



**REPUBLIC OF ALBANIA  
THE COMPETITION AUTHORITY**

**ANNUAL REPORT 2007**

**AND**

**MAIN WORK OBJECTIVES  
FOR THE YEAR 2008**

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## **Introduction**

It is a known fact that the Albanian economy is free-market oriented. Although competition is an unavoidable free market characteristic, the establishment of effective competition requires a legal and institutional framework. In Albania, that framework exists and is implemented by the Competition Authority.

The Competition Authority, which is one of the public institutions directly engaged in the creation of a system that guarantees the functioning of market mechanisms, has as her main objective the protection of competition in the domestic market from distortions and anti-competitive practices. By doing so, the Competition Authority contributes to the creation of a free and effective market economy.

In support of the enforcement of the Law No. 9121, dated 28.07.2003 “On the Protection of Competition” and the National Competition Policy, the Competition Authority has considered of particular importance to increase its advocacy inputs, enhance transparency of the procedures and the decisionmaking, with the objective to influence fair play of the market operators.

The Competition Authority has conducted investigations, and for the first time, adopted important decisions against anti-competitive practices which violate the Competition Law. Th decisions were argued and supported with proofs of the breaches committed, to include abuse of dominant position or prohibited agreements between undertakings. Under this context, the interventions of the Competition Authority to ensure free and effective competition in the market have been oriented towards sectors and markets that are more susceptible to deformations of competition, such as the mobile telephony market, insurance market, construction sector, and in particular, concrete production and bread production markets. The most important decisions adopted by the Competition Commission regarded these markets.

The decisionmaking of the Competition Authority was based on the economic analyses performed by its Secretariat and the hearing sessions conducted with the undertakings under investigation. The practice of organizing hearing sessions and enabling the parties to access the investigation file is another novelty in the practice of the Competition Authority that aims at increasing the transparency of the procedures and the decisionmaking process.

The Authority has improved her investigative capacities in producing evidence on anti-competitive practices, especially by increasing the rapidity of action. However, still remain aspects of work that need to be consolidated further, in particular concerning the investigation procedures.

The Albanian market economy has its own specifics that are related to the short history, the size and structure, the dominance of small and medium business,

etc. These characteristics have been taken into consideration by the Competition Authority, whose decisions in support of the implementation of the Competition Law and the National Policy on Competition were based also in international best practice, as applied by the European Union and counterpart institutions.

The Competition Authority has intervened with measures towards undertakings, whose actions were in breach of the Competition Law, and also provided recommendations to regulatory institutions in favour of a larger liberalization of the economy and its opening towards competition and competitiveness.

Only an open and competitive economy can ensure sustainable economic development and a better welfare for all. The Authority has supported the economic liberalization and the promotion of competition in the economy, to ensure equal competitiveness criteria for private businesses and public enterprises, with the belief that only in this way the Competition Authority can realize her vision, which is “competition produces prosperity.”

The Competition Authority has entered a new phase of functioning, because this institution is today much better equipped with human and financial resources than before. Therefore, the Authority is required to improve the level of expertise and truly operate as an independent institution in performing the function of guaranteeing equality between the market operators.

The Competition Authority has increased her presence in the regional cooperation activities, through active participation in roundtables and consultations, and experience sharing with international experts and counterpart institutions in the region and broader. In addition, the Authority has submitted materials for publication at the Global Competition Review; Competition and Antitrust Review, 2007 (published by Euromoney); and the International Competition Network.

Lindita Milo(Lati) PhD  
Chairwoman of the Competition Authority

## **II. The main Developments in Market Competition and Performance**

During the year 2007, the Competition Authority based her activities on the competences conferred by Law No. 9121, dated 28.07.2003 “On the Protection of Competition” and on the National Competition Policy Document, approved by the end of 2006. The main challenge in the implementation of these documents is the creation of a business culture favourable to a free and effective competition in the market and the raising of consumers’ and businesses’ awareness on the positive effects of competition. By following carefully market developments related to competition, the Competition Authority has been able to successfully conclude the ongoing investigations and to open a series of new investigations in various economic sectors. In general, the investigations progressed well, and this fact was noted also in the Progress Report of the European Commission.

In performing her tasks, the Competition Authority followed the principle of equality, i.e. the placing of all market players under the same conditions, and the protection of those rights of consumers that are threatened because of the anti-competitive behaviour of undertakings that operate in the market.

The Competition Authority has intervened in important economic sectors with the purpose of restoring competition in the market. They include the telecommunications, energy and the financial market.

During 2007, at the conclusion of the mobile telephony market investigation, the Competition Commission adopted one of her most important decisions regarding abuse of dominant position in the market. The investigation started on September 2005 and involved two undertakings operating in the relevant market during the investigation period, i.e. AMC and Vodafone Albania. Through Decision No. 59, dated 9 November 2007, “On abuse of dominant position in the Mobile Telephony Market by Albanian Mobile Communication sha and Vodafone Albania sha”. the Competition Commission imposed fines on both companies, amounting at 454,185,000 Lek.

In the Progress Report, the European Commission commended the investigation and the decision adopted by the Commission, in relation to the factual evidence on abuse of dominant position in the market by both undertakings.

Subsequent to that investigation, the Competition Commission issued Decision No. 61, dated 21.11.2007 where was recommended to the Council of Ministers and the Regulatory Agency for Telecommunications to take immediate measures to effectively liberalize the mobile telephony market through the introduction of the third operator, and the initiation of licensing procedures for a

fourth operator, since the frequency band allocated to Albania enables the introduction of a fourth operator.

These recommendations aim to strengthen competition in the mobile telephony market and, consequently, make available to the consumer higher quality services at a lower price.

During the whole year 2006, and the first quarter of 2007, the insurance market was under investigation following observation of certain practices and coordinated behaviour of eight undertakings that operate in the market.

The Competition Authority ascertained that (i) the Third Party Liability (TPL) Insurance market is not completely liberalized, (ii) the coordination of the behaviour of the operators brings about price fixing of compulsory insurance policies and the implementation of exclusive agreements, regarding selected products (Internal TPL, Border Insurance Policy, Green Card Policy); and (iii) TPL Insurance Market is deformed and there is observed restriction of competition.

Concerning the agreement for the trading of Border Police Insurance, the Competition Commission issued two decisions that (i) abolish the agreement and impose fines on the participating insurance companies; and (ii) recommend to the Ministry of Finance measures for the liberalization of the market for this product and the abrogation of the relevant ordinance issued by the ministry regarding the sale and administration of Border Policy. In addition, the Commission made recommendations to the Financial Supervision Authority related to market regulation on the basis of defined standards, and the enforcement of controlling procedures and sanctions.

These recommendations were duly taken into consideration by the Ministry of Finance and the Financial Supervision Authority.

However, further investigation and decisionmaking by the Competition Commission was suspended by a decision of the District Civil Court of Tirana. The Competition Authority has reacted both publicly and institutionally against that decision, as a violation of Law No. 9121, dated 28.07.2003 "On the Protection of Competition", a law that established the competences of the Competition Authority.

Another occasion when the Competition Authority intervened to restore competition in the market was in the case of the agreement entered between 18 concrete producers in Tirana Region. The Competition Commission decided on the immediate annulment of the agreement that stipulated price fixing on several concrete trademarks, and proceeded to monitor the developments in that market until the conclusion of the investigation. Based on the conclusions of the investigation and the contentions of the undertakings participating in the hearing

sessions organized by the Authority, the Competition Commission decided to impose fines on nine concrete producing companies on grounds of their failure to provide the required information to the Competition Authority.

The Competition Authority investigated the agreement entered between several bread producers in Fieri District, on the basis of which they (i) fixed the prices of massive bread at 100 Lek; and (ii) increased the prices of other types of bread products by around 17%. During the investigation proceedings, the hearing sessions, as well as the declarations of the head of the association [of bread producers] it became clear that he personally had played the chief role in the inducement of the agreement. Therefore, the Competition Commission decided to impose an individual fine on him.

Another important decision adopted by the Competition Authority during 2007 was the launching of a general investigation in the energy sector. The investigation comprised three submarkets: hydrocarbons, liquid hydrocarbons and electrical energy and its objective was to ascertain whether there was competition restriction in that market. The investigation was triggered by a preceding market monitoring performed by the Competition Authority, revealing such practices in several energy subsectors that raised suspicion on possible restriction or distortion of competition.

The year 2007 was considered as the year of a “tide” of transactions and concentration of capital in the financial market (to include both the banking and insurance markets). The Authority monitored and approved of eight of the transactions and concentrations between undertakings.

An important development in 2007 concerning the Competition Authority’s activity, was the approval by the Parliament of the new structure of the Competition Authority, and the increase of her staffing level at 35 employees. The structure of the Competition Authority was further completed with the creation of three departments and a sector, which are: Market Monitoring Department, Juridical and Integration Department and Human Resources Department, and the Sector of Market Research and Analysis.

During the year 2007, the Competition Authority has expressed opinions and made recommendations concerning various legal acts and normatives. Presently, the Competition Authority is working on a Guideline for the assesment of the legislation on competition, to be submitted to all parliamentary and governmental institutions, as well as sector regulatory agencies, which are also in charge of the preparation of normative acts.

Another priority objective of the Competition Authority during the year 2007 was the enhancing of the level of cooperation with the regulatory agencies. This objective was materialized through the signing of memoranda of understanding between the Competition Authority and these institutions, as well as the



common efforts to identify effective means in support of the intervention in regulated sectors of the economy. As a result, progress was made in establishing a higher level of cooperation with the Telecommunications Regulatory Agency, The Bank of Albania, the Financial Supervision Authority, the Energy Regulatory Entity, the General Directorate of Customs, the Agency of Public Procurements, as well as other institutions. In particular has improved information exchange and mutual recommendations with regard to potential measures that support the restoration of competition in the markets.

The cooperation with international partners, such as the General Directorate of Competition at the European Commission, the OECD, the International Competition Network, as well as counterparts in the region, was also raised at a higher level.

### **III. Organization and Functioning of the Competition Authority**

The Competition Authority is a public and independent body, established through Law No. 9121, dated 28.07.2003 “On the Protection of Competition”. The same law establishes the purpose and competences of the Competition Authority with regard to the protection of free and effective competition in the market, considered as a public good.

The Competition Authority is composed of the Commission and the Secretariat. The Commission is composed of four members and the chairperson.

#### ***III.1. The Competition Commission***

The Competition Commission is a permanent, collegiate body, with a 5-year mandate and presided by a chairperson. The legislation confers upon the Competition Commission the power to adopt decisions on matters related to limitation, restriction or preclusion of competition in the market, to include both public and private undertakings. In addition, the Commission forwards proposals on creating measures and means in support of the protection of free and effective competition.

The Commission’s activity is based on Law No. 9121, “On the Protection of Competition”, the National Policy on Competition, and the obligations originating from the Stabilization and Association Agreement with the EU. Furthermore, in her work the Commission is guided by the European standards in the field of competition.

At present, the Commission is composed of four, instead of five members as stipulated in the Law. In more than one occasion, the Competition Authority has addressed the relevant institutions with submissions requesting to complete its structure with a fifth member, and therefore upgrade the prerogatives for decisionmaking by the Commission. However, so far there are no new developments on this issue.

#### ***III.2. The Secretariat***

The Secretariat performs administrative investigations in accordance with the Law “On the Protection of Competition”, the Code of Administrative Procedures and other relevant legislation.

During the year 2007, the Competition Authority paid a particular attention to the strengthening of her administrative capacities, in terms of staffing levels,

structure, and capacitation of her employees, considering all of them as important factors to ensure real independence of the institution. These efforts were also stressed in the framework of the Albanian institutions' performance assessments made by the European Commission for the year 2007.

In the process of implementation of the obligations deriving from the Stabilization and Association Agreement with the EU, and in support of the work of the Competition Authority, the Government and the Parliament adopted decisions for the allocation of additional human and financial resources to the Authority. Specifically, during the fiscal year 2007, the staff of the Competition Authority was increased with 15 employees, of which 12 are expert staff. The recruitment process of the new staff took place during the period May-December of 2007.

The new structure of the Competition Authority Secretariat was approved by Decision No. 96, dated 30.04.2007 by the Albanian Parliament. The new structure reflects the three main pillars of the activity of the Competition Authority, as stipulated by the law. The newly created Sector of Market Research and Analysis, which task is to precede market investigations with market analysis, is expected to contribute to the increased effectiveness of the functioning of the Authority.

Below follows a more detailed description of the organizational structure of the Secretariat.

### **III.2.1 The Market Monitoring Department**

In the course of the past year, the Market Monitoring Department has gone through an organizational consolidation process, which transposed the three main directions of the Law through the creation of three corresponding sectors, specifically:

- Abuse of dominant position;
- Anti-cartel (prohibited agreements);
- Control of concentrations (transactions in the capital markets that result in concentration in the relevant markets).

The Market Monitoring Department performs market monitoring, research and investigation from the standpoint of the economic effects of anti-competitive practice in the markets, in support of the implementation of the Law "On the Protection of Competition" and the regulations adopted by the Competition Authority. One of the main challenges facing this department was the improvement of investigative techniques, effectiveness and diligence in processing administrative acts and evidence.

As a result of the work performed by this department, during the year 2007, the Authority has been able to intervene into several markets, through economic and financial analyses of the markets, investigations to identify potential anti-competitive practices that hamper, or threaten to hamper competition or create situations of abuse of dominant position. In addition, this department performs analyses to assess economic effects of mergers or acquisitions of undertakings operating in the same market or related markets.

### **III.2.2 The Juridical and Integration Department**

The Juridical and Integration Department is in charge of the integration of the domestic legislation on competition with EU legislation. The Juridical and Integration Department is organized in two sectors: the European Integration Sector and the Investigation of Juridical Affairs Sector. The department functions as integral part of the Competition Authority. It covers the juridical aspect of the procedures followed by the Monitoring Department, and in cooperation with the experts of the working groups, represents the Authority before courts, when lawsuits are filed by third parties in relation to the Authority's decisions.

Under this context, one of the main challenges of this department was the adoption of the experience of other EU countries with regard to the argumentation and presentation of draft-decrees that deal with ascertained anti-competitive practices.

The Juridical and Integration Department reviews the legislation to identify potential incoherence with the Law No. 9121, dated 28.07.2003 "On the Protection of Competition" and makes suggestions to the Competition Commission for amendments to legal and normative acts, accordingly. In addition, the department ascertains the legal basis and performs legal interpretation of normative acts issued by other institutions in general, and by the Competition Authority, in particular.

### **III.2.3 Human Resources, Services and Documentation Department**

One of the main, immediate priorities of the Competition Authority during the year 2007 was the enhancement of institutional capacity, in support of the overall objective to create an institution that would perform in a responsible and transparent way in the implementation of the law, aiming to guarantee a free and effective competition in the market.

The new organization of the institution required the immediate provision of job descriptions, both for the new and the restructured functions. During the period May-December 2007, the Human Resources, Services and Documentation Department realized 20 recruitment procedures, of which 17 concerned

acceptance to the civil service, and three parallel movements. The recruitment of qualified personnel was conducted in accordance with the requirements and procedures stipulated under Law No. 8549, dated 11.11.1999, "On the Status of Civil Servant", Articles 10 and 13.

The completion of the organizational structure with newly recruited employees requires appropriate training, both in country and out of country. During the year 2007, the employees of the Competition Authority participated in a number of domestic and international activities, to include seminars, workshops, conferences, etc. The participation to these activities was financially supported by the Training Institute of Public Administration, the OECD, TAEIX, and the Competition Authority.

The Human Resources, Services and Documentation Department is also in charge to cover all the financial activity of the Authority, and has full responsibility for the administration of the allocated budget, in compliance with the effective legislation in Albania for the management of the State budget. In cooperation with the other departments, the Human Resources, Services and Documentation Department prepares the budget proposal of the Competition Authority, maintains the accounting of the same and performs analyses on the usage of budgetary funds, in accordance with the Albanian accounting legislation.

### **III.2.4 Market Research and Analysis Sector**

The Market Research and Analysis Sector was created upon Decision No. 96, dated 30.04.2007, "On the approval of the organizational structure of the Competition Authority". Its mission is the performance of economic analyses of the various structures of markets and *prima facie* identification of anti-competitive practices in such markets. The sector operates in accordance with Law No. 9121, dated 28.7.2003 "On the Protection of Competition", as well as the related bylaws.

The analyses performed by the Market Research and Analysis Sector aim to acquire a general understanding of the market and support the other sectors and departments of the Competition Authority in the performance of their tasks.

## **IV. Cases Addressed by the Competition Authority**

Law No. 9121, dated 28.7.2003 “On the Protection of Competition” provides clear dispositions on the procedures that enable the Competition Authority to investigate on abuse of dominant position, prohibited agreements and concentrations, as well as contains sanctions, to include fines, to be applied in cases of violation of the law.

Further in this Report are presented the cases addressed by the Competition Authority during the past year. The cases are grouped according to the three main directions of the Competition Law.

### ***IV.1. Abuse of dominant position***

The Law “On Protection of Competition” prohibits abuse of dominant position, and yet recognizes dominant position in itself. The Law prohibits any abuse by two or more undertakings holding dominant position in the market, in particular the determination, either directly or indirectly, of unfair sale or purchase prices, or any other unfair trading conditions.

#### **IV.1.1 On abuse of dominant position by AMC and Vodafone Albania**

During the year 2007, the Competition Authority has concluded the investigation on abuse of dominant position in the mobile telephony market. The parties involved in the investigation were two undertakings that operate in the Albanian market, i.e. AMC and Vodafone Albania. The investigation in the mobile telephony market started on September 2005, on the Authority’s own initiative. In the 2006 Annual Report, the Competition Authority provided information on the progress of the investigation proceedings in that market.

The Competition Commission demonstrated that AMC and Vodafone hold a dominant position in the mobile telephony market and that during the period 2004-2005, both undertakings had abused of their dominant position.

Pursuant to Article 9, paragraph 2, letter “a” of the Competition Law, one of the main forms of abuse of dominant position is the application by the undertakings of unfair pricing. The applied price is deemed unfair if it is much higher compared to that applied in a competitive market.

In order to be able to assess the unfairness of the price, first the price level should be compared against the economic value of the product, or stated differently, with the cost of the product. Secondly, and if the cost of the product can not be determined, the market price level and the profit rate should be

compared, respectively, against the price level and the profit level of comparable products, or to the same price and profit levels of same products in different geographical markets. Based on the above, the Competition Authority used three different approaches:

1. Ascertainment of the fact that the high prices of the products had no reasonable relation to the products' economic value;
2. Assessment of profits from trade, and the resulting conclusion that they would not apply in a presumably competitive market;
3. Comparison of tariffs [products' prices] with those applied in other geographical markets.

As a result of the findings, the Competition Commission concluded that:

- Both undertakings that operate in the mobile telephony market hold a dominant position in the market and have abused of such position through the application of unfair pricing in the relevant market during the period under investigation, i.e. 2004-2005.

Upon conclusion of the investigation, the Competition Commission decided to impose competition infringement fines on Albania Mobile Communication sh.a. (AMC) and Vodafone Albania sh.a. The size of the fine for AMC was equal to 2% of the 2005 annual turnover of the relevant product, and amounted to 211 552 000 Lek. Likewise, the size of the fine for Vodafone Albania sh.a. was equal to 2% of the 2005 annual turnover of the relevant product, and amounted to 242 633 000 Lek.

AMC sh.a. and Vodafone Albania sh.a. have appealed the decision of the Competition Commission to the the District Civil Court of Tirana and the court proceedings are expected to continue during the year 2008.

Upon the conclusion of the investigation on the mobile telephony market, the Competition Authority adopted Decision No. 61 "On Some Recommendations Regarding the Mobile Telephony Market". Since the mobile telephony market is a regulated market, the Competition Commission recommended to the Council of Ministers and the Telecommunications Regulatory Agency the liberalization of the mobile telephony market through the introduction of the third operator, "Eagle Mobile", within the legal deadline as determined in the licensing criteria, as well as the opening of the licensing procedures for a fourth operator since the frequency band allocated to Albania enables the introduction of a fourth operator.

Through Decision No. 61, the Competition Authority suggested to the Telecommunications Regulatory Agency that the dispositions of Law No. 8618, dated 14.06.2000, titled "On telecommunications in the Republic of Albania" that regard Operators with Significant Market Power should be brought in line with

the European Union Telecommunications Regulatory Structure, in particular with Directives issued during 2002. In addition, the Competition Authority suggested that Chapter XII, which addresses inspection, supervision and administrative procedures should be revised in order to strengthen sanctions (fines) against violations of administrative procedures by the undertakings.

The Competition Commission has expressed the view on the indispensability of the drafting of a User Tariff Regulation Methodology and a Interconnection Tariff Regulation Methodology for both mobile telephony operators, which are recognized as Significant Market Power Operators. The Commission also suggested the need to increase the transparency and ensure observation of the non-discrimination principle in relation to the interconnection agreements. In addition the Commission suggested the Telecommunications Regulatory Agency to monitor the interconnection agreements and to ensure compliance with competition principles in the telecommunications market.

The aforementioned institutions have responded to the suggestions made by the Commission through drafting and publishing relevant regulations.

#### **IV.1.2 Launching of general investigation into the energy sector**

By adopting her Decision No. 60, dated 12.11.2007, the Competition Authority launched a general investigation into the energy sector. The investigation shall comprise three submarkets: hydrocarbons, liquid hydrocarbons and electrical energy, with the purpose to ascertain competition restrictions or distortions in the market. The investigation was triggered by a preceding market monitoring performed by the Competition Authority, and that revealed the implementation in several energy subsectors of practices that raised suspicion on possible restriction or distortion of competition. In addition, there is a continuous concern of the consumers and public institutions with regard to the behaviour of the undertakings operating in this market. Taking into account the fact that, to a certain degree these markets are substitutes, as well as the expected developments in the electrical energy submarket, the general investigation was extended to include the whole sector.

At this initial phase, the investigation is being conducted by a working group composed of experts of the Competition Authority. At a later stage of investigation, the Authority, with the support of TAIEX has provided for the assistance of foreign experts.



### **IV.1.3 Interventions of the Competition Authority into the fixed line telephony**

During the year 2007 the mobile telephony market went through important developments. Most notably, the sale of 70% of the shares of “Albtelecom”, a public company, and the ownership change of the third operator of the mobile telephony market, created chances for new investments in the market.

Another important development in the telecommunications market during the same year was the liberalization of fixed line telephony in the urban areas. An offshot of the liberalisation was that many alternative operators offering their services only in the rural areas, have applied to change the service areas defined in their respective licenses, in order to include urban areas. The liberalization is a sign of the opening of the market to competition and is expected to positively impact both the quality of service and price.

However, the market liberalization, associated with the transition of ownership of “Albtelecom” created a number of problems that concern competition between Operators with Significant Market Power and alternative operators. The Competition Authority has received several complaints filed by diverse associations, to include the Association of Alternative Operators, and directed against “Albtelecom” and two mobile telephony operators, which are AMC and Vodafone Albania.

The first complaint filed with the Competition Authority was that of “Nisatel” company. “Nisatel” is the first licensed operator for the provision of telecommunication services in the urban area of Vlora. “Nisatel” complaint is based on the claim that Albtelecom is abusing of dominant position by declining to enter an interconnection agreement with “Nisatel”.

Upon receipt of the complaint, the Competition Authority addressed both undertakings, namely Albtelekom and Nisatel, and organized several meetings with their representatives. Since the issue under discussion involved the interpretation of various technical indicators and the activity of the Telecommunications Regulatory Agency, several consultative meetings were organized with the latter, as well, with the objective to realize the interconnection agreement within the month of December. The Competition Authority required by the parties full compliance with Law No. 9121, “On the Protection of Competition”, under which, in order to ensure competition in the market, the undertakings holding dominant position are obligated to offer services without discriminatory conditions to the other operators.

As a result of the intervention of the Competition Authority, the parties agreed to start negotiations, which resulted in the signing of a preliminary interconnection agreement on 31 December 2007. This agreement shall be used as a template

for the interconnection agreements that Altelecom shall sign with all the other licensed, alternative operators that offer their services to urban and rural areas.

This issue represents one of the first cases when an undertaking complains for anti-competitive practices applied by another undertaking. This fact supports the growing confidence of domestic business on the Competition Authority, as well as an increased efficiency of the work of this institution. The Competition Authority has received other complaints by alternative operators and their association, all of which [complaints] concern mainly the interconnection agreements.

The Telecommunications Regulatory Agency has already adopted a regulation, in order to provide for the regulation of such relations, and has determined a deadline for the completion of the interconnection agreements. Under these conditions, the Competition Authority is waiting until the obligations deriving from the abovementioned regulation are met, while continuously monitoring the telecommunications sector.

#### **IV.1.4 Inquiry on the existence of dominant position of “Profarma” sha and “Ajka” sha companies**

Upon request forwarded by the Wealth Verification Inspectoriate, the Competition Authority has performed a market assesment to inquiry on the existence or less, of dominant position “Profarma” and “Ajka” companies in the pharmaceutical market and milk processing market, respectively. The Competition Authority carried out analyses of both markets and found that none of the companies hold dominant position in the relevant markets.

### ***IV. 2. Prohibited agreements***

Acting on the basis of the authority conferred by Law No. 9121, dated 28.07.2003, “On the Protection of Competition”, (Article 4), and to ensure its implementation, during 2007 the Competition Authority has followed closely market developments to investigate for evidence on prohibited agreements. Acordingly, when the Competition Authority found evidence of agreements between undertakings, which acting as one organization (in case of cartel agreements) impose fixed pricing and therefore violate free competition in the market, has intervned with appropriate measures to abolish such agreements and other relevant procedures.

In various occassions, the Competition Authority has addressed businesses or associations that represent them, to make them aware that entering into agreements that imply restriction, hampering or distortion of competition constitutes a violation of the Competition Law.

The objective of the work of Anti-Cartel Sector of the Competition Authority has been the achievement of free and effective market competition, acting to remove restrictions to competition and to prohibit price increase and price fixing, and other consumer discriminatory trading conditions.

In analysing horizontal agreements that imply price fixing, the Authority followed the best practice of the European Commission, and accounted accordingly for the specific characteristics of our country's economy. The assessment of market conditions to investigate on such type of agreements and the estimation of the economic damage to the consumers is a valuable tool for the protection of public interest, economic development and, in particular, consumer protection.

Below are presented the most important cases addressed by the Competition Authority in fulfilling its tasks to implement Law No. 9121, dated 28.7.2003 "On the Protection of Competition".

#### **IV.2.1 The agreement between concrete producers**

Upon information made available by written and electronic media, the Competition Authority became aware of the existence of an agreement signed between the members of the Union of Concrete Producers in Tirana Region (18 concrete production companies). The agreement provided for fixing the concrete sales price and determined trading conditions. Such provisions were in breach of Law No. 9121, dated 28.07.2003 "On the Protection of Competition".

The agreement signed between the concrete production companies was found in violation of the Competition Law, specifically of its Article 4, paragraph 1, letter "a". The agreement directly restricts competition by establishing fixed sales price and conditions that are incoherent with the object of the contract. The Competition Authority required free price negotiation and /or other trading conditions by the interested parties and the lifting of additional conditions that are unrelated to the object of the contracts.

Following up the investigation proceedings, the working group continued to monitor the market to observe eventual impacts of decision No. 56, dated 24.09.2007 "On the prohibition of the agreement in the concrete production market in Tirana region", adopted by the Competition Commission. The working group observed that the construction companies purchase concrete from concrete production companies at different prices.

In compliance with the investigation procedures, the Competition Commission organized a hearing session with the representatives of concrete production companies in Tirana Region. Upon review of the Report prepared by the Secretariat and the claims expressed by the parties, the Competition Commission concluded that the agreement was effectively implemented by the member companies of the Union of Concrete Producers. Therefore, on the

meeting held on 18.12.2007, the Competition Commission decided to impose fines on nine concrete production companies on grounds of their failure to provide the required information to the Competition Authority. Pursuant to Law No. 9121, dated 28.07.2003 “On the Protection of Competition”, Article 73, paragraph 1, the declining of undertakings to provide information is considered as a minor breach.

#### **IV.2.2 Insurance market investigation**

During the last years, the Competition conducted various investigations into the financial sector, and more specifically into the insurance market.

The Competition Authority ascertained that (i) the Third Party Liability (TPL) Insurance market is not completely liberalized, (ii) the coordination of the behaviour of the operators brings about price fixing of compulsory insurance policies and the implementation of exclusive agreements, regarding selected products (Internal TPL, Border Insurance Policy, Green Card Policy); and (iii) TPL Insurance Market is deformed and there is observed restriction of competition.

For the abovementioned reasons, the Competition Authority decided to launch a fact-finding investigation into the insurance market, and specifically, in relation to TPL products.

By considering separately the three compulsory insurance products' submarkets, the Competition Authority followed distinct investigation procedures and adopted only one decision regarding Border Police Insurance.

Although in compliance with Article 39 of the Competition Law, the insurance companies were duly informed on the investigation and were invited to express their claims concerning the issues, they refused to cooperate with the Competition Authority and appealed Decision No. 45, dated 19.01.2007 adopted by the Competition Commission, on the basis of which, the Competition Commission launched an in-depth investigation into the insurance market in relation to the (Internal TPL, Border Insurance Policy, Green Card Policy).

Concerning the agreement for the trading of Border Police Insurance, the Competition Commission issued two decisions that (i) abolish the agreement and impose fines on the participating insurance companies; and (ii) recommend to the Ministry of Finance measures for the liberalization of the market for this product.

In compliance with the Competition Law, the Competition Authority adopted a decision to prohibit the draft-agreement dated 05.04.2005, “On establishing the Pool of Border Insurance on Third Party Liability for owners of motorized vehicles”. The agreement was entered into between eight insurance companies

that operate in the insurance market, and they are: Sigma sh.a., Sigal sh.a., Atlantik sh.a., Intersig sh.a., Interalbani sh.a., Albsig sh.a., Eurosig sh.a. (former Dukagjini sh.a.), and Insig sh.a.. The Commission considered it as a prohibited agreement because it imposed restrictions to competition, through price fixing and market sharing provisions. The Competition Commission decision was to impose a fine on each of the undertakings participating in the agreement, at an amount equal to 2% of the 2005 annual turnover of each.

The insurance companies have appealed the abovementioned decision to the District Civil Court of Tirana and the cause is still under judgment (although almost one year has elapsed, the court has not been able to start the judgment, because both the court and the parties have delayed the process).

In compliance with the Competition Law, the Competition Authority adopted Decision No. 49, dated 21.03.2007 "On recommendations for amendment of several normative acts concerning the insurance sector". Through that decision, the Competition Commission recommended to the Minister of Finance the total abolition of Ordinance "On sales and administration of Border Policy Insurance by Albanian Insurance Bureau" and other related ordinances, that regard the distribution of income generated from border policy. These normative acts formalized the agreement that had both object and consequence the restriction of competition.

For the first time, the Ministry of Finance reacted in compliance with the recommendations provided by the Competition Commission. The Minister of Finance issued Ordinance No. 69, dated 17.7.2007 "On production, issuance, administration and sale of border insurance policy", which was in line with the recommendations of the Commission. The Competition Authority commended the issuance of the ordinance, since it complied with the decision of the Competition Authority in relation with the prohibition of anti-competitive practices in the insurance market, practices that were in breach of Article 4 of the Law "On Protection of Competition" and that provided for price fixing, market sharing, and restriction of supply to only one agent.

In addition, the Competition Authority recommended to the Financial Supervision Agency, which is the responsible authority for the supervision of the insurance market, to regulate the obligatory insurance policy market through establishing standards and controlling procedures, as well as enforcement of sanctions in case of violations, in order to avoid informality in the market.

The Competition Authority notes with pleasure the increased decisionmaking efficiency of the Commission of the Competition Authority, in relation to the establishment of standards into the insurance market. Such standards are considered as essential conditions for the functioning of businesses in the relevant market.

It should be noted that the further investigation proceedings into the insurance market concerning obligatory insurance and the sale of Green Card and TPL, where the Competition Authority had observed restriction of competition, was suspended since March 2007 by a decision adopted by the District Civil Court of Tirana. Such decision abrogated Decision No. 45, dated 19.01.2007 “On Launching of an In-Depth Investigation into the Insurance Market”, adopted by the Competition Commission, and hence has invalidated the work of the Competition Authority, an independent institution dedicated to the protection and restoration of free and effective competition in the market. The Competition Authority has reacted to the decision of the District Civil Court of Tirana, and has appealed it.

#### **IV.2.3. The agreement of bread producers**

Another case of prohibited agreement investigated by the Competition Authority was the agreement entered between several bread producers in Fieri District, on the basis of which they (i) fixed the prices of massive bread at 100 Lek; and (ii) increased the prices of other types of bread products by around 17%.

The agreement that became effective on 16.08.2007, constitutes a serious infringement of Article 4/a of Law No. 9121 “On the Protection of Competition”, because the grouping of the undertakings eliminates competition by fixing the sale price. For these reasons, the Competition Commission decided to abolish the agreement entered on 08.08.2007 between the bread producers in Fieri Region.

During the investigation proceedings, the hearing sessions, as well as the declarations of the Mr. Kajo Hallka, the head of the association [of bread producers] it became clear that he personally had played the chief role in the inducement of the agreement. Therefore, the Competition Commission decided to impose an individual fine on Mr. Kajo Hallka, amounting at 30,000 Lek.

#### **IV.2.4. Fine leniency program**

In all the practices followed by the Anti-Cartel Sector, along with requests for information, the sector has presented a fine leniency program that proposed full or partial reduction of fines imposed on those undertakings that cooperate with the Competition Authority in the investigation of prohibited agreements. According to this program, the undertakings involved in such prohibited agreements may terminate their involvement and avoid the imposition of financial penalty by providing evidence related to the issue under investigation. However, no case of such level of cooperation that would comply with the criteria set forth in the fine leniency program has occurred to date.

### **IV.3 Control of concentrations**

The experience to date of the Competition Authority has shown that in relation to the enforcement of the legal and regulatory framework on competition, the control of the concentrations between undertakings is of paramount importance. Through the control of concentrations, the Competition Authority can influence the development of market structures through the prohibition or limitation of those concentrations that may create or reinforce the dominant position of one or more undertakings, which imposes significant restriction in the market.

During the year 2007, the financial market has gone through structural changes that produced the side effect of enhancing competition. The year 2007 was characterized by a dynamic development of the banking market that consisted on structural changes, introduction and increase of foreign capital, changes in the ownership of the main market players [undertakings], and which were reflected in the applications for concentration filed with the Competition Authority. In all the reviewed applications, the Competition Authority cooperated with the Supervision Department of the Bank of Albania, being the regulatory agency of the banking sector, and the Financial Supervision Authority, being the regulator of the insurance sector.

#### **IV.3.1. Authorizations regarding the financial sector**

1. Through adoption of Decision No. 51, dated 9.5.2007, the Competition Commission authorized the concentration realized through the purchase of 80 of the owners' capital and voting rights of the American Bank of Albania by Intesa SanPaolo Spa, which is the majority shareholder of the Italian-Albanian Bank. The realization of this concentration is expected to increase competition with the main bank operating in the national market (i.e. Raiffeissen Bank). The enhanced competition concerns the asset market, deposits market and treasury bonds market, thus creating two strong competitors that are followed by other 14 banks that play an important role in the relevant market, national market, as well as the international market.
2. Through adoption of Decision No. 52 dated 21.06 2007, the Competition Commission authorized the concentration realized through the purchase of 75.006% of the owners' capital and voting rights of the Popular Bank by Societe General S.A., which is part of the banking group based in France.
3. Through adoption of Decision No. 64, dated 3.12.2007, the Competition Commission authorized the concentration realized through the purchase of 36.25% of the shares of ProCredit Bank sh.a. by ProCredit Holding AG, which is part of Procredit Group based in Germany. Pursuant to the procedure for the control of concentrations as stipulated by the Competition Law (articles 53-63), resulted that, although the concentration

did not affect the banking market structure, the information provided by the notifying party, i.e. ProCredit Bank AG, concerning the date of the signature of the [concentration] agreement was neither accurate, nor complete. In this context, the Competition, pursuant with Article 73 of the Competition Law, adopted her Decision No. 63, 3.12.2007 to impose a fine on ProCredit Holding AG at the amount of 7 million Lek.

4. Through adoption of Decision No. 65, dated 11.12.2007, the Competition Commission authorized the concentration realized through the merger by acquisition of the Italian-Albanian Bank by the American Bank of Albania. The concentration realized by acquisition caused that Italian-Albanian Bank ceased to exist as juridical person, and a new bank was formed, named "the American Bank of Albania". The merger of these banks increases the market power of the newly formed American Bank of Albania and ranks it only second to Raiffeisen Bank. Viewed from the standpoint of market efficiency, the strengthening of market position of the American Bank of Albania after the concentration does not have a significant adverse effect on market competition and is beneficiary to the clients. The introduction of new products and services, the improvement of the existing ones, creation of synergies through the decrease of costs and increase of revenues, the development of information technologies, etc. are all pro-competition indicators that offset the consequences of the strengthening of market position of the American Bank of Albania.
5. Through adoption of Decision No. 55, dated 11.09.2007, the Competition Commission authorized the concentration realized through the purchase of 75%+1 of the shares of Sigma sh.a. company by TBIH Financial Servis Group N.V. This is the first concentration realized in the insurance market. The introduction into the market of a powerful financial group of the European Union represents a positive development for the Albanian insurance market, as it is expected to improve service standards and increase competition. Sigma sh.a. company holds the third position in the market with regard to the amount of primes signed during the year 2006 (the year prior to the concentration) and operates also in Macedonia and Kosova through its agencies. The particularity of this case is the intermingling with another market, that of private and supplemental pensions market, which is still at an initial phase.

#### **IV.3.2. Authorizations of concentrations**

Agreements or practices of undertakings operating in the national market, but also of undertakings operating in the international market, that either directly or indirectly, have an adverse impact on the competition in the national market are subject to the Competition Law. Under this context, the Competition Authority adopted the following decisions:



6. Through adoption of Decision No. 48, dated 21.03.2007, the Competition Commission authorized the concentration realized through the purchase of 100% of the shares of Gallaher Group plc Company by Japan Tabaco Inc. We note that both undertakings operate in the Albanian tobacco and cigarettes market through their authorized, exclusive distributors, which are Primal Trading and Kuinda sh.p.k.
7. Through adoption of Decision No. 53, dated 12.07.2007, the Competition Commission authorized the concentration realized through the purchase of 30% of the shares of Strabag SE company by Rasperia Trading Limited, with headquarters in Limassol, Cyprus. The concentration does not have any adverse impact on competition in the national construction market, neither at the vertical or the horizontal level, for two reasons: Firstly, we have a limited geographical market, where the parties to the transaction share only 5% in total. Secondly, the product market of the undertakings is different both at the vertical and the horizontal level.
8. Through adoption of Decision No. 54, dated 04.09.2007, the Competition Commission authorized the concentration realized through the purchase of 76% of the shares of Albtelekom sh.a. company by Calik Energji Telekomunikation (CETEL). Competition in the fixed-line telephony market is limited because of the domination of the market by one single operator and the absence of powerful competitors. In pursuing her mission, the Competition Authority shall closely monitor the market behaviour of the company, in order to avoid restriction, hampering or deformation of competition in the market. In the meantime, the transaction is expected to produce structural changes in the mobile telephony market, as a result of the entry of Eagle Mobile, which is envisaged to increase competition in this market, where currently operate only two undertakings.

#### ***IV.4. Market monitoring and analyses***

Market Research and Analysis Sector was established by Decision No. 96, dated 30.04.2007 "On the approval of the structure of the Competition Authority", adopted by the Albanian Parliament. As a newly created sector, it has been primarily engaged with the monitoring and analyses of the energy and financial markets.

## **V. Juridical Issues, European Integration and Amendment of Legislation to Comply with EU Legislation**

### ***V.1. Juridical Issues***

In fulfilling her role to protect free and effective market competition, during the year 2007 the Competition Authority focused, in particular on aspects that concern the legal obligations stipulated under the dispositions of paragraph 2, Article 62 of Law No. 9121, dated 28.07.2003 “On the Protection of Competition” (amended). Under this context, the Competition Authority has provided contribution in the assesment of the various legal and regulatory acts from the standpoint of restriction or distortion of competition. The Competition Authority has provided recommendations in that regard when has been required to so by the relevant institutions, but also has acted on her own initiative to assess whether certain normative acts comply with the Competition Law.

The Authority has addressed relevant state institutions in relation to any normative act, which would have had a potential adverse effect on market competition. In this manner, the Competition Authority has ensured an ex-ante intervention by recommending to various institutions amendments to their legislation, at the drafting phase, so that it would comply with the rules that ensure free and effective competition in the market.

More specifically, the Competition Authority has assessed the following legal acts from the standpoint of compliance with competition rules and has provided recommendations as appropriate:

- On draft-decision “On leasing or granting the use of asets of publicly owned enterprises, companies and institutions”;
- On draft-law “On some amendments and additions to Law No. 8701, dated 01.12.2000 “On gambling businesses, casinos and race-courses” as amended”, (Ministry of Economy, Trade and Energy);
- On draft-law “On the creation and functioning of economic zones” (METE);
- On the Project regarding the Rules and Procedures for the Sale of Electrical Energy;
- On draft-law “On numerical, experimental transmissions in the Republic of Albania”;
- On draft-law “On Agriculture and Rural Development”;

- On draft-law “On some amendments and additions to Law No. 8518, dated 30.07.1999 “On Irrigation and Drainage”, (Ministry of Agriculture, Food and Consumer Protection);
- On draft-decision “On some amendments and additions to Decision No. 463, dated 05.07.2006 “On the approval of the National Plan on the Implementation of the Stabilization and Association Agreement”, (Ministry of Integration);
- On draft-law “On some amendments and additions to Law No. 9362, dated 24.03.2005 “On plant servicing and protection”, (Ministry of Agriculture, Food and Consumer Protection);
- On draft-law “On entrepreneurs and commercial companies” (METE)
- On draft-decision “On the approval of structure and salary levels of civil servants/employees, employees of ministerial cabinets and the administrative staff of several independent institutions (Ministry of Interior).

In complying with her legal obligations, and specifically, Article 82 of Law No. 9121, dated 28.07.2003 “On the Protection of Competition”, the Competition Authority, in cooperation with GTZ, has consolidated the methodology for the assessment of normative acts in effect. Following up that process, the Competition Authority has prepared the matrix for the assesment of legislation from the standpoint of compliance with the Competition Law.

Also in cooperation with GTZ, the Competition Authority drafted Guideline “On the assessment of the impact of [existing] legislation on competition”, which is expected to facilitate the implementation of Article 69 of Law No. 9121, dated 28.07.2003 “On the Protection of Competition”. This Guideline shall assist central and local government bodies to identify those cases when they should require the assessment of the legislation while still in drafting phase by the Competition Authority. the Competition Authority has submitted this Guideline as recommendation to relevant institutions, in order to help them during the drafting legislation process so that they comply with the requirements of the Competition Law.

## ***V.2 Judicial cases of the Competition Authority***

In the fulfillment of her legal obligations, the Competition Authority has conducted various investigations in several economic sectors and applied sanctions, as appropriate. These sanctions have disturbed the economic interest of the parties involved. Therefore, such parties have objected the decisions adopted by the Competition Authority and have filed court complaints.

During the past year, in all cases when other parties have filed lawsuits against the decisions adopted by the Competition Authority, the latter has provided to present the defense before the District Civil Court of Tirana and the Court of Appeal.

The Juridical Department can not realize the defence of the decisions adopted by the Competition Authority if not involved actively during the investigation process and the argumentation of such decisions. The involvement of juridical experts of the Department of Juridical Issues and Integration into the activity of the working groups formed to deal with the various investigations conducted by the Secretariat of the Competition Authority, has had a positive impact on the improvement of juridical argumentation of the investigation reports and draft decisions. In addition, such work practice ensures a better performance during the phase of juridical defence of draft-decisions before the Competition Commission, and the eventual defense of the same decisions at the courtroom.

At the conclusion of the in-depth investigation into the insurance market, the Competition Authority faced two lawsuits filed by the investigated undertakings. It is worth mentioning the circumstance that before the adoption of the final decision, the Competition Commission invited the undertakings under investigation in a meeting, with the purpose of enabling them to express their opinion and reasons concerning the investigation process, the facts that emerged from it, and the investigation report.

However, because of poor knowledge of the procedures of Law No. 9121, dated 28.07.2003 "On the Protection of Competition", the undertakings did not consider appropriate to take this approach, but instead proceeded immediately to file lawsuits with the District Civil Court of Tirana. Through the first lawsuit, they required the invalidation of the decision of the Competition Authority to open an in-depth investigation in the market. The court was unclear on the procedure followed by the Authority in the launching of the in-depth investigation and also on its consequences. Therefore, the court decided to open a court case and by doing so, it automatically suspended partially the investigation in that market. The suspension is in effect until the case is resolved by the Court of Appeal.

Upon adoption of the decision of the Commission for imposition of fines on the undertakings in the insurance market at the amount of 2% of the annual turnover, the Authority was again faced with lawsuits filed by these two undertakings. The case is still open and is being handled by the District Civil Court of Tirana.

Until the end of the year 2007, the Competition Authority had an open court case with AMC sh.a. at the Tirana Court of Appeal following the latter's lawsuit against the Competition Authority's decision to impose a fine at the amount of 1% of the annual turnover of AMC sh.a. At the same time, the Competition

Authority is expecting the resolution by the Court of Appeal in relation with the decision adopted by the the District Civil Court of Tirana to annulate the in-depth investigation into the mobile telephony market, which [decision] was objected and appealed by the Authority.

The Competition Authority won, at both court levels (the District Civil Court of Tirana and the Court of Appeal) the court case opened by Calik Sheker Yatirim in relation with the fine imposed by the Authority.

### **V.3. Approximation with EU legislation**

In compliance with the authority conferred by Law No. 9121, dated 28.07.2003 "On the Protection of Competition", the Competition Authority has continued to focus her attention towards the approximation of our national legislation with EU legislation. During the year 2007, the Competition Authority has worked to complete and draft secondary legislation in the field of competition in order to ensure compliance with relevant EU legislation.

During the EU-Albania joint committee meeting held in March 2007 in Brussels, was discussed and commended the work done by the Competition Authority in the framework of the approximation with the EU legislation in the field of competition, investigating procedures of anti-competitive practices, and in particular, the investigation into the mobile telephony market and the obligatory insurance policy. EU experts praised the increase of institutional capacity of the Competition Authority as an important factor in improving market performance from the standpoint of competition. The same positive evaluation for the performance of the Competition Authority was expressed by EU experts at the 11<sup>th</sup> EU-Albania joint committee meeting held in November in Tirana. They expressed regard for the work done in the framework of complying with the legal obligations deriving from the Stabilization and Association Agreement concerning the approximation and adaptation of EU legislation into the field of competition.

Through her monthly, quarterly and annual progress reports submitted to the Ministry of Integration, the Competition Authority has informed and reported on the fulfillment of the obligations stemming from the Stabilization and Association Agreement. The Competition Authority has worked on the approximation of EU regulation No. 139/2004 "On the Control of Concentrations Between Undertakings", etc. These regulations shall be reflected into the amendment of Regulation "On the Implementation of Concentration Procedures Between Undertakings" and into a legal package (regulations, guidelines, notification forms" that regard the issue of concentration. This legal package is prepared in compliance with the *Acquis Communautaire* and aims at the improvement of the concentration procedures and their approximation with similar procedures adopted by competition authorities of EU countries. It also aims at increasing

the transparency and facilitation of the procedures of the Competition Authority, etc.

The process of approximation with EU legislation is in the phase of discussion with legal firms and other interested third parties. The Competition Authority expects to obtain feedback from such discussions and reflect the as appropriate into the drafting of the legal package.

The Competition Commission has adopted the new internal Regulation “On the Functioning of the Competition Authority”. This Regulation was drafted to comply with the implementation requirements of the organic law of the Competition Authority, the National Policy on Competition and Regulation 1/2003 of the European Commission “On the Implementation of the Rules on Competition Laid Down in Articles 81 and 82 of the Treaty”, etc. The objective of the Regulation is to determine exactly the investigation procedures in accordance with the rules of organization and functioning of the Competition Authority, in accordance with the investigation procedures applied by counterpart institutions, and to define clearly the competences of the Competition Commission and the Secretariat, based on the law.

To ensure the application of a high work ethic and professional and social correctness, the Competition Authority prepared and adopted “The Code of Ethic of the Competition Authority”. The Code determines the work ethical rules to be applied by the employees of the Competition Authority, also in compliance with Law No. 9131, dated 08.09.2003 “On Ethical Rules Applying to the Public Administration”, Law No. 9367, dated 07.04.2005 “On prevention of Conflict of Interest in the Exercise of Public Functions” etc. Furthermore, the Code reflects the principles in accordance with the codes of ethic of competition authorities of other European Union member states.

## **VI. Advocacy activities**

Pursuant to the National Policy on Competition, during the year 2007 the Competition Authority continued to consider as one of its main activities the advocacy and the institution of a culture of competition.

The main directions and achievements during the year 2007 regarding advocacy and institution of a culture of competition were as follows:

1. Achieving greater transparency of the proceedings of the Competition Authority and providing for a more formalized organization of the hearing sessions, to include participation of the parties under investigation and all the other interested parties involved in financial transactions and concentrations. The transparency of the decisionmaking of the Competition Authority was realized and improved through the real-time publication [on the webpage] of its decisions and news regarding her activities of market monitoring and investigations, as well as through participation in public debates on issues regarding competition.
2. During the year 2007, the Competition Authority has been active in informing various groups of interest, to include businesses, consumers, media, universities on the role and importance of the implementation of Competition Law and policies. In addition, the Competition Authority has provided for the enhancement of her professionalism, transparency and level of responsibility in the implementation of Competition Law and efforts to ensure a free and effective market competition.
3. Translation and publishing of glossary of competition terminology, and specifically, the “Vocabulary of Competition Terms”. The publishing was realized with the technical and financial assistance of GTZ. The vocabulary is a translation from English language of the same material produced by the General Department on Competition of the European Commission and is meant not only for use by the experts and staff of the Competition Authority, but also by the community of lawyers, businesses and scholars.
4. The publishing, for the first time of the the Official Bulletin of the Competition Authority covering the period 2004-2007. The Bulletin contains all the decisions adopted by the Competition Commission during the whole period of her functioning.
5. A substantial increase of transparency, with the public in general, and the interested parties in particular, was made possible through the publishing

of the official webpage of the Competition Authority on the Internet, where are announced all the decisions adopted by the Competition Authority. The continuously updated webpage, which is very active, and exists both in Albanian and English languages, is considered as an informative and consultation tool with the interested parties and counterpart institutions. Due to the rich thematic addressed by the Competition Authority, the competition issues have increasingly drawn the attention of the written and electronic media, which also can find real-time information on our webpage.

6. Improvement of efforts for the information of the business community and the general public on the legislation in the field of competition, through the enhancement of the cooperation with market operators and with the media, the latter being considered as an important factor in the fulfillment of the public information objective.



## VII. The economic activity of the Competition Authority

During the year 2007, the Competition Authority has observed carefully the requirements of Law No. 9645, dated 27.11.2006 "On the State Budget of Year 2007", concerning the use of budgetary funds allocated for the Competition Authority.

The management of material and monetary values is considered as an important aspect of our activity, and the Authority has complied with all the legislation in effect in this matter. The activities of the Finance Sector concern financial operations and management of expenses and investments, which are related to the activity of the institution. The Finance Sector has provided data on the financial activity and has determined the realization of the budget, income, and increase of the value of our institutions' assets. Overall, the work performed by this sector has impacted positively the achievement of the objectives and tasks of our institution.

The annual budget of the Competition Authority constitutes a separate item of the State budget and is approved by the Parliament. The income generated in compliance with the implementation of Law No. 9121, dated 28.07.2003 "On the Protection of Competition", to include revenues from financial penalties, is relocated into the Treasury.

Below follows a table where is summarized the planned and realized budget for the year 2007:

No.	Item	Planned '000 Lek	Realized '000 Lek	Difference '000 Lek	In %
1	Salaries and contributions to Social Insurance Fund	35.724	28.255	-7469	79
2	Materials and other expenses	12.035	11.610	-425	96.5
3	Investment	4.721	4.668	-53	99
	<b>Total:</b>	<b>52.480</b>	<b>44.533</b>	<b>- 7947</b>	

The data suggest a realization of 85 % .

### VII. 1. Salaries and social insurance contributions

The budgeted fund for salaries of the Competition Authority was 35.724 thousand Lek, of which were expensed 28,255 thousand Lek that represent 79% of the planned budget. The difference of 7,469 thousand Lek occurred due to understaffing (smaller number of employees than planned) mainly during the first 6-months of the year. The Competition Authority has fully complied with the requirements of decisions of Council of Ministers No. 450, dated 14.06.2006, No. 475, dated 13.07.2007, No. 477, dated 13.07.2007, and Law No. 9584, dated 17.07.2006 "On salaries, remuneration, and salary structure of

independent constitutional institutions and other independent institutions, created through law". In addition, the Authority has complied with the requirements for the disbursement of contributions to social and health insurance funds, and the taxation of the salary for each employee, in accordance with the respective directives.

## ***VII. 2. Materials and other expenses***

Under "Materials and other expenses" the approved budget was 12,035 thousand Lek and are expensed 11,610 thousand Lek, or 90.6 %, the difference in amount being equal to 425 thousand Lek. The difference is due to unused funds for travel, per diems, telephone communications, etc.

During the year 2007, the Authority has applied Law "On documentation and use of material and monetary values". With regard to small value purchases, the Authority has fully complied with Law No. 9643, dated 20.11.2006 "On Public Procurement", while for purchases above the value of 400 thousand Lek, has applied tendering procedure in accordance with the apposite legal requirements.

## ***VII. 3. On the realization of investment plan***

With regard to investments, the Authority has realized 4.668 thousand Lek out of a planned 4.721 thousand Lek, or 99% of the plan. The investment consist mostly on office equipment, computer hardware and equipment, a power generator, partial reconstruction of offices, installation of an audio system in the conference hall, etc. all needed to create appropriate working conditions for the staff members of the Competition Authority.

## **VIII. Cooperation with other institutions**

The Competition Authority considers the relationship with the central and local institutions, and in particular, with regulatory bodies, as an important aspect of her work, and in accordance with the legal dispositions. The cooperation aims at establishing close work relations between the Competition Authority and the relevant institutions with the objective to protect free and effective market competition. The cooperation includes exchange of information and expertise, through joint trainings, creation of joint working groups on specific issues, etc. that help to increase of transparency and capacity strengthening.

Under this context, during the year 2007, the Competition Authority has aimed to creating close relationship with some of the sector regulators, institutions of central administration and market players, to include consumer associations, and has formalized such relations through signing memoranda of understanding with these institutions. The Competition Authority has signed memoranda of understanding with the aim to protect free and effective market competition with the following institutions: The Bank of Albania (pursuant to Article 70 of the Competition Law, the Competition Authority signed a Memorandum of Understanding with the Bank of Albania, and in that framework, has organized a workshop on banking market competition), the Ministry of Economy, Trade and Energy, the Ministry of Agriculture, Food and Consumer Protection, the Energy Regulatory Entity, the Telecommunications Regulatory Entity, the Office for Consumer Protection, the Association for Consumer Protection, the Agency for Public Procurements, the General Customs Directorate, etc.

The Competition Authority has aimed and will continue to pursue the objective to establish close working relations with counterpart institutions in the region and broader. In the context of the cooperation at regional level, a Memorandum of Understanding between the Competition Authority of Albania and the Competition Authority of Macedonia was signed. Through the memorandum both institutions expressed their willingness to exchange information, in the fulfillment of the respective legal obligations and to the benefit of the public in both countries.

Staff members of the Competition Authority have participated in various training courses, seminars, workshops, regional and international conferences organized by the OECD, ICN<sup>1</sup>, international counterpart institutions, GTZ Project, ITAP, UNCTAD, the United States of America, etc. These activities have served also as a forum to share experience and present the work of our institution in the framework of the protection of free and effective market competition. We have presented our cases involving prohibited agreements,

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<sup>1</sup> The Competition Authority is a full member of the International Competition Network (ICN).

control of concentrations, have discussed the regulations, guidelines and notifications provided by the EC in the area of competition, etc.

In addition, the Competition Authority has contributed to various research projects in the area of competition. In relation with the research activity, the Secretariat of the Competition Authority has required support from the TAEIX Program (through which were realized several study visits and participation in seminars).

In cooperation with the GTZ, were organized the following activities:

- A workshop in Tirana on the theme of advocacy and national competition policy. The workshop was attended by a broad spectrum of central and local government officials, legal firms, court representatives, the Magistrates' School and other interested stakeholders.
- A workshop on the theme of legislative assesment matrix, which [legislative assesment] constitutes a legal obligation of the Competition Authority.

## **IX. Main Work Objectives for the Year 2008**

### ***IX. 1. Capacity strengthening***

During the year 2008, the Competition Authority shall function with a new organizational structure that provides for all the necessary human resources, and shall be supported with appropriate financial means. The main objective in this regard is the increase of the independence of the Competition Authority, through the improvement of professionalism and application of practices in compliance with the standards of counterpart institutions in the EU countries.

In support of that objective, the Competition Authority shall invest in the training and capacity building of her employees. The completion of the organizational structure with relatively young-aged staff raises the need for additional training and qualification, in order to improve the efficiency of the institution and ensure a higher standard of monitoring, investigation proceedings and decisionmaking.

Under this context, the Competition Authority shall continue the cooperation with domestic and international partners, such as ITAP, University of Tirana, GTZ, the OECD, TAEIX, UNCTAD, the General Directorate of Competition at the European Commission, the International Competition Network, as well as counterpart institutions and donors, in order to develop a comprehensive training program for her staff and expose them to best international practice in the field of competition.

### ***IX.2. Legislation improvement and completion in the framework of the Stabilization and Association Agreement***

The Competition Authority shall focus on the fulfillment of obligations deriving from the Stabilization and Association Agreement and the acceleration of the legislation integration process. In support of this objective, the Competition Authority has included in its work objectives the following items: preparation of guidelines for the assessment of horizontal and vertical agreements; preparation of a guideline for horizontal concentrations, (in compliance with EU guidelines); amendment of Regulation "On fines and leniency programs"; preparation of a methodology for fine setting; preparation of a guideline for the determination of relevant market from the standpoint of Competition Law; preparation of a guideline for the assessment of vertical concentrations and conglomerates; guideline for investigation procedures (to include agreements of minor importance, rules to access the documentation of the Competition Authority, etc.

In pursuing her legal obligation to approximate national primary and secondary legislation with EU directives, regulations and best practice, an obligation deriving from the Stabilization and Association, the Competition Authority is considering the revision of Law No. 9121, dated 28.07.2003 "On the Protection of Competition". The work experience accumulated to-date, the development characteristics and maturation of the Albanian market, as well as the dynamic development of EU best practice in the field of competition have created the need to revise the Competition Law and to upgrade its effectiveness in practice.

In order to ensure a realistic and accurate assesment of the framework of competition law, the Competition Authority shall continue to cooperate with the regulatory entities, central administration bodies and counterpart institutions in the region and broader. In this context, the Authority is in the process of drafting memoranda of understanding with the Albanian Copyright Office, the Chamber of Commerce and Industry of Tirana, the Ministry of Justice, etc.

### ***IX. 3. Market monitoring and investigation of potentially anti-competitive practices***

During the year 2008, the Competition Authority has determined the main work objectives regarding the monitoring of market conditions and the investigation of practices that cause restriction, hampering and distortion of competition.

The interventions of the Competition Authority shall concern important sectors of the economy, in accordance with the nature of the Law No. 9121, dated 28.07.2003 "On the Protection of Competition", and the fact that these sectors are esential to the country's economy and the welfare of the consumers. Furthermore, the Competition Authority shall intervene in all cases to be presented by market operators, as well as on the basis of her findings of market research and analyses.

#### **IX.3.1 General investigation into the energy sector**

The general investigation into the energy sector remains the main challenge for the year 2008 and beyond, not only because of the importance of this sector in the country's economy and the welfare of the citizens, but also in light of the upcoming developments concerning the privatization and liberalization process in the electrical energy sector. The Competition Authority, in cooperation with the Energy Regulatory Entity has provided recommendations in favour of the liberalization of production and distribution operations of the electrical energy sector, as well as the application of a market-oriented tariff setting approach.

The market of hydrocarbons shall remain in the priority list of the Competition Authority work agenda, because of scarce competition in the market, especially

in the wholesale market, and because of the high concentration in the market. The opening of market to competition through the elimination, to the extent possible, of entry barriers and the monitoring of the behaviour of major market operators constitute the main objectives of the work in this field.

### **IX.3.2 Monitoring of the financial market**

The Competition Authority is monitoring the financial market not only with the objective to assess the banking market structure, but also to analyse market characteristics in relation with the products supplied by the operators, in order to be able to assess whether there is reasonable competition both for retail products and services offered by the banks, and specific aspects of the banks' offers concerning public debt.

The Competition Authority is expecting the resolution of the Court of Appeal to continue the investigation into the insurance market - an investigation which was suspended by a decision of the District Civil Court of Tirana. The Competition Authority avails the opportunity to raise the awareness of the juridical system on the importance of timely intervention of the Competition Authority in favour of the restoration of competition in the market, and on the fact that the prolongation in years of court decisions not only hampers the work of the Competition Authority, but also places the investigation out of context.

### **IX.3.3 Investigation into the telecommunications sector**

The telecommunications sector is another important sector that shall be under continuous monitoring and investigation by the Competition Authority. The competing undertakings in the telephony and internet services market are reconsidering their position under the new market conditions. The Competition Authority shall further monitor the behaviour of the operators with significant market power and the alternative operators alike, that are now offering fixed-line telephony services in the urban areas. With the liberalization of these services – a most welcome event from the standpoint of competition in the market – a number of developments are expected. They concern the supply of a broader range of services, the introduction of new and powerful foreign investors in the market, as well as the repositioning of the domestic companies that offer those services.

### **IX.3.4 Monitoring of the pharmaceutical market**

During the year 2008, the pharmaceutical market shall be monitored to observe how it functions, although at present none of the undertakings licensed for production and/or import of pharmaceutical products holds dominant position. However, the monitoring of the market becomes necessary because exclusivities maybe granted for specific products. During the year 2008, the Anti-cartel Sector shall proceed to investigate on evidence of practices that

restrict competition in the market, in the context of the regulatory reform, which has the focus on the further liberalization and increase of the number of undertakings operating in the market, as well as the eventual feedback of relevant associations.

### **IX.3.5 Creation of a database for market monitoring**

An expected, important development in 2008 shall be the creation of a comprehensive database to include historical economic data for economic sectors, which shall serve as a basis for the economic analysis of anti-competitive phenomena and shall support the conduct of investigations launched by the Competition Authority.

### ***IX.4. Public awareness on importance of competition***

The implementation of the Competition Law and the National Policy on Competition requires the creation of a favourable environment for the operation of public and private businesses and their acknowledgment and implementation of the rules of the game.

The relatively short time of the activity of the Competition Authority in Albania, makes of paramount importance informing market players on competition law and policy.

The business community, which is interested for a normal market functioning and enhancement of the overall productivity is a key ally of the Competition Authority.

For all the reasons mentioned above, the Competition Authority shall provide for the promotion of a culture of competition in the market and advocacy of the Competition Law and the role and function of the Competition Authority in cooperation with the Union of Chambers of Commerce and business associations. During 2008, shall be organized roundtable discussions with all the interested parties in all the main cities of the country.

The consumers and their associations are another important ally of the Competition Authority. Also, the Competition Law and its implementation are the best ally of the consumers, because competition generates better services at better prices.

The specifics of our country's economic development and the Albanian market particular characteristics have created the need to establish a close cooperation with researchers in the field of economics and competition, in order to provide for a more realistic assessment of the impact of these specifics into the competition policies. The research work shall be supported by the US Embassy.



The research shall contribute to the building and development of a basis for further studies of the various markets.

The media shall continue to be considered as an ally of the Competition Authority in her public outreach efforts.

The official webpage of the Competition Authority shall continue to function and is expected to increase public access to the activities of the Competition Authority and support the objective to increase the transparency of her decisions.

During the year 2008, the Competition Authority will continue to publish its Annual Report, the Bulletin, the legal and regulatory framework and other informing materials on the importance of competition in the increase of productivity, sustainability of economic development and the citizen's welfare.

### ***IX.5. Consolidation of international relations of the Competition Authority***

One of the chief priorities of the year 2008 shall be the proactive participation in the European integration process and the strengthening of cooperation with her international counterpart institutions and other international bodies. Through the signing of memoranda of understanding with counterpart institutions, in particular with the Competition Authority of Bulgaria, the Competition Authority aims at establishing effective cooperation in the investigation of potential anti-competition cases. The staff members of the Competition Authority shall continue to be trained and to contribute through their participation into conferences, seminars, and trainings in the field of competition.

With the support of TAIEX program shall be organized:

- A workshop on the theme of raising public awareness on the Competition Law, National Competition Policy and the relation between the Competition Authority and the Regulatory Bodies shall be organized in Tirana.
- An international expert shall be hired to assist the staff of the Competition Authority with the general investigation in the electrical energy sector.

The Competition Authority shall continue to present and exchange her expertise in relation with the procedures applied through publishings at the Competitions Department of UNCTAD, Global Competition Review; Competition and Antitrust Review, 2008 (Euromoney publishing); and the International Competition Network.