REPUBLIC OF ALBANIA
COMPETITION AUTHORITY
COMPETITION COMMISSION

National Competition Policy

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NATIONAL COMPETITION POLICY

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Foreword:

By Prof. Dr. Lindita MILO (LATI)
COMPETITION AUTHORITY CHAIR

Dear Reader,

It gives me great pleasure to address you with the first National Competition Policy document.

The fall of the Berlin Wall marked an important step not only in the political history but also in the history of economic development in Eastern Europe, in its efforts to adopt a free market economy following the collapse of the command economy.

It is a true fact that Albania was the last country in South-eastern Europe to start implementing the principles of a free market economy after 1990. In the early transition, therefore, competition was an inherent phenomenon of the market, and actions related to it were new to Albanians.

Competition went beyond the economic aspect: it affected the broader political and social life because the preceding system had excluded competitiveness from all aspects with the main role played by the State, thus completely eliminating competition related to market price or, rather, competition as a regulator of supply and demand.

Like other Western Balkan countries, which are well on their path toward European integration, competition remains a challenge for Albania, too.

In general, competition protection structures in developing countries are at similar stages of establishing or consolidating national competition authorities. The relevant legal framework enjoys a high degree of approximation with the European legislation.

The scarce initial experience, inadequate market players' knowledge of the legal framework, lack of competition education, obstacles to the consolidation of national competition authorities and inadequate law enforcement are some of the common issues for competition authorities in developing countries.

These issues are the main challenges in Albania's path to European Union integration. The implementation of the competition legal framework, the efforts to increase the independence and responsibility of the institution of Competition Authority, raising market players' awareness of the fact that competition means economic prosperity, stronger institutional cooperation and greater transparency to the public are the major pillars of the national competition policy paper.

The Competition Authority efforts for developing the National Competition Policy were based on three main arguments: (i) economic and political conditions necessitating

the adoption of legislation in competition and establishment of the Competition Authority; (ii) market supervision from the perspective of competition; and (iii) implementation of European Union standards for the protection of free and effective market competition.

The Competition Authority aims at having a complete and comprehensive National Competition Policy. In addition to the wholeness of issues addressed by the document, this aim was also reflected in the process that was followed to develop, consolidate and adopt the Policy. The following regulators have given their contribution to having a comprehensive and inclusive document: the Energy Regulatory Entity, the Financial Supervision Authority, the National Radio and Television Council, the Telecommunications Regulatory Entity, the Ministry of Justice, Ministry of Finance, Ministry of Economy, Trade and Energy, Ministry of Integration, Consumer Protection Association, etc.

This document was developed with the support of GTZ, which provided for the technical assistance of Ms. Pranvera Këllezi, as well as its translation and publication.

While wishing you a good read of the document, I kindly invite you to send us your comments on the National Competition Policy by e-mail at competition@caa.gov.al, or by mail at: Autoriteti i Konkurrencës, Rr.”Sami Frashëri”, nr. 4, kati 4, Tiranë, Albania.

I. COMPETITION POLICY, GOALS AND MISSION

I.1. What Is Competition?

Competition is an economic phenomenon that refers to a certain situation in a free market economy in which companies try to attract as many customers as possible independently from each other, in order to achieve their objectives such as maximization of profits, revenues, market share, etc.

Competition establishes an economic environment in which companies can make free efforts for achieving their objectives, while consumers benefit from prices that have been set based on interaction of demand and supply factors.

Competition is not a purpose in per se, but it is a necessary instrument to achieve higher levels of social wellbeing, by rewarding those companies that offer lower prices, higher quality and greater options for consumers. It establishes a sense of insecurity, which makes companies respond to their actual or potential rivals by adopting aggressive competition strategies. This, in turn, contributes to having more goods and services in the market, which will eventually benefit consumers. If competition is hampered by unnecessary restrictive regulation, which is a barrier to market entry, then consumer demand would be discouraged and the overall efficiency of the economic system would fall significantly.

Lack of competition would discourage innovations and research and development efforts. Companies that operate in a competitive market look for innovations to reach a higher level than their competitors, make more profits and better respond to the increasing market demand. A competitive environment ensures more than one entry in the race to make a new product or provide a better service. as a result, strong competition is a major driving force behind increased productivity, and it ensures that the market remains competitive. At the same time, it has affects consumers positively, because the latter can take advantage of the many options, enhanced quality, fair prices and new products.

Competition is the major factor encouraging competitiveness of companies, and it leads to overall economic growth of a country. It makes ineffective companies get out of the market, and makes a reallocation of production inputs from failed companies to more powerful competitors.

In order to establish a more competitive economy there is an important role to be played by the implementation of the competition law and competition policy.

I.2. Competition Policy

The Competition Policy is the body of measures and legal framework in which companies that operate in the private or public sector can carry out their economic activities freely based on free, effective and fair competition. Competition Policy is based n the assumption that a competitive market leads increased production efficiency, by meeting the condition that the price equals the total production unit cost and on the

allocation and consumer efficiency, thus meeting the condition that the price equals marginal cost. By contrast, non-competitive markets—mainly monopolies—do not yield such results and are, in general, undesirable for the society.

The drafting of the National Competition Policy is based on Law no. 9121, dated 28.7.2003, "On Competition Protection", and is one the Competition Authority tasks. The fundamental mission of the Competition Policy is to correct market distortions, given that a competitive market generates development and increases the overall wellbeing of our society.

I.2.1. The Need to Implement a Competition Policy

In competitive markets, companies are encouraged to gain market power, which allows increased catering of consumers' needs. This, in turn, leads to increased wellbeing. However, efforts that companies make to achieve this goal often lead to constrained competition, which points at the indispensable need to implement a competition policy and law.

The competition policy aims at preventing abuse of a dominant position by market players. It also aims at preventing them from reaching deals that lead to price fixing or establishing a market structure in which competitors unite (through concentration) thus restricting competition in the future.

The need to implement a competition policy arose with the emergence of big companies in various sectors of the economy. For the first time such a policy was implemented in USA with the adoption of the Sherman Act in 1890 and, later, the Clayton Act. While both acts were amended and adjusted in the following decades they are still in use in the US economy, and they serve as an example for the development of antitrust laws elsewhere.

In Europe the competition policy started to be implemented when the United Europe was established and found its way into the Treaty of Rome, particularly its Article 81 (Protection against secret agreements, undertakings and concerted practices), Article 82 (Abuse of a monopoly or dominant position), and rules on merger control.

Since 1990s, after the changes in Eastern and South-eastern European countries and their transition toward the market economy, the need arose for those countries to adopt and implement competition rules, not only in the private sector, which had just started to emerge, but also in the public sector, which should adapt itself to the new rules of the market economy.

I.2.2. Competition Policy Goals

The overall goal of the Competition Policy is to maintain the competition process and ensure effective competition in the market. Maintained or ensured effective competition is indispensable given the restrictions competition may suffer from the private or public sectors. Therefore, the Competition Law prohibits price fixing deals, abuse of dominant position and concentrations that pose the risk of creating a dominant position in the market.

The achievement of the overall goal is a condition for the achievement of the society's economic wellbeing. Through its efforts for encouraging increased competitiveness, ensuring level ground for all market participants, promoting innovation, increasing consumer choices, improving the quality of goods and services and reaching a balance in the market, the Competition Policy becomes an important factor to the economic development of a country.

The National Competition Policy takes into account the economic and social conditions and the competition culture in Albania. As a result, in addition to its objectives, it underlines other objectives such as:

- protect the freedom of economic activity of market participants;
- reduce market entry barriers, in order to establish a friendly environment for the promotion of entrepreneurship and the growth of small and medium-sized enterprises;
- foster fairness in business relations.

The processes of deregulating specific sectors of the economy, lowering tariffs or removing quota or licenses, which are taking place in our economy, are also important objectives for the competition policy management. The Competition Authority can give its contribution to those processes through its active participation in the development of public policies, providing comments and intervening in regulation procedures. This is particularly necessary in the regulation and privatization of state monopolies or so-called "national champions", where the Competition Authority has makes efforts for the implementation of policies that foster competition.

Aiming at increasing the local economy competitiveness, the Competition Policy can give a significant contribution to the improvement of macroeconomic indicators such as price level, employment and economic growth.

I.2.3. National Competition Policy Development Objective

The overall objective of the development of the Competition Policy document is for it to be a descriptive program of what to do in order to encourage effective market competition, by answering the questions: Why, Who and When? In addition, the document will also contribute to the communication with the public, business community and public institutions. The general public should be acquainted with the goal of competition protection and objectives of the institution that has been charged with the implementation of the relevant law.

The development of the national competition policy also raises the awareness of protecting and fostering competition. The policy should describe the principles contained in the Law, the advantages of implementing it, the policy to be pursued by the Competition Authority and the main principles to be observed by all market players, businesses and public institutions.

1.2.4. Interaction between the Competition Policy and Other Policies

As competition is present in the social and economic life of our country, it is understandable that competition policy and relevant laws are implemented across all sectors of the economy. Because of this, the competition policy greatly interacts with other public policies. There areas where objectives can be complementary, such as the case of government initiatives for the deregulation of privatisation of public companies. In those cases consideration should be given to the fact that privatization of companies in small markets, or more or less closed markets, poses a great risk of concentration in the market. Therefore, when developing privatization and liberalization strategies for such sectors, competition policy and law goals should be taken into account.

There area other areas such as trade, foreign investment or regional regulation in which there might be some discrepancies between their respective policies and the competition policy. Some of such policies include antidumping rules, the implementation of which can have anticompetitive effect. From a legal perspective those rules allow such practices as price fixing or merchandize limitation, which are prohibited under the competition policy. From the economic perspective, however, those policies pursue various different goals, which more often than not lead to contradicting situations. The antidumping includes a series of trade provisions that aim at helping domestic industries cope with the competition from imports. The ultimate goal of the competition policy is to promote consumer welfare and production efficiency, which in part depends on the interaction of market factors. Import competition often plays quite an important role with regard to that.

The competition policy is closely related to the state aid policy. The latter can provide certain companies with more favourable positions compared with the rest of companies, thus limiting competition among them. Therefore, when developing the state aid policy, competition relevance, law and policy should be taken into account.

Besides the monetary, fiscal and trade policies, the competition policy is regarded as the fourth cornerstone of public policies. Hence, it is of utmost importance that its main principles are taken into consideration by various public agencies when developing and implementing other economic policies, in order to harmonize their objectives with the goals of the competition policy.

The competition policy may be used as a guideline for the development of strategies regulators develop for various sectors of the economy. Therefore the cooperation with regulators is of great importance. More information about this cooperation is given later on in this document.

II. ECONOMIC AND POLITICAL CONDITIONS FOR THE IMPLEMENTATION OF A COMPETITION POLICY

II.1. Competition and Competition Policy in Transition Economies

On their path to consolidating a free market economy, transition countries have implemented liberalization, privatization and deregulation reforms. Many state-owned companies that have a powerful position in the market have been affected by those policies. In these circumstances, unless there is a competition policy in place and under implementation, this means a mere transfer of monopoly from the public sector to the private one, which can damage consumers' interests.

Following 1990, competition laws and policies were adopted and implemented across transition economies. The group of ten transition countries that became EU member states on 1 May 2004 decreed those laws between 1990 and 1993, with important amendments between 1995 and 1999, which approximated them with the European Union competition law. One important element of the amendments was the particular harmonization with Article 81 and 82 of the Treaty of Rome. Special care was paid to administrative procedures related to investigation and law enforcement, and institutional independence and effectiveness, addressing these issues in more detail. Despite their specific differences, competition policies in those countries have three common pillars:

1. Law implementation and enforcement. Competition protection and promotion is useful not only in the cases where it is limited, distorted or obstructed by private or public companies through abuse of dominant position and concentration but also in the cases where there are obstruction, limitation and distortion caused by the public administration and regulators.

In addition to its implementation, the law also provides fines and sanctions.

2. Competition advocacy. This has been an important element of competition policies in transition economies, reflecting comments provided by competition authorities on other policies with an impact on competition, particularly in the areas of privatization and regulatory policies. The benefits deriving from the incorporation of competition principles and requirements into laws and regulations have been important, particularly because transition economies have also privatized infrastructure networks for which there has been inadequate regulatory expertise through their Comments and recommendations provided to public administrations and regulators, competition authorities have used their official powers as competition advocators in order to embody competition principles in the legislative and regulatory activities and educate all the key competition stakeholders.

3. Institutional effectiveness. This element depends on the degree of competition authority independence, administrative capacities and transparency, and the effectiveness of the appeals process in courts.

Challenges of competition authorities in transition countries. The effective implementation of competition policies in transition economies has encountered a series of challenges, which are almost characteristic of all new competition authorities. Such challenges include:

- Developing a series of laws and regulations that do not facilitate good working standards to respond to the assigned task of protecting competition;
- Limited political support for the authorities;
- Establishment of inadequate administrative structures for enabling sound decision-making, based on the legislation and economics;
- Inadequate budget and staff;
- Limited staff training systems;
- Government structures that do not provide the authorities with the necessary data as required;
- Inability to provide solutions that would prevent anti-competitive behaviour;
- Courts lack the necessary expertise to enforce rules and implement a complete court review process;
- Limited support by the business community and consumers for the work of the authorities.

II.2. Economic Context of Competition and Competition Law and Policy in Albania

Albanian economy is open to the international market. It is characterized by dynamic development and growth. Over the past few years Albania has had macroeconomic stability and steady economic growth. According to the Global Competitiveness Report 2006-2007, Albania was ranked 98th on the competitiveness index out of 125 countries.

Due to issues inherited from the past, the Albanian economy will need higher economic growth rates in the next few years in order to reduce the gap between its average income per capita and the average income in Europe. Albania has made progress with regard to its structural reforms toward establishing a free-market-based economy.

Special attention has been paid to institutional changes, including the establishment of regulatory entities, the adoption of organic laws, establishment of institutions and development of policies that support markets and ensure state intervention in response to market distortions.

The essence of the transition consists of institutional changes in relation to companies and businesses and the legal, financial and social framework that support the market and entrepreneurship processes. **In this plane, the main challenge in the presence and the future will be the consolidation of a fully functional market economy capable of coping with competition pressures and market forces in the European Union, regional and global economies.**

On 12 June 2006, Albania signed the Stabilization and Association Agreement with EU, and on 1 December 2006, it started the implementation of the Interim Agreement. This shows, on one hand, that European countries recognize the progress toward

more democratic political institutions and a more consolidated market economy, and, on the other hand, the undertaking of obligations deriving from this process.

To enable sustainable growth and expedited integration into EU structures, our country needs a strong and efficient governance and business climate. However, **the situation can deteriorate if state intervention is not effective. Experience has shown that solutions should be provided not only to imperfect markets and state intervention but also to imperfect markets and imperfect or incomplete state interventions.**

II.3. Background on the Development of the Competition Protection Policy, Legislation and Institutions

II.3.1 Competition Policy Development Stages

The competition policy in our country started to be developed with the emergence of the market economy, when competition started to grow. So did the government's interest in establishing conditions for effective competition. The state is an important player in the creation and protection of competition. Competition policy and law can be seen in three stages: 1991-1995; 1995-2003; 2003 to date.

II.3.2 Competition Emergence and Development between 1991 and 1995

With the installation of political pluralism and beginning of transition toward a market economy in 1991, Albania implemented a series of structural reforms. special importance was given to privatization, deregulation of economic activities, liberalization of prices and domestic and foreign trade, liberalization of exchange rates, allowing and ensuring foreign investment, reforming the banking and financial system, ensuring market-set interest rates, establishing a tax system, etc.

Those were the beginnings of the market economy, which means independence of economic agents and their ability to make independent decisions on their economic activity. In addition to economic freedom of enterprises, however, risks related to anti-competitive practices started to become evident. Like everywhere else, main sources of similar threats in Albania included (i) public rules and administrative and bureaucratic implementation of those rules; and (ii) market player behaviour.

On 7 December 1995, Law no. 8044, "On Competition," was adopted, which concluded the stage of institutionalizing competition policy in Albania. The main concern of the government policy at that stage was the establishment of the conditions for better and fuller implementation free competition. The law addresses such issues as monopoly and dominant position and unfair competition.

II.3.3 Implementation of Law on Competition, and Competition Policy Development between 1995 and 2003

Legal progress. During that period, Law no. 8044, "On Competition," was amended only once, in 1998, with Law no. 8403, dated 10.09.1998, "Amendment to Law no. 8044, dated 07.12.1995, "On Competition," published in the Official Gazette no. 23,

dated 10.10.1998, p. 897[1]. However, a series of problems were encountered during the implementation, which had not been addressed in the Law.

Institutional progress. The adoption of the Law on Competition enabled the establishment of the first competition structure at the Ministry of Industry, Transport and Trade Department of Commercial Legislation. The period between 1996 and 2001 was characterized by an unstable competition structure; therefore, the training of the staff was not effective. In the context of competition institutional strengthening and in line with EU expert recommendations on a better operation of structures in the area of competition and consumer protection, the Competition Department was established together with a competition decision-making unit, the Competition Commission, at the Ministry of Economy. Based on its statute, which was approved by the Council of Ministers, the Commission comprised five members, who were appointed by the Minister of Trade.

Law implementation and institutional development began to give results in the area of setting competition policy goals and objectives and coordinating with other economic policies. At the same time, relevant actions were taken to implement the law. After 2000, it became clear that there was a need for institutional and legal amendments in the area of competition.

While the competition policy had developed during that period, the competition legislation had gaps and was a far cry from EU competition legislation, institutions and policies. It became clear that mere amendments to the existing legislation would simply not be enough: a new law on competition protection and promotion was needed, in which anti-competitive rules would play a key role and the implementation of which would be ensured by an independent authority. The fact that the existing law excluded the investigation of important sector of the economy such as services, telecommunications, mail, transport, insurance, agriculture, etc., indicated the indispensable need for changing it. Therefore, on 28.07.2003, the current Law no. 9121, “On Competition Protection,” was adopted. This is a modern law, which provided for the establishment and operation of the Competition Authority. It also marked the end of the second stage of development of the national competition policy, and the beginning of a new stage.

II.3.4 Competition Policy Development between 2003 and 2006

II.3.4.1 Approximation of the Law with the European legislation.

Law no. 9121, dated 28.07.2003, “On Competition Protection” became effective on 1 December 2003. It is applicable to all the sectors of the economy and all types of companies, both public and private, operating in the Republic of Albania. It is also applicable to companies operating abroad that affect the domestic market.

In overall, the Law has a high degree of concordance with the European legislation in this area. It contains considerably clear provisions on the Competition Authority operation as an independent public institution with a mission to protect market competition. So far, no essential amendments have been made to the Law. The first amendment was made on 3.4.2006 with Law no. 9499, “Amendments to Law no. 9121, 28.07.2003, ‘On Competition Protection’.” Those amendments were related to changes to Articles on the criteria to be met by the Commission members and release from office.

[1]The amendment was made to Article 39, in which a new paragraph was inserted after paragraph 2, with the following content: “In the area of independent printed media, the price of newspapers and magazines shall not be lower than their production cost.”

The Law was also affected by an amendment related to the powers of the Competition Commission, by Law no. 9584, dated 17.07.2006, "On Salaries, Bonuses and Structures of Independent Institutions Established by Law."[2] Changes are mainly related to the organization and operation of the Competition Authority and not its scope or the instruments it used to prevent anti-competitive policies.

Pursuant to Article 84 of Law No 9121 "On Competition Protection", the Competition Authority has developed the relevant regulations, with GTZ expertise support, which were then approved by the Competition Commission. The regulations and instructions are published on the Authority website. The preparation of the secondary competition legislation in line with European Union principles completed the legal framework, enabling full functioning of the Competition Authority as an independent public institution that is responsible for the protection of free and effective competition.

With the signing of the Stabilisation and Association Agreement and the coming into effect of the Interim Agreement, the National SAA Implementation Plan envisages the development and approximation of a series of regulations and guidelines with the EU legislation.

Another very important aspect of the approximation of legislation on free and effective competition—a primary task for the Competition Authority since its establishment—are the provisions under Articles 69 and 82 of Law No 9121, which stipulate that the Authority assesses the degree of competition restriction or obstruction deriving from the legislation in power at the moment when the Law entered into force. Upon consulting with the relevant public bodies, the Authority prepares a special report on the issues inherent in specific pieces of legislation, in which it gives recommendations on the necessary changes. The reports are submitted to the Council of Ministers and the Parliament.

II.3.4.2 Establishment of the Competition Authority

Pursuant to the requirements of the Law on Competition Protection, in February 2004 the members of the Competition Commission were elected, based on nominations from the Parliament of Albania, the Council of Ministers and the President. This event, which took place on 26.02.2004, marked the beginning of the Competition Authority activity as an independent public institution, responsible for the enforcement of competition rules. The Authority comprises the Competition Commission—its decision-making body—and the Secretariat—its executive body.

The Competition Commission operates as a standing structure, with all the necessary powers to make decisions on its own initiative on issues restricting, obstructing or distorting market competition for both public and private companies. It also puts forward the necessary measures for the protection of free and effective competition. The Competition Commission also presents an annual report to the Parliament.

In order to perform its legal responsibilities, the Authority has asked for adequate staff and expertise, by also making efforts to engage its existing capacities effectively. Experience over the past few years, however, has shown that it is not sufficient to set institutional, administrative and professional capacity strengthening as an objective: it is indispensable to make everyday efforts for the achievement of such a target.

[2]According to the amended Article 15, the Commission cannot approve the organization and staffing structure of the Secretariat, as provided in Article 24, Item b, Law no. 9121, dated 28.7 "On Competition Protection." This responsibility was transferred from the Competition Commission to the Parliament of Albania. According to Article 10, Law no. 9584, 17.07.2006, "The organization and staffing structure of constitutional institutions shall be approved by the Parliament based on the approved number and as per the approved budget of each institution."

The European Commission, too, has pointed to the need for strengthening the Competition Authority institutional capacities and its real independence for performing its legal functions.

II.3.4.3 Issues in the Focus of Competition Authority's Efforts, and Its Focus on Law Implementation

The main function of the Competition Authority as an independent public institution is the effective implementation of the Law on Competition and, in addition to advocacy, lobbying with the government and the private sector for the implementation of competition-friendly policies.

The Secretariat has started investigations in the following three sectors: telephony, banking and insurance.

In the course of the implementation of the law, the following findings were revealed:

- Decision-making is more complete when preceded by an overall market study.
- Information is a fundamental element for a fair judgment and informed decision.
- Relationships with courts (beyond the efforts for increasing courts' awareness of competition law).
- A small number of cases have been initiated pursuant to third party complaints, which points at the need to regulate this relationship in the future.

An analysis of the Competition Authority activity comes to the conclusion that the existence of a modern Law on Competition, or an independent Competition Authority are, not sufficient prerequisites for an effective implementation of the competition law and policy. Therefore, it is indispensable to strengthen the Competition Authority institutional and professional capacities. This would help the Authority play an active role for a strict and effective implementation of the Law on Competition Protection and be an advocate of the development of economic reforms in line with competition principles.

The provision of the Authority with the necessary human and financial resources under the 2007 State Budget is the first important step the Government and the Parliament have taken to enable increased effectiveness of law implementation and increased competition in the market.

II.4 Competition Authority, an Institution Assigned with the Implementation of Competition

The Competition Authority aims at:

- Being an independent public institution with the necessary power and capacity to take active actions against anti-competitive behaviour, and establish a competition-friendly environment;
- Being a fair arbiter, ensuring free and effective competition among market players, like in a football match where everyone is satisfied if all play to the rules;

- Ensuring the competition policy and its implementation ensure that all market players compete with each other and win only on the basis of their merits;
- Contributing to the process of establishing a competitive economy in the regional and European market;
- Further completing the legal framework with implementation legislation such as regulations and instructions, as per the SAA requirements, and implementing them duly.
- Developing and effectively implementing the National Competition Policy;
- Monitoring and assessing market conditions for the development of free and effective competition;
- Being a competition advocate, performing assessments and giving recommendations to Parliamentary committees, central and local administration bodies and other public institutions, business associations, chambers of commerce and industry, for the development of sector policies and other strategies and policies that affect competition and its relevant legislation;
- Cooperating with other central and local administration institutions, regulators and other public and private foreign and domestic institutions on issues related to competition;
- Establishing contacts and mutual bilateral and multilateral regional and international for an effective implementation of competition law and policy;
- Establishing contacts with counterpart authorities in the region and beyond in order to ensure information exchange in the context of competition policy implementation;
- Actively participating in various training events in the country and abroad, related to administrative capacity strengthening, and in other events (seminars, and conferences) on the competition in the region and beyond.

II.5. Principles Governing the Competition Authority

The underpinning bases of the legislation, national policy, and performance of the Albanian Competition Authority, include:

(i) Fairness

Application of competition principles in a way that bars discrimination against economic activities conducted under equal circumstances.

(ii) Inclusion

Inclusion involves application of broad competition and regulatory principles in economic activities, including goods, services, and public and private business activities, recognition of extent of competition in development policies and reforms that impact on the effective functioning of the markets, protection of the competition process, and development and protection of a free and effective competition environment. Competitive markets need to be surrounded by a solid general legislative framework, to enjoy explicit rights of

ownership, and operate in a non-discriminatory, efficient and effective setting.

(iii) Transparency

The Competition Authority should develop an open approach-based performance, willing to explain the reasons behind the decisions made, and provide updated information about the results obtained. The Competition Authority communicates its activities to the general public through annual reports to the Parliament of Albania, statements and press releases, as well as its website, and press conferences.

(iv) Accountability

The responsibility of the administration for enforcement of competition and efficiency regulations in developing policies and their implementation should be prescribed in a clear-cut way. The Competition Authority should act in compliance with the National and Cross-sector Social and Economic Development Strategies, so as to benefit improvement in the nationals' well-being.

(v) A reliable institution

Drawing on continuing studies and the taking of the market actors' opinions into account, the institution will make sure that the credibility of its statements and decisions rests on its performance. The Competition Authority adheres by the honesty principle, and takes decisions about and publishes accurate data on its performance.

(vi) An institution with integrity

The institution should refrain from running into financial obligations or other kinds of obligations, which may affect it adversely, or stop it from discharging its primary functions. On a yearly basis, the Competition Authority reports to the Parliament of Albania on the use of the financial resources allocated to it from the state budget, and keeps accurate financial records, which are checked on by the High State Audit.

(vii) A co-operative institution

In its performance, the institution relies on the principle of cooperation with all the market players and factors, the constitutional institutions, the Government, the regulatory entities, the consumers' representatives, the counterpart institutions in the region, and the General Competition Directorate in the European Commission.

III. IMPLEMENTATION OF COMPETITION POLICY

Under the index of economic liberalisation Albania is ranked above the average level, with several sectors only remaining under the State management, which observe similar regulations and standards as those applied by private operators.

Under the conditions when the market is taking its first steps to consolidate its position, the private operators are well past the initiatial stage when they did fail to observe the rules of the game, a comprehensive legislative and regulatory framework is in force, and an independent institution responsible for protecting competition is in place, it is important for all the market players to know, implement and observe the Law "For competition protection," so as to ensure that competition is effective in the market.

III.1. Forms of anti-competitive practices

Designed to achieve the goal of making sure that competition in the market is free and effective, the Law "For competition protection" has an effect largely on artificial barriers increasing an undertaking's market power that leads to restrictions on competition. The said law has the same effect on abusing conducts and on concentrations focussed on establishing a dominant position, which lead to price rises for consumers, restriction on production and choice of products, restrained innovation, reduced service for clients, and overall, less well-being for consumers.

III.1.1 Agreements Restricting Competition

In his work Wealth of Nations,[3] Adam Smith has described the tendency towards prohibited agreements. In a competitive conduct-driven market, producers, whose personal interest is to boost their profits as much as possible, compete freely with one another, bringing about an increase in production to the benefit of consumers. Instead, where producers are focussed on restricting competition, thus coordinating their actions by virtue of secret agreements designed to fix prices and establish other trading conditions, the level of production is reduced, and as a rule, consumers have to pay more.

Price Fixing

Price fixing is a classic element present in nearly all cartel-related cases. This is a way competitors resort to in an effort to avoid competing with one another in terms of prices, at the expanse of consumers, thus charging higher prices. Another approach to price fixing is noted in a vertical relationship, where a service provider or producer strives to force the deliverer to charge a given price for his products. Falling under serious restrictions on competition, this conduct is styled illegal.

The masterminds behind a secret agreement (cartel) are above all present in retail sale markets for both produce and services, in which, overall, undertakings compete against one another in terms of prices rather than in terms of quality. As a result of these kinds of conduct, consumers are forced to pay higher prices than what the

[3]Hohn Vickers, "Competition Is Everything," The Economist, 6-12 December 2003, p. 74.

competing level involves. Such horizontal agreements, which may not be justified in terms of efficiency, should be prohibited.

III.1.2 Abuse of dominant position

With respect to supply or demand, dominant position allows one or more undertakings to be able to operate independently of the other participants in the market, including competitors, clients or consumers. One undertaking may hold a dominant position individually; two or more undertakings hold a collective dominant position (collective dominance). In these cases, undertakings tend to coordinate their conduct in the market with regard to prices, the quantity offered, production or the new capacities introduced to the market.[4]

An individual or collective dominant position is addressed from the perspective of both the supply and demand. More often than not, it is the supplier that enforces the market power. However, this may also be brought to bear by the purchaser (purchaser's power). This definition is in line with European jurisprudence.

A given undertaking may control the market when it has the market power, which is understood as the ability of the undertaking to charge, over a long period of time, higher prices than in a competition-driven situation, and gain more than what would normally be the case.[5]

The Law "For competition protection" prohibits abuse of dominant position, though not the dominant position per se. Abusing practices include, amongst others, unfair prices, restriction on production, markets and technical development, or discriminating or unequal conditions set out in agreements among competitors.

"Predatory" Prices

Predatory price is one of the types of abusing practices. Undertakings are abusing their dominant position if they offer their clients produce or services at much lower prices, or succeed in obtaining lower prices from their suppliers. This may prevent competitors to the dominant undertaking from accessing opportunities proffered by business. Hence, such an approach to price fixing is called predatory.

Predatory prices are seen as abuse in the event when a dominant undertaking charges them in order to protect or strengthen its dominant position. An undertaking enjoying such a position may fix prices below the production costs for the sole purpose of removing the other competitors from the market, or preventing entry of new ones into that market, while initially consenting to losses, and charging higher prices in a second phase, i.e. increasing profits.

III.1.3 Control of Concentrations through Undertakings

"Concentrations are horizontal if the participating undertakings are active in the same relevant market; they are vertical if undertakings operate at different levels of the market, and mixed if undertakings, even though they may not be operating at different levels of the market, are active in markets of different products. These are also called non-horizontal concentrations."[6]

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[4] Court decision, 14.02.1978, UB and UBC Companies, Çikita Bananas, p. 65, reads that "a position of economic power that enables an enterprise to hamper effective competition in the relevant market, allowing it to adopt an independent approach vis-à-vis its competitors and clients, and, finally, vis-à-vis consumers."

[5] www.usdoj.gov/atr/public/guidelines/horiz_book/hmg1.html

[6] P. Këllezi, Competition Law, a course for the Higher School of Magistrates, November 2004, http://www.unige.ch/droit/ceje/documents/Kellezi.pdf.]

Mergers and concentrations may be neutral towards competition, or in certain cases, do render undertakings more efficient, enhance their competitiveness, and lead to reduced costs, thus increasing benefits for consumers. Merger is part of the industrial reconstruction, and is deemed necessary so as to meet the challenges in the world economy. The scope of regulations controlling concentrations is not to hamper the necessary reconstruction required to help improve efficiency, but to make sure that such concentrations do not harm competition.

The policy controlling concentrations should definitely be designed to promote developments in economic and structural reforms in Albania, towards consolidation of the market economy. This is expected to be the major long-term benefit from the rigorous implementation of the competition policy instruments, so as to promote the economic success of undertakings and Albania's sustainable economic growth. A policy of control of concentrations only may ensure the remaining of a sufficient number of undertakings in the market, ensuring at the same time effective competition and low prices.

Building on its experience so far, the Competition Authority has found that control of concentrations of undertakings is playing a major role in ensuring implementation of the legislative and regulatory framework. Through control of concentrations, the Competition Authority may call a stop to a concentration likely to give rise to or strengthen the dominant position of one or more undertakings, thus significantly limiting effective competition in the market.

Form the perspective of efficiency, in its overall assessment of a merger the Competition Commission will carefully look into the efficiency criterion, and the very economic efficiency resulting from this merger, which should overshoot any one negative effect on competition.

Over the last two years, the Competition Authority has considered several cases of concentrations, mainly in the banking sector. In these cases, the Competition Authority has enforced legislation, and has issued the relevant recommendations to the Secretariat to follow up conduct of undertakings in the market after the merging of companies together.

III.2. Adjusting Competition Policy to the Conditions in Albania

Albania is considered to be a relatively small and open economy. It is a small economy on account of the size of its population, i.e. consumers, and an open economy on account of the open market policy that has been pursued recently. One of the major problems with the small economies includes market concentration, as well. Given that there is a small selling market, or, put another way, the quantity demanded is limited, undertakings may not succeed in fully benefiting from economies of scale in production and distribution. On the other hand, the number of undertakings operating in a small market is low, which also leads to a reduction in the level of competition.

The small market in Albania and its isolation in the past are blamed for the low level of domestic and foreign investments, which impacts on the number of players in the market. Even though the Albanian economy may be considered an open economy, experience shows that there are still barriers to entry.

High concentration of markets impacts on the implementation of three aspects of the competition policy: agreements among undertakings, treatment of undertakings

holding a dominant position, and control of concentrations through undertakings. If the competition policy pursued towards horizontal agreements regulating price fixing is to be equal to the policy pursued at an international level, analysis of restrictions to competition and the weighing of both negative and positive effects should take account of the features of the small economies.

Vertical agreements resulting in isolating and separating the Albanian market from the regional and European market, entail more serious consequences for the small countries. On the other hand, in a concentrated market horizontal agreements may enhance chances for cooperation among undertakings, but, at the same time, may improve economic efficiency, and in particular, production efficiency.

Specialisation-focussed agreements enable specialisation of activities and reduction in the cost of production at home where specialised activities are inexistent, and new technologies take time to enter the market. These agreements allow improvement in the production and distribution process for undertakings operating in Albania, most of which are small and medium-sized enterprises.

Particularly in the new markets, where new goods or products are traded, analysis of the effects of competition takes account of and assesses the risk to small and medium-sized undertakings. In this case, even agreements benefiting a more or less important market segment, may be seen as allowable, except for the cases where they lead to fixing of a shared price, or to the division of territories or clients.

The need for achieving a minimal level of production facilitates establishment of undertakings holding a powerful position in the market. The provisions contained in the Law “For competition protection,” addressing abusing practices, may be applied more often precisely on account of the concentration of the market. While legislation allows the taking over of large market segments over a long period of time, it prohibits their taking over and protection by way of means inconsistent with competitiveness on account of merit. The said law provides for both the prohibition of exploitative practices and practices resulting in removal of competitors from the market, or in barring market entry.

The question of the extent of and barriers to entry warrant careful scrutiny also at the stage of preliminary check on concentration through undertakings. Yet, if barriers to entry are minor, with the understanding being that a regional geographical market has been taken over, in the more rare case concentrations through undertakings are likely to establish or strengthen a dominant position.

III.2.1. Free Trade and Competition

A member of the World Trade Organisation as early as 2001, the Republic of Albania has signed up free trade agreements with the countries in the region. Even earlier than that, the Albanian Government did pursue a policy aimed at promoting opening of the Albanian market to foreign products, increase in quantity, and reduction in market price. On the other hand, this allows undertakings to carry out their activity in Albania so that they may expand it to other countries, thus making possible such a level of production allowing them to operate at a lower cost, which is indispensable for such a small economy as Albania. The policy promoting free trade with other countries

reduces market entry tariff and non-tariff barriers to foreign goods and service, thus increasing competitive pressure brought to bear at home. From this perspective, the opening of markets coincided with promotion of competition in Albania.

In more concrete terms, the opening of the Albanian market impedes abuse of dominant position by domestic undertakings holding it. Likewise, in markets open to imports, concentrations of undertakings create less of competition problems. Generally speaking, the opening of markets to international trade enhances the level of competition at home. In this aspect, perceived as a set of rules surveying undertakings' conduct the competition policy aims at guaranteeing the positive effects of the opening of markets. The competition policy will enable integration of the Albanian market into the Balkan, European and international market, and, on the other hand, will impede isolation of the Albanian market and its separation on account of undertakings entering the market.

Free trade agreements with countries in the region contain specific provisions designed to protect competition if the conduct of undertakings from the signatory countries restricts trade among these countries. These agreements prescribe provisions addressing prohibited agreements, and abusing practices by undertakings holding a dominant position in the market, with these provisions fully complying with the respective provisions provided for in the Law "For competition protection," and its scope. Within its powers, the Competition Commission will assist the state bodies assigned with the implementation of these agreements in interpreting and applying these provisions. Even though these agreements do not contain provisions addressing control of concentrations, the Law "For competition" provides enough coverage to that end. Preliminary control of concentrations with an impact in the territory of Albania will be designed to extend oversight to the market structure, allowing increase in competition in the domestic market, which will help enhance both productivity and competitiveness of undertakings abroad.

Foreign investments, which enable entry and trading of new goods or products in the market, increased supply of the existing ones, and the spread of new technologies, have also a major role to place in the framework of the free trade and the opening of markets. The competition policy is designed to ensure equal conditions for all undertakings operating in Albania, thus protecting competition in the market. This policy, on the other hand, will take account of the positive effects of increased supply, diversity and innovations introduced in the market, while also scrutinising the needs of undertakings to guarantee investments.

III.3.2.2. Promoting SMEs and Competition

Protection of competition serves the policy promoting small and medium-sized enterprises. Protection of competition in the market will serve small and medium-sized enterprises because the latter, on account of their low level of negotiating power, are more vulnerable to abusing practices, agreements restricting competition, and establishment of undertakings holding a dominant position in consequence of a concentration. These undertakings, on the other hand, rarely affect the scope of law enforcement. Besides horizontal agreements for prices and quantity and vertical agreements for prices, the other agreements restricting competition may be

justifiable on the grounds of economic efficiency. Likewise, regulations providing for abusing practices are applied only if these undertakings hold a dominant position in the market. Finally, given the delivery of notification of concentrations, most of these regulations are not applied in respect of the SMEs.

III.3. Instruments for Implementing Competition Policy

III.3.1. Investigatory Procedures

Legislation itself best determines the procedures the Competition Authority pursues on its own initiative, or upon the request of the Standing Parliamentary Committee for the Economy and Finances, to conduct general investigations into given sectors of the economy and then, based on the findings of investigation, determine the relevant measures.

The Competition Authority has determined the procedures and investigative tools with regard to any one breach of the law for the agreements concerning abuse of dominant position, as well as for the decisions about notice of concentrations prescribed by law. Alongside the procedures determined, the provisions contained in the Administrative Procedure Code applicable to investigation of a case are also in place.

All the undertakings are obliged to provide the Competition Authority with the required information, and failure on the part of undertakings to provide this information may make them liable to penalties, including progressive fines.

III.3.2. Fines as an Instrument for Ensuring Implementation of Competition Policy

Penalisation of undertakings for violation of the law is one of the chief ways to ensure implementation of legislation and lifting of the role the Competition Authority plays with a view to protecting free competition in the market.

Fines fall under two categories:

a) Fines for light contraventions, with the amount of fine being determined in the range of 0.1-1 per cent of what was the total giro income in the preceding financial year. They are applicable to all procedural violations, including refusal to provide information, or provision of inaccurate information.

b) Fines for serious contraventions, with the amount of fine ranging from 2 to 10 per cent of what was the total giro income in the preceding financial year. They are applicable to violations committed by undertakings, including horizontal restrictions via cartel-specific agreements for fixing prices and production or selling prices, division of markets, as well as other unfair trading conditions, reduction in imports or exports and other practices, which put the very functioning of the market at stake. The latter includes also abuse of dominant position (refusal to offer supplies, discrimination, exclusion, significant reduction in prices) by an undertaking in dominant position with the aim of removing competitors from the market.

In two cases, the Competition Authority has imposed fines for light contraventions.

Within the same category, and particularly, in the case of serious contraventions, the proposed amount of fine will enable enterprises' differentiated treatment consistent with the nature of contravention. As a rule, account is taken of the following:

- The effective economic capacity of transgressors to cause serious damage to other undertakings, and particularly, to consumers, while making sure that such fines have the required effect.
- The fact that usually large undertakings boast the necessary economic and legislative capacities and infrastructure allowing them to understand whether their conduct is a contravention of the law, and be aware of the ensuing consequences.

The amount of fine is determined on a case-by-case basis, in accordance with the implication and duration of contravention. In the event of failure by undertakings to execute the decision within the timescale laid down in the decision taken by the Competition Authority, the latter also applies progressive fines, which may amount up to 5 per cent of what was the daily median giro income in the preceding financial year. Imposition of similar fines is deemed necessary, particularly in cases involving application of decisions for the taking of temporary measures, or decisions in support of undertakings' commitments.

III.3.3 Programme for Lessening Fines

The programme for lessening the fines comprises a general framework focussed on complete or partial reduction in fines imposed on undertakings, which cooperate with the Competition Authority in investigating prohibited agreements. Lessening of fines affects secret agreements concluded among two or more undertakings with the intention of fixing prices, production or selling prices, and dividing markets, including irregular bids or restriction on imports and exports. Disclosure of these agreements benefits public interest, and particularly, the consumers, as the latter are best served by competition only.

Undertakings that have entered into such agreements may call a stop to their participation and avoid the fine, while submitting evidence with regard to the case under investigation. As part of its policy, the Competition Authority has drafted the Regulations for Lessening Fines.

IV. COMPETITION POLICY AND CROSS-SECTOR DEREGULATION

Competition policy is designed to ensure functioning of the market, overall. Competition policy concerns the definition of sectors of which development is inhibited by absence of competition, and in consequence, may not have efficiency.

While assessing the need for an open market and free competition, removal of or reduction in technical-administrative entry barriers, creation of an attractive market for foreign investments, consolidation of partnership between the State and the private subjects through enforcement of shared projects, participation of the public in the privatisation processes and making the latter as transparent as possible, efforts should be made to study the actual market, the forces operating in it, its tendencies, and the extent to which the rules of the game are observed, so as to ensure that the necessary measures to bring about its ex-ante regulation and its ex-post control are taken.

Study of the market is conducted in two stages:

a) Identification of the market

A straightforward assessment of competition (definition of the relevant market; summing up of the characteristics for each market; inclusion of a clear-cut balance-sheet about the positive and negative effects, with an explanation supported by arguments being attached, into the alternatives of a competition policy).

b) Assessment of competition

A detailed assessment of competition includes definition of the market affected by regulation, making sure that this definition is not exclusive of the market affected indirectly; knowledge of the nature of competition in the relevant markets when we utilise factors in a more detailed manner, from the perspective of both demand and supply, the products out in the market and the competitive processes, as well as identification of the direct or indirect impact on competition that is obtained from any choice of competition policy in the regulatory assessment process.

IV.1. Coordinating Competition Policy with Public Policies in the Regulated Sectors

Law "For competition protection" does not provide for any exclusion of the regulated sectors. This law is uniformly enforced in all the sectors of the economy, and avoids distortion of competition from one sector to the next. Coordination of law enforcement is put into effect by making sure that several simple principles come into play, and through formalisation of cooperation among regulatory entities, the Government and the Competition Authority.

In the regulated sectors or in the sectors in the process of liberalisation, the competition policy shares the same scope as the specific legislation: whereas the latter is designed to ensure opening of market under given conditions, by making use of the preliminary control mechanism, the competition legislation is designed to ensure protection of competition by ensuring occurrence of ex post control. The liberalisation process keeps to a progressive approach: the greater the opening of the market and the competition in the market, the lesser the need for specific

regulations governing preliminary control. From this perspective, progressive liberalisation of markets will enable transition from enforcement of specific legislation to implementation of general competition protection regulations only. Yet, given that liberalisation of markets in Albania is at an initial stage, enforcement of cross-sector legislation will have a major role to play in the near future, too.

If legislation governing the relevant sector provides for the taking of specific measures, including price control or access to physical infrastructure, the cross-sector regulatory entities have the duty and major responsibility to oversee these competition parameters. The Competition Authority may intervene if the cross-sector regulatory entities may not or fail to undertake actions at the right time in order to resolve problems, while always making sure that in so doing it acts within the powers conferred to it by the competition legislation and in the range of the financial resources made available to it.

Enforcement of the Law "For competition" in the regulated sectors depends on the extent of competition allowed in the market. In principle, if in fixing the principal competition parameters, including price and quantity, the respective legislation does not provide for any more room for competition, the Law "For competition protection" is not applied, because the law-maker has ruled that protection of the other public interests justifies the reduction in the extent of competition.

In order to avoid implementation of the Law "For competition protection," it is necessary for relevant legislation to fully and directly circumvent competition. For instance, a price is not considered as fixed if relevant legislation prescribes the manner in which it or the cost is calculated only, or if relevant legislation sets a ceiling price. Similarly, a price is not considered as fixed by law if undertakings are free to fix even a small part of it. In these cases, competition among the players impacts on the market price, and their conducts are subject to the Law "For competition protection."

For enforcement of the Law "For competition" to be avoided, fixing of prices or other competition parameters should clearly be provided for in a formal law to be voted on by the Parliament of Albania, or in a subordinate legal act based on clear delegation of power as set out in the formal law. This complies with the principle whereby protection of free and effective competition, laid down in the Law "For competition" and its material provisions, may not be skirted round, except for the cases where this is clearly provided for in normative acts at a constitutional level. If interpretation of the formal law fails to clearly underscore an authority's power to set a fixed price, then the Competition Authority has full power to intervene in the market.

If the price is fixed by virtue of subordinate legal acts or general (or individual) decisions made by the central authorities, while the formal law has provided for delegation of clear powers, then intervention by these authorities may be considered devoid of legal consequences: the Law "For competition protection" may fully be put into effect. Under Article 118 of the Constitution of the Republic of Albania, points 1 and 2, subordinate legal acts are issued on the basis of and for implementation of the laws by the bodies provided in the Constitution. A law must authorise the issuance of subordinate legal acts, designate the competent organ, the issues that are to be regulated, as well as the principles on the basis of which these subordinate legal acts are issued. Likewise, a formal law regulating a given sector should provide

for the competent body, and explicitly express that the latter has a power to fix or approve the prices, and the cases where price is fixed. It should also specify that this body should exercise its own power, i.e. should take a decision for a concrete case.

If a formal law recognises an authority's power to fix or approve a price, in principle the Competition Authority may not intervene by taking a decision because the said law, democratically voted on by the Parliament of Albania, confers this power to the relevant authority. The Competition Authority may address a recommendation to the competent authority for enforcement of legislation, if the measures taken by the latter (for example, level of price) are not proportionate to the goal pursued. In this context, what the Competition Authority will be doing is to promote competition with refrence to the other public authorities.

IV.2. Liberalisation and Competition Policy

Following privatisation of trade and small and medium-sized enterprises in the early transition years, in recent years liberalisation and privatisation was basically oriented toward the strategic public service sectors, including electricity, telecommunications and financial market. Entry of new players, expansion of privatisation, interventions in vertical and horizontal divisions, technical progress and sophisticated technical arrangement have brought about a quick change in markets, particularly in telecommunications, where significant and unforeseen developments are taking place, even though they should yet be considered insufficient for a fully competitive environment to be created.

Generally speaking, these sectors are dealt with by separate and independent regulatory entities whose major goal is to encourage free and effective competition. Even though instruments and intervention approaches are essentially different, in these strategic sectors there are no fundamental disagreements between the Competition Authority and the regulatory entities in respect of regulation of and intervention in these markets. Regulation determines the specific conducts pursued by undertakings in terms of final prices and entry tariffs, while the Competition Authority intervenes by making use of general and abstract provisions applicable to all the sectors.

From this perspective, regulation is seen from the perspective of economic regulation. Economic regulation is built on the perspective that intervention in the market is necessary and profit-making only if it provides solutions to several features of the market power, and particularly, to market failures, which are carried over from earlier monopoly-like structures. Development of the analytical framework surrounding regulation has moved along in step with the development of the market structures, switching from state-owned monopolies into a pro-competitive environment that is growing ever more liberalised. The same type of industrial-economic analysis has simultaneously become a common denominator between the competition economy and the regulation economy. Both perspectives share now one focus of applied micro economy, industrial organisation and incentive economy. However, it is clear that, irrespective of these developments, the market conditions that would allow us to abandon a preliminary regulation (ex-ante), are not yet in place in Albania. Compared to the other sectors of the economy, these sectors are still undergoing a transition period, in which both the instruments of the Law "For competition," and regulation of specific sectors need to be implemented. There are still shortcomings surrounding functioning of the electronic communication market on the basis of

the market mechanisms. For as long as such problems, including unjustifiable barriers to entry into the basic arrangements, exist, the ex-ante regulation remains necessary. However, this strong intervention into the market draws undoubtedly on the competition legislation principles, and, hence, is in line with its instruments.

The owner of the infrastructure operational at the competition stages is often driven by a strong urge to discriminate against competitors, while employing new ways and strategies for their removal.

In these cases, the tasks regulation and the Competition Authority are faced with are not easier, i.e. to impede an undertaking controlling infrastructure so as to take advantage of its market power at the expanse of clients and users. The regulating policy may no longer be viewed as independent of the pro-competition policy. It should be seen as part of a larger set of instruments to be had for intervention into the economy, while building on the principles guiding competition-related analysis.

The fact that regulation is increasingly identified from a perspective of the pro-competition policy, making use of both the competitive and regulatory tools, should not be seen as a countervailing one. These tools deal with the same problem and are designed to achieve the same goal. The high level of the market power and the plausibility of its abuse is an issue. The main goal is to place final users at the heart of each and every economic activity.

However, there is a significant difference between the competitive and regulatory instruments. Of course, the competitive instruments are and will be applicable, whereas the regulatory instruments are needed for as long as competition is not developed enough. In this sector, too, the results of anti-monopoly action entail a high level of technological complexity, and a serious financial burden inherited from the past.

The aim is to ensure achievement of the long-term goals of conducting competition to the benefit of the final consumers. For as long as it relies strongly on the competition rules, regulation may not be harmful to conduct of competition. It may favour it only.

IV.2.1. Telecommunications Sector

Over the past years, the telecommunications sector has known important developments as a result of new technology entry in telephony and Internet services. Technological progress and innovation have produced new products and markets, allowing the new entries to quickly gain positions and weight. Competition and regulation are integrated into each other in order to discipline the former monopoly's market power. Albania, which is going through the integration process, is now moving toward privatisation of state-owned enterprises, and overall, regulation of the sector by orientating it toward pro-competition policies, and particularly, approximation of the telecommunications sector legislation with the recent EU directives (2002) for electronic communications.

The amendment, dated 6 November 2006, to Law no. 8618, has brought about a change in the areas for licensing of the fixed telephony operators. Except for Albtelekom, legislative changes enable the other operators of the fixed telephony networks and telecommunications service providers to operate in urban areas, too.

ERT has undertaken an analysis of the mobile telephony markets, and has announced both mobile operators as OFNT bodies in the relevant markets taken into consideration:

- Wholesale terminal call markets in each one of the mobile networks
- Retail sale market of mobile telephony public services

In consequence of intervention by ERT on 28 June 2006, in the mobile networks terminal call tariffs were reduced by 43 per cent, reaching a level equal to the average level in the EU member countries. Final users' tariffs impacted on reduction in tariffs charged to Albtelekom users for outgoing calls to mobile operators to the extent of 8-18 lekë per minute.

According to data provided by INSTAT, pre-paid mobile service tariffs dropped by 14.9 per cent in October, compared to September 2006.

ERT is working on the methodology of tariff regulation for both mobile operators announced as OFNT in the above-mentioned relevant markets.

In 2005, on the other hand, the Competition Authority started investigation into the possibility of both mobile telephony operators abusing the dominant position. The process is still under investigation by the Competition Authority, which is conducting an assessment of the market. To that end, the Competition Authority is examining information on the level of prices, differences in prices, differences in time, cost, efficiency, innovation, production and profit. It has also deemed vary valuable the information on structural peculiarities concerning market segments, concentration, buyer power, players' conduct in the market, and market entry barriers.

IV.2.2. Electricity Sector

The electricity market reveals dominance in its largest part, or at all its levels. A vertically integrated corporation (AHC), it performs all functions in transmission and distribution, with its relations with clients being controlled through bilateral regulated contracts. In part, it performs the same functions in production (generation) of electricity, as well. In this concentrated market, ten other private operators, six of which operate concession-based contracts, are currently involved in the generation of electricity. All of them have been licensed by ERE to produce electricity at the hydro-power resources whose power ranges from 70 KW to 12 MW[7].

Finally, the Transmission Operator, which operates independently of the Corporation, has been set up.

The current electricity market fits into the monopoly classical model. A number of its priorities include simplicity in management, cost-effective transactions, and easy acceptance of social initiatives launched by the Government.

Whereas problems and inefficiencies that associate this model and unfold broadly in this market, include: (1) prices not based on cost, which lead to major economic distortions; (2) poor quality service; (3) poor productivity; (4) prevalence of short-term policies towards long-term economic factors, and (5) difficulty to generate funding for new investments.

The above-mentioned shortcomings, which inhibit competition and limit choices for consumers, raise the urgent issue of delivering on reform of this market and its switch in a more economical model, which is governed by clear, transparent and non-discriminatory regulations, and in which the private participants are owners of and operate several or all the appliances for the generation, transmission and distribution of electricity at home.

[7] The electricity grid fulfills 70-80 per cent only of the overall demand over the wintertime peak period, thus causing interruption of electricity for consumers. This situation will continue in the future, too, until new thermo-power stations to generate electricity are built. (Extracted from the Strategic Plan of Measures for Reform of the Electricity Sector in Albania.)

Other countries' experience has demonstrated that lack of clear, transparent and non-discriminatory regulations facilitates abuse by monopoly-like operators in the electricity sector. This means that the right balance should be struck between market mechanisms and Government's interventions, as well as among the technical and technological aspects, management of electricity, and the importance to be paid to the social aspect[8].

IV.2.3. Financial Sector

The financial market, and in particular, the banking market, remains the most developed sector of the Albanian economy, both in terms of the liberalisation of financial services, and the quality of service for clients.

In addressing competition, privatisation of the Savings Bank, which used to hold a dominant position in the banking market, has been the most widely debated case. The Savings Bank[9] had to be split up into separate, independent units. But this would hamper the privatisation process, as no strategic investor would be interested in buying it. Faced with this fact, the request was filed that the Savings Bank was not subject to enforcement of the competition legislation. Given that such a thing would set a precedent in the case of other companies or sectors of economy, too, this was objected by the former Competition Directorate. In the submission made by that Directorate, the Savings Bank had to spared the harsh intervention by the provisions on the splitting up contained in the Law "For competition," but it had to be subject to all the other provisions, including those on horizontal and vertical agreements, mergers, and abuse of dominant position[10].

On account of the structural changes made in the financial market particularly over the two last years, jointly with the relevant regulators, including the Bank of Albania and the Financial Oversight Authority, the Competition Authority is monitoring and scrutinising the market conditions for accommodating free and effective competition with regard to the following phenomena:

a) concentration at second-tier banks so as to avoid creation or strengthening of a dominant position;

b) coordinated practices by or restrictions on competition in consequence of the horizontal and vertical agreements among the suppliers themselves, and between the latter and distributors, for several obligatory motor services in the insurance market.

Building on this, the Competition Authority will make sure to:

1) investigate plausible abuse of dominant position (for second-tier banks);

2) prevent concentrations that are likely to create or strengthen a dominant position, and the agreements restricting competition in the insurance market.

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[8] In cooperation with the Ministry of Economy and the Electricity Regulatory Entity, the Competition Authority has developed an action plan for reforming the electricity sector and opening the competition market, based on the best European practices, and for switching it to a more economical model, which is governed by clear, transparent and non-discriminatory regulations, and in which the private participants are owners of and operate several or all the appliances for generation, transmission and distribution of electricity at home

[9] Requirement under Articles 5-8 of Law no. 8044, dated 7 December 1995, "For competition."

[10] Under Law no. 8900, dated 23 May 2002, "For an addition to Law no. 8563, dated 22 December 1999, 'For defining the form and formula for the privatisation of the Savings Bank Sh.a.,' amended by Law no. 8806, dated 17 May 2001," until 31 December 2010 the Savings Bank will not be subject to obligations arising under Articles 5, 6, 7, and 8 of Law no. 8044, dated 7 December 1995, "For competition." This amendment removes the Savings Bank from the scope of provisions handling the splitting up only, while stipulating that the Savings Bank is subject to all the other provisions contained the competition law, particularly those dealing with abuse of dominant position.

Oversight of the financial market also aims at ensuring sustainability of the financial system, establishing an efficient financial market, ensuring the functioning of the financial and banking companies, and protecting depositors. The powers of the supervisory authorities (the Bank of Albania, or the Financial Oversight Authority) comply with this mission: they are primarily tasked with licensing entities and supervising their financial performance.

This mission, even though it does not run counter to that assigned to the Competition Authority, is different from the latter's mission. The Competition Authority has the duty to protect competition in the financial market by preventing agreements restricting competition among the licensed entities, to prevent abuse of dominant position, and to put in place preliminary control of concentrations. To that effect, the Competition Authority acts independently, i.e. decisions have to be taken irrespective of licensing or authorisation by the financial market oversight authorities. This means that it is not sufficient that these authorities authorise the merging of two financial companies or banks. If the terms under Article 12 of the Law "For competition protection" are met, the Competition Authority should consider whether this transaction is likely to give rise to or strengthen a dominant position in the market. This analysis is entirely different from the examination carried out by the financial market oversight authorities.

IV.3. Intellectual Property Rights and Competition

Broadly understood, intellectual property rights include patents, trademarks, copyright, and industrial design. Under the intellectual property rights, the holder has an exclusive right on the object protected, which is expressed as an exclusive right on the use, utilisation and trading of products based on it. Exclusivity recognised by law is designed to encourage creative activity and protect the investments made. This object fully complies with the object pursued by the competition policy, which is focussed on creating the conditions for enhancing dynamic efficiency (innovative or dynamic efficiency).

Holders of intellectual property rights may enjoy a powerful position in the market, indeed going as far as a dominant position. Like in the case of physical property, the Law "For competition protection" prohibits abuse of dominant position. This means that the Law "For competition protection" does not provide for a more rigorous treatment in respect of holders of intellectual property rights, but, on the other hand, it does exempt them from enforcement of law. Given the existence of similar goals (lifting dynamic efficiency and economic efficiency, overall), consideration of the above-mentioned positive effects against the negative effects, which may arise from creation or the holding of a powerful position in the market, will be carried out on a case-by-case basis.

V. COMPETITION ADVOCACY AND COOPERATION WITH THE REGULATORY ENTITIES

V.1. Competition Advocacy and the Tools Available to the Competition Authority

Two main approaches may be adopted for the National Competition Policy to deliver on its targets. The first approach concerns the Competition Authority's basic activity, and particularly, the taking of decisions to enforce the law. Related to advocacy and enhancing competition culture, the second approach concerns whole areas of the Competition Authority's performance, which warrant cooperation with other bodies and institutions.

Under definition of the International Competition Network,[11] competition advocacy refers to those activities that the Competition Authority carries out to promote a competitive environment for the undertakings' economic activity by virtue of non-binding mechanisms. This is basically achieved through its relations with public agencies, and through raising public awareness of the benefits from competition.

As per this definition, competition advocacy becomes very important for countries in transition, where for years on end emphasis has been given on different public goals, which bars the functioning of a free market, and renders protection of competition more difficult.

Underscoring that competition is one of the basic conditions for increased productivity and economic growth in a country: "The policies focussed on creating macroeconomic sustainability and developing a strong and fair competition are the most important conditions for a quick economic growth."[12]

In Albania, public economic policies have played a major role conducive to the country's macro-economic sustainability. In the current situation, for the economy to grow and society's well-being to improve in consequence it is a matter of urgency to pursue economic policies designed to enhance undertakings' competitiveness and productivity. Somewhat overlooked by the Albanian public authorities, this aspect should be at the focus of the State's intervention in the economy.

In order to be able to deliver efficiently on advocacy, the Competition Authority is mandated by Law "For competition protection," under which this institution is tasked with a range of obligations and rights in this aspect. In more concrete terms, the Competition Authority has the power to:

a) assess the extent to which competition is restricted by normative acts in force, under Article 82, point 1;

b) consider the issues concerning competition and legislation in this field, upon the request of Parliamentary Committees;

c) assess and recommend amendments to legal acts addressing enforcement of competition by central and local administration bodies and other public institutions, trade companies, consumers' organisations, chambers of commerce and industry, and groups of interest (Article 69; Article 24, letter f).

d) Article 70 provides for the role to be played by the Competition Authority in regulation and the regulatory reform. Under this article, (i) in order to enforce this law in the regulated sectors the Competition Authority joins efforts with the other

[11] According to the International Competition Network Congress, held in 2002.

[12] According to the International Competition Network..

regulatory entities and institutions; (ii) for reasons of public interest, the Competition Authority assesses the regulatory barriers to competition, included in the economic and administrative regulation, and issues the relevant recommendations. To be able to perform this function, the Competition Authority should play an important role in carefully deciding on the priorities concerning, primarily, provision of scope for effective enforcement of legislation, and sectors of the economy in which problems arise when competition is affected. These goals may be obtained in cooperation with the regulatory entities and other institutions.

Administration of the competition advocacy is no easy task. More often than not, it triggers counteractions by different players in the market, including businesses and their associations, or different private and public institutions, and various groups of interest.

V.2. Assessment of Legal and Subordinate Draft Acts

To enhance efficiency of advocacy and competition policy, Articles 69 and 70 of Law "For competition protection" sanction that the Competition Authority should consider the extent to which competition is restricted or impeded under any normative draft act. The Competition Authority will consider particularly those draft acts providing for quantitative restrictions on market entry and trade; those providing for introduction of exclusive or specific rights in given areas as far as certain undertakings or products are concerned; and those providing for same practices in respect of prices or selling conditions, or providing for increased entry barriers, including the economic and administrative regulation.

V.2.1. Quantitative Restrictions

The market works efficiently when a supplier may expand production capacity and other suppliers can access the market. Under these conditions, competition allows a reduction in prices and increase in quality. Consumers will be able to choose among various products and bring pressure to bear on prices.

In the markets where legislation prescribes quantitative restrictions on market entry, competition may not be effective, leading to reduction in production, increase in prices and reduction in quality. Quantitative constraints on market entry include any kind of regulation limiting the number of suppliers of products or services in the market. Restriction may be exercised in a direct or indirect manner.

Regulations leading to increase in cost and providing for unnecessary conditions for an economic activity to be carried out, increase barriers to entry, thus restricting potential competition. The conditions that legal or physical persons have to comply with in order to conduct an economic activity, should serve a public interest, for instance, protection of health or public order, and protection of consumers or creditors. If the conditions that are laid down, are not meant to protect the public overall, restriction on market entry and simultaneous restriction on competition are not justifiable. Likewise, the measures undertaken should be proportionate to the interest expected to be protected. Establishment of barriers on entry, which may not be justifiable on grounds of protection of public interest, unjustifiably constrains competition. The Competition Authority will consider legal or subordinate draft acts, which increase cost of market entry and launching of an economic activity in any sector of the Albanian economy.

The Competition Authority will also look into the situation surrounding competition in the market where free professions are offering services. The latter include advocacy services, accounting expertise, and services provided by engineers or architects. In the case of obtaining a license, for instance, the conditions for market entry should not be designed to limit the suppliers' number.

Quantitative trading restrictions hamper existing suppliers to increase quantity in the market. And reduction in supply leads to increase in prices. Similar restrictions should be avoided as early as the stage of the development of the legal and subordinate draft acts.

V.2.2. Exclusive Rights

Introduction of exclusive rights or specific rights in certain areas restricts competition. Conferring exclusive rights to one or several operators lessens the likelihood for other operators to supply a given market with products. Restriction on competition stems primarily from reduction in the quantity offered to the market and increase in price. The reduced number of suppliers in the market leads also to reduction in quality. Granting exclusive right for the offering of a product to a single undertaking gives rise to a legal monopoly in the market. Such a monopoly-like position allows the undertaking to set high prices.

It should be remembered that the awarding of exclusive or specific rights restricts economic freedom significantly, and at the same time, is in conflict with the market economy principle sanctioned in Article 11 of the Constitution of the Republic of Albania. Such constraints may be established for legal public reasons only. Besides, these restrictions should be proportionate to the scope of protecting public interest.

One of the principal reasons behind the granting of exclusive rights is to ensure public services for the citizens, for instance, postal service, telecommunications service, and provision and distribution of electricity and water. Public service (or, put otherwise, universal service) is primarily designed to provide all citizens with access to a qualitative service at a reasonable price.

According to these principles, services should be offered on a constant basis and with the same price both in the urban and remote areas, which may not prove to be profit-making. Conferring state-run or private enterprises the exclusive right for offering services of public interest is one of the ways to make trade-offs for losses and profits for having offered services at the same price in different areas and for different strata of the population.

The Competition Authority recognises that providing public service to all the nationals in the Republic of Albania is important and one of the major tasks of the Government. The Competition Authority takes account of the fact that granting of exclusive rights is justifiable only on the grounds that the public service offered is explicitly prescribed by law, and when other ways of financing are not plausible or feasible. First, exclusive right, on the rare occasion, may only be justifiable on grounds of services benefiting the whole of the population, being considered as basic services. Special and exclusive rights are not justifiable in the case of services and markets that are not considered as public or universal services. Second, given that conferring of exclusive rights restricts competition significantly, thus leading to reduction in the quality and quantity of services and other things offered in the market, this financing tool should be avoided in the event that other potential financing approaches are in place. Establishment of a shared fund, feeding on undertakings operating in the same market or in markets of the

same economic sector, is also one of the ways of financing. Financing through state aid, when it does not exceed the net cost the provision of public service entails, is another way of financing. Both these approaches have less restrictive effects on competition.

The need for important preliminary and irreversible investment is considered to concern another situation where granting of exclusive rights may be justifiable. Such restrictions on competition may be necessary for new players to enter the market, particularly the markets that are not functioning in Albania. Large investments allow provision of previously non-exitent services, thus increasing the quantity in the market. In similar cases, special or exclusive rights may be justifiable if they are proportionate to the need for preliminary protection of investments: first, extension of exclusivity should be proportionate to the importance of investments; second, duration of exclusivity should be proportionate to the need for the protection of investments. The length of time for the implementation of an exclusive right should not overshoot what is necessary to ensure normal return of investment, which covers the risk the opening of an economic activity in Albania is associated with.

Outside the public service area and the needs for unaffordable investment, conferring exclusive rights runs counter to free and effective competition and the functioning of the market economy.

V.2.3. Price Fixing

Fixing of prices and other conditions surrounding selling is in conflict with the market economy principle, if the price is a result of compliance of consumers' needs (demand) with supply. The Competition Authority will consider all the legal and subordinate draft acts, which determine or impact either directly or indirectly on the production costs, prices and other trading conditions.

Fixing of prices, either in a direct or indirect manner, adds to restrictions to entry for potential competitors. Price fixing may also hamper renovation and lead to reduction in quality. Finally, price fixing may serve as an indication of agreements among undertakings operating in the market, which draws the attention of the other undertakings operating in the market to it.

Price fixing may be justifiable if it designed to set a ceiling price, particularly in the regulated sectors, which base themselves on infrastructures that are a natural monopoly and are exploited by undertakings holding exclusive rights. As far as these sectors are also concerned, the Competition Authority will assess effects on competition in the market.

V.3. Assessment of Legal and Subordinate Draft Acts in Force

Under Article 82 of Law "For competition protection," the Competition Authority considers the extent of restriction on or impediment of competition under the normative acts in force. The Competition Authority will specifically focus on assessment of the extent of restriction set out in the normative acts providing for quantitative restrictions on market entry and trading; determining granting of exclusive rights or specific rights to given undertakings or products in given areas; and prescribing similar practices concerning prices or conditions for selling (Article 69 of Law "For competition protection").

The Competition Authority will devote its attention to the regulated or semi-regulated economic sectors, starting with those where the State intervenes in a more active manner. Analysis will indicate market failures that render its functioning difficult.

In order to assess the extent of restriction on or impediment of competition under the normative acts in force, there is need for a comprehensive analysis of the normative acts and the market conditions. An exhaustive analysis allows assessment of the effects of normative acts on competition.

First, the analysis should consider the extent of competition in the market, with the question being asked whether there is enough competition in the market. To that end, the number of competitors operating in a relevant market constitutes an important element. Likewise, concentration of the market is a significant element for competition. Markets in which a small number of enterprises operate, are more concentrated, which may indicate low extent of competition.

The reason behind the high concentration of the market concerns high restrictions on entry. Economies of scale are created in consequence of the high fixed cost, which is normally determined by the technology used.

Second, the analysis should look into the restrictions on entry, and particularly, the restrictions determined by the normative acts, otherwise called legal restrictions. Examples of several legal restrictions include licenses and other conditions placed for the start-up of an economic activity. The analysis of these restrictions should underscore the role they have to play, and their indispensability, in particular. The measures to be undertaken under the normative acts should provide for the indispensable conditions only, which concern market entry and are proportionate to the reasons justifying these obstacles.

Finally, assessment of the normative acts in force will be focused on those acts restricting the quantity offered, fixing prices or determining exclusive rights. In this case, the analysis will be similar to the examination to which legal and subordinate draft acts will be subject (see above)[13].

V.4. Cooperation with the Regulatory Entities

Law “For competition protection” provides for cooperation between the Competition Authority and central and local administration institutions. In this context, strengthening of cooperation between the Competition Authority and these regulatory entities is a must. To ensure better enforcement of law, the Competition Authority is cooperating with the regulatory entities. Definition and knowledge of responsibilities lying with either side avoid overlap of legislative acts enacted by these institutions and interference with their respective legal powers.

The different ways of cooperation are determined in the Memoranda of Cooperation concluded between the Competition Authority and the regulatory entities. If it finds restrictions on and distortions of competition in the market as a result of an administrative barrier, but cannot interfere with a direct decision, the Competition Authority may issue for the regulatory entity or the institution analogous to it and with a function equal to its function recommendations concerning the measures to be taken to ensure that the instruments employed are consistent with the goal set.

[13] See V.3

V.5. Cooperation with the Regulatory Entities

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V.6. Introduction of Competition Culture

Introduction of a competition culture in the Albanian setting is considered as one of the important ways to protect free and effective competition in the market.

Irrespective of the putting in place of the Competition Authority and the approximation of the domestic competition legislation with the European competition legislation, at all levels the economy in Albania still reveals lack of a competition culture, including lack of development of public policies, the business community and the general public.

Absence of competition culture is still a problem that affects the relevant authorities' ability to implement the Law "For competition" and the competition advocacy in the regulatory reforms or in the economic reforms, overall, so that they are governed by the competition principles.

Consequently, raising awareness among players (policymakers, business community, and public) about the competition policy issues is one of the most delicate tasks assigned to the Competition Authority.

The National Competition Policy document is a basic instrument for this goal to be achieved. It is also designed to help the business community and consumers understand the rules of how competition legislation works. If undertakings and consumers have better knowledge of the market rules of the game, then they will endeavour to avoid and/or report anti-competitive practices to the Competition Authority.

Improvement in the competition culture and the capacities of the Competition Authority's staff so as to enforce law and interpret decisions, while building on international experience and standards, is an important approach to fulfilling this function. An indispensable element for this function to be discharged is the translation and publication of the glossary of terminology the European competition policy employs, and the preparation of a commentary on the intent and enforcement of law. However, communication with the other institutions, the business community and

the public about the Competition Authority's performance overall, and particularly, its decision-making concerning the implementation of legislation, are essential for this function to be carried out.

Annual reporting to the Parliament of Albania, as prescribed by law, and the publishing and publication of the Report and the Official Journal of the Competition Authority, are of paramount importance.

The Competition Authority should conduct occasional surveys among the business community and the public about the intent and the problems surrounding implementation of competition overall, and particularly, of the Law "For competition protection," with a view to building an effective dialogue with the business community and the public.

The media should be an important partner in correctly communicating the competition policy to the market players. By making use of the television stations allowing direct communication and the media, the Competition Authority will make efforts to put its messages across for the community by way of the known instruments of public relations, as follows:

- a website for internal communication and to reach out to outside readers,
- conferences, seminars, workshops,
- press conferences,
- interviews,
- written articles and programmes,
- publications,
- journalists' training,
- lectures and cooperation with education,

which are the first steps quite necessary for this function to be carried out.

VI. EUROPEAN INTEGRATION AND COOPERATION AT AN INTERNATIONAL LEVEL

VI.1. Bringing Competition Legislation into Line with the EU Legislation

The Competition Authority has always seen protection of free and effective competition, a constant and primary tasks assigned to it under the Law "For competition protection," closely related to the approximation of the legal and subordinate draft acts deriving from the national legislation with the EU legislative acts. Regulations, provided for in Article 84 of the above-mentioned law and in its implementation, designed for the completion of the local competition law have been drafted in full compliance with the relevant EU legislative acts. At the same time, in developing a national legislative act for the purpose of this law reference is always made to the EU legislation.

To ensure these adaptations are made to legislation, technical assistance has always been sought from the bodies and projects run by EU or its member countries, which are operating in Albania to cover this aspect, or are assigned to make sure that the EU structures offer such assistance. Assistance provided through the CARDS and GTZ Projects is worth mentioning. Identification of the procedure to be pursued so as to bring domestic current legislation into line with the EU legislation was seen as a first step in this aspect, and to that end, the methodology for the approximation of legislation has been designed. With a focus on the approximation of national legislation with the EU legislation, this methodology also lays down the successive steps a recommendation for change in a legislative act will have to go through.

The methodology highlights the legislative acts and subordinate legal acts, which are thought to possibly provide restrictive barriers to free and effective competition in the market. To this effect, the procedural scheme for the structures that a legislative act or subordinate legal act has to go through, has been developed. At the same time, for each and every recommendation for a change in a legislative act, the relevant EU legislative act, which will serve as a valid reference point in the approximation process, has also been identified. The plan for bringing domestic legislation into line with the European legislation regulating the competition field, has become part of the National Plan for the Approximation of Legislation.

This has been viewed as an important task of the Competition Authority so as to be able to meet its part of obligations arising under the Stability Pact, and the Stabilisation and Association Agreement that Albania has signed with the EU member countries. These tasks are clearly outlined in Articles 6, 40, 70, 71, and 72 of the SAA, or Articles 27, 38, and 39 of the Interim Agreement. On the basis of these obligations arising under the above-mentioned agreements, including the European Partnership, the Competition Authority will strive to ensure that, over the next two to three years, it is involved in submitting correct opinions and recommendations about regulating state-run monopolies, and undertakes measures with a view to avoiding discrimination against foreign competitors as compared to the state-run monopoly-like enterprises. Likewise, approximation of the Albanian competition legislation with that of the European community affects all the elements contained in the Acquis Communautaire, which are incorporated into this agreement.

The SAA calls for improvement in the existing competition legislation, building up of the capacities of the institution, and in concrete terms, increase in the staff and meeting of standards with regard to the Competition Authority's officers. Moving towards establishing a comprehensive discipline for the implementation of the regulations governing competition in

Albania in order to ensure as competitive an environment as possible and improve competition culture, has been foreseen as a long-term priority. It is worth-mentioning here that legislation approximation concerns only a part of the Acquis Communautaire, and it is precisely the SAA the one that will highlight the areas of the Acquis Communautaire, which will be transposed into the domestic competition law. Hence, the domestic competition law will be at the same "wave length" with the European competition law.

Efforts to ensure approximation of legislation concern largely the drafting of subordinate legal acts dealing with introduction of European concepts and procedures regarding: a) types of prohibited agreements and the way for identifying abuse of dominant position; and b) procedures for controlling concentrations. These aspects also concern the other important function of the Competition Authority, which is the decision-making function of the Competition Commission, as provided for in Article 24, letter f, of the Law, with its role in issuing recommendations being underpinned. Decision-making tasks concern both the preparatory work on the issuance and execution of decisions, and the importance of identifying the Competition Authority through the recommendations it gives for the purpose of protecting free and effective competition overall, and particularly, the basic competition law. In order to avoid barriers on competition, during examination of these laws the Competition Authority has deemed it fit to ensure modification of articles containing outdated concepts, and introduction of several new concepts, as defined in the relevant contemporary EU legislation, too. If the Parliament of Albania finds the supplementary recommendations issued by the Competition Authority appropriate, it submits them for approval, thus avoiding hurdles to free and effective competition, which result from the legal and administrative barriers.

The commentary for the Law "For the competition protection" and the subordinate legal acts promulgated for its implementation in particular, and the competition law overall, is an instrument for the application of this policy.

VI.2. Cooperating with Counterpart Competition Institutions at an International Level

a) Opening of the Economy and Competition

With the opening of its economy and the liberalisation of its trade and markets, Albania is becoming more and more part of the globalisation developments. The integration of its economy into the region, and later on, into the common European market is an on-going process. The signing of free trade agreements with the countries in the region and with the European Union, the opening of the domestic economy to foreign investment, the privatisation of the strategic sector enterprises and the process for the liberalisation of licenses have paved the "way" for the entry of multinational undertakings from different EU member countries, or other countries outside the EU. This cooperation is also necessary because the competition issues (cartels, concentrations and abuse of dominant position) assume a supra-national character. The Competition Authority reviews practices for the implementation of the competition law in all the cases where they affect the internal market, irrespective of the fact that such examination has been made in another country or community. Indeed, the Competition Authority cooperates with the counterpart authorities both in sharing information and in investigation and decision-making processes.

b) Cooperating with Competition in EU

Being an integral part of the Stabilisation and Association Process, the Competition Authority has been involved in developing the Action Plan for the Implementation of the European Partnership Recommendations, and the National Plan for Legislation Approximation.

In all the Stabilisation and Association Process, the Competition Authority has offered its contribution on the plan of commitments and actions until the signing of the Stabilisation and Association Agreement. In this aspect, it has cooperated directly with the EU experts in the competition field.

The implementation of the SAA has already started, and in the framework of the SAA Implementation Plan the Competition Authority's direct commitments concern competition in the area of law enforcement, and strengthening of the institutional capacities, legislation approximation and improvement in the competition advocacy and culture.

The Competition Authority has already absorbed part of the assistance for the project under the CARDS Programme 2003, in the framework of which it is cooperating directly with the General Competition Directorate and the competition authorities from EU member countries, including Germany, Great Britain, and Finland.

In June 2006, in cooperation with the Ministry of Economy, Trade and Energy and with support from the CARDS Project and the GTZ, the Competition Authority hosted in Tirana the international Conference Policies for Competition and State Aid in the Framework of Accession to the European Union, which was focussed on important issues relating to competition policy and a comparison between the experiences in the competition field in the region and those in the European Union. The Conference served also as a bridge of cooperation not just among the regional competition authorities, but also between them and the General Competition Directorate and renowned experts in this area.

c) International Competition Network

Since 2003, the Competition Authority is a full-fledged member of the International Competition Network (ICN), of which membership includes 65 competition authorities from many countries across the world. It inherited this status from the former Competition Directorate in the Ministry of Economy, Trade and Energy. This network cooperates closely with international organisations, including OECD (Organisation for Economic Cooperation and Development), OBT (World Trade Organisation), and UNCTAD (United Nations Conference for Trade and Development). Even though it does not perform a decision-making function, this network seeks to enable the competition authorities to maintain regular contacts among them, and debate on practical issues concerning competition. The final goal out of this is to ensure that cooperation among competition authorities world wide is enhanced, and that agreement on jointly shared competition policies is reached through an on-going dialogue. Hence, the Competition Authority will constantly be committed to make its contribution to preparation of documents in the framework of different studies this network conducts on competition matters.

VI.3 Cooperation in the Future

Being part of the European integration process, a member of the International Competition Network, and part of the process of cooperation among the competition authorities in the region, the Competition Authority will be firmly committed to reinforcing cooperation and placing this cooperation on institutional bases. Signing of the Memoranda of Understanding with the countries in the region will pave the "way" for concrete cooperation in investigating the mutually affecting cases of secret agreements, mergers or abuse of dominant position.

The Competition Authority is focussed on upgrading the technical and professional capacities of its staff. To that end, the Competition Authority has participated on a regular basis in a number of training sessions, conferences and workshops for the Southeast European countries, hosted by the OECD, the Federal Commission of Trade, in cooperation with the US Department of Justice, and the GTZ. In all these activities, the representatives from the Competition Authority have taken an active part in the debates on the issues raised, and have come up with solutions to cases taken up for discussion by the said Authority.

The Competition Authority aims at developing the competition policy, reinforcing cooperation with counterpart competition structures in the Southeast European countries, with those in the European Union member countries and with the General Competition Directorate based in Brussels.

VII. MAIN DIRECTIONS FOR ENHANCING THE EFFECTIVENESS OF THE COMPETITION POLICY AND AUTHORITY

The National Competition Policy document is designed to serve as an instrument to help:

- understand and implement the Law "For competition protection," the private and public players' conduct in accordance with the competition and free market regulations;
- increase public awareness of the role competition has to play in the country's economic development and its integration into the regional, European and international developments;
- ensure mutual communication between the Competition Authority and the public, the business community and public institutions, as well as the international counterpart bodies during development and implementation of the National Competition Policy.

The Competition Authority is the institution responsible for enforcing the Law "For competition protection." However, it is not the only one institution assigned with its realisation. Enforcement and imposition of legislation, and the conduct of undertakings and other players in compliance with the competition regulations in a functioning market economy depend much also on the approach adopted by the central and local institutions, the court, the media, the regulatory entities, the business and its associations, the consumers' associations and the general public.

The Competition Authority is and will continue to be open to fruitful cooperation and interaction with all the interested parties for putting in place a free, effective and fair competition.

The following constitute the major goals contained in the National Competition Policy and the major areas for the focus of the Competition Authority over the period between 2007 and 2008:

VII.1. Improving the Legal Framework

The Competition Authority aims at meeting the commitments made under the Stabilisation and Association Agreement and the Interim Agreement with EU. First, the relevant regulations and directives should be accommodated into the legal and subordinate draft acts, with the Legislation Approximation Plan and the implementation of the Stabilisation and Association Agreement with EU being taken account of, and the necessary loopholes should be filled so as to ensure effective enforcement of law. Second, improvement in the legal framework will be designed to ensure that, in accordance with the experience gained, the increased capacities and the requirements for developing a functional and competitive market economy, the relevant amendments and additions are made to legislation so that the needs for Albania's economic development are taken into account.

VII.2. Institutional Developments

1. From the institutional perspective, the Competition Authority is keen to develop as a competent authority facilitating the establishment of a contemporary competition system.

2. The Competition Authority will make efforts to obtain the required financial resources, with a focus on achieving financial autonomy, as a necessary prerequisite for an independent decision-making process.

3. The professional administrative capacities should be developed by making sure that high requirements are in place for recruitment of new staff and that all the staff receives training, so that they are able to offer legislative and economic expertise.

4. For these goals to be obtained, the competent bodies and the Parliament of Albania should go out of their way so that the administrative autonomy is upgraded, and the autonomy in decision-making is ensured.

5. Important goals include also development of the competition culture in Albania, inter-institutional cooperation, and building or strengthening of relationships with the competition authorities in the region and at large.

VII.3. Enforcing the Law

The Competition Authority considers the effective enforcement of law as the most important component of its policy and performance.

To this end, attention will be focused on:

1. improvement in investigation in certain cases. In the course of its activity, it will check on:

(i) all the agreements among undertakings, the decisions taken by groups of enterprises, and the practices coordinated among undertakings, which have the scope of or result in restriction to or distortion of competition,

(ii) practices adopted by one or more undertakings with the intention of abusing the dominant position,

(iii) concentrations of undertakings, and

(iv) introduction of investigative procedures in the application of the law.

2. Improvement in the effectiveness of law enforcement in certain cases. The Competition Authority will undertake administrative measures against violations of competition, while effectively making use of the sanctions and penalties prescribed for cases involving abuse of dominant position, cartels and control of concentrations. The Competition Authority, on the other hand, will be attentive to and will encourage all the businesses, which feel discriminated against in the market, to cooperate with it. Undertakings, which take part in prohibited agreements, but denounce them and offer the necessary information, will benefit from a special programme for the lessening of fines up to the lifting of sanctions against them.

The Competition Authority considers feels duty-bound to help the judicial system grow aware of the comprehensive implementation of the right to the competition.

VII.4. Advocacy of and Improvement in Competition Culture

Encouragement of competition through non-binding mechanisms will constitute one of the important aspects of the Competition Authority's performance. It will be accomplished through:

1. evident participation in and proactive approach to development of and improvement in legislation, in accordance with the requirements and principles surrounding a free and effective competition. The policy-making institutions should inform the Competition Authority about their legislative practices or subordinate legal acts so as to receive the relevant recommendations;

2. cooperation and coordination with the regulatory entities, thus paving the way for the signing of the Memoranda of Understanding. The Competition Authority will join efforts with the regulatory entities in reviewing the concrete cases, while adopting the best expertise from the field regulators and observing the relevant legislations;

3. creation of a suitable climate for business and investments, with this being one of the major goals of the Competition Authority;

4. consideration of consumers and their associations as another important ally of the Competition Authority. As much as competition assists consumers, so much consumers may contribute to competition. The Competition Authority needs to rely on consumers' support and understand their interests, both in the short and long run, so as to ensure healthy competition and better enforcement of legislation in this area. The Law "For competition" and its implementation is consumers' best ally;

5. sensitisation of the public and the media about the role of competition as a public benefit so as to identify the real allies in support of free and fair competition in the market;

6. increased access to information about legislation, and the policy and performance of the Competition Authority. Publication of decisions on the website, in the written and electronic media, with the processing of a communication strategy being an ultimate goal, are considered as conditions conducive to introduction of a competition culture in Albania, as well.

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