution system:</i></p> <ol style="list-style-type: none"> <li><i>1) ERE should not introduce a restriction on the number of providers in all types of services to be carried out in the distribution network;</i></li> <li><i>2) All the procedures for the services requested by OSHEE on new connections with the distribution network should be transparent and published, in order to not restrict the number of providers of that type of service;</i></li> <li><i>3) The approval of the licensees to provide service in the distribution network should be granted by the ERE or licensing institutions and be notified to OSHEE.</i></li> </ol>	
<u>17.</u>	Evaluation of public consultation paper “Analysis of landline telephony market: Retail market of public access/calls to public telephony networks from	On Authority’s own initiative.	<p>The Competition Authority, in its Letter No. 307ë1 prot, of 16.09.2015 to AKEP, stated that:</p> <p><i>At the end of the analysis, the Competition Authority states its no-objection, and notes that the document has correctly addressed competition issues and that Albtelekom’s market share has decreased due to competition from other</i></p>	

	landline locations and retail and wholesale markets of call termination, transit and origination in public telephony networks from landline location”.		<i>operators.</i>	
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Annex 9: Competition Authority Structure



**BUDGET EXECUTION**

( 2015 )

<b>Item</b>	<b>Unit</b>	<b>Approved</b>	<b>Actual</b>	<b>Difference</b>	<b>in %</b>
Salaries and bonuses	ALL	45,500,000	43,667,799	1,832,201	96
Social insurance contributions	ALL	7,000,000	6,458,523	541,477	92
Supplies and services	ALL	10,100,000	8,984,255	1,115,745	89
Transport allowance	ALL	240,000	240,000	0	100
Social assistance	ALL	50,000	50,000	0	100
Investment	ALL	1,000,000	999,380	620	100
<b>Total</b>		<b>63,890,000</b>	<b>60,399,957</b>	<b>3,490,043</b>	<b>94.5</b>

**Revenues from concentrations were ALL 5,600,000**