



REPUBLIC OF ALBANIA  
COMPETITION AUTHORITY

**ANNUAL REPORT**

**2006**

**AND**

**MAIN PERFORMANCE AIMS**

**FOR**

**2007**

ANNUAL REPORT 2006 AND MAIN PERFORMANCE AIMS FOR 2007

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## Introductory speech

Prof. As. Dr. Lindita Milo (Lati)  
Chairwoman

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The activity of the Competition Authority during 2006 has been carried out in line with the commitments to ensure a free and effective competition in the market in accordance with the law “On protection of competition”, as well as with the entire legal framework which regulates the activity of an independent institution in the Republic of Albania. This institution perceives its function as encouragement and defence lawyer of competition and interests of consumer, aiming finally at development generation for the market.

By means of monitoring, survey and investigation procedures, the Competition Authority has attentively followed the developments in some markets focusing on the evidence pertaining to the aspects of deformation of competition in accordance with the law “On protection of competition”. Consequently, there have been made the respective decisions and there have been issued the recommendations for the market stakeholders, aiming at introducing competition in the affected markets.

The approval of the document of Competition Policy by the new Commission of Competition marks the performance of the obligation imposed by the law “On protection of competition” and at the same time of determining a short term strategy of the roadmap of the Competition Authority.

One of the main issues which has been followed up by the competition Authority in accordance with the legal framework in the field of competition during 2006 has specifically been the deepened investigation in connection with the potential abuse through the dominant position in the mobile telecommunication market, institution of the procedure of Preliminary Investigation of the Insurance Market and specifically in the insurance services for Liabilities to Third Parties,

Green Card and Border Insurance and internal TPL, as well as a series of concentrations (sale-purchase of shares), mainly in the banking sector.

The Competition Authority has been active in the relations with central institutions and regulatory entities making the exchange of information and cooperation for the correct implementation of the law "On protection of competition" as well as their respective laws formal through memoranda of understanding.

During 2006, the Competition Authority has been an integral part of the Stabilisation and Association process, being involved in the drafting of Actions Plan for the Implementation of Recommendations of European Partnership, as well as the National Plan of Approximation of Legislation. The authority has met the commitments assumed in the framework of the Stabilisation and Association Agreement with the European Union, and it has reported about the progress marked in the field of competition.

6 With regard to the regional cooperation, we can highlight that the Competition Authority has actively participated in the deepening of the cooperation in the regional network of the Competition authorities and this cooperation was concluded with the organisation of the joint international conference pertaining to the issues of competition and state aid. The conference was organised in cooperation with the Ministry of Economy and through the support of CARDS project and GTZ. Participating were representatives from the Competition Department General at European Commission, OECD, counterpart authorities from regional countries etc.

## I. Main developments in the field of competition

During 2006, the activity of Competition Authority has been concentrated on the implementation of the law “On protection of competition” relying on three main pillars which determine the protection of competition: abuse with the dominant position; prohibited agreements in the form of cartels, merging or concentration of enterprises.

The Competition Authority has continued with the work for the deepened investigation in the field of mobile phone communications, thus performing a considerable volume of investigation concerning the potential abuse with the dominant position of the operators being present in this market. The Authority has informed the Assembly and specifically the parliamentary committee “On investigation on the monopoly in mobile phone communications” on the investigation phases and has, in accordance with the request of the Committee, the information possessed by it.



The Competition Authority instituted a preliminary investigation ex officio even in the financial sector, specifically in the insurance market. In accordance with the law no 9121 “On protection of competition”, the Competition Authority has found out that (i) the insurance market for “Third Parties Liability” (TPL) has not been fully liberalised; (ii) coordination of the conduct of operators amounts to setting of policy prices of the obligatory insurance, implementation of the exclusive or selective agreements in accordance with certain products (TPL, Border Insurance Policy, Green Card) and (iii) insurance market for TPL is deformed and with competition restrictions. For these reasons, the Competition Authority decided instituting the procedure of Preliminary Investigation in the field of Insurance market and specifically in the TPL services (Green Card, Border Insurance and internal TPL).

At the same time, the Competition Authority has notified a series of concentrations, specifically in the banking sector, such as that of the sale of the shares of National Commercial Bank to Calik-Seker Consortium; concentration carried out through the purchase of the shares of Emporiki Bank by the company “Credit Agricole S.A.”, concentration through the sale of 80 percent of shares of Italian Albanian Bank to San Paoli Pank Imi, etc. The Competition

Authority has followed attentively all the developments in the financial sector, in order to continuously monitor the anti-competitive practices.

In June 2006, the Competition Authority, in cooperation with the Ministry of Economy, Trade and energy and being supported by CARDS project and GTZ, organised in Tirana an international conference: "Policies of Competition and State Aid in the context of the Accession into European Union". There were in the conference dealt with important issues of the competition policy and approximation of the experiences of the region to those of European Union in the field of competition. At the same time, the conference served as a cooperation bridge not only with the regional authorities of competition, but also with the Competition Department General of European Commission and outstanding experts in this field.

A presentation of the main aspects of the Competition authority shall be provided in the latest progress report of the European Commission for Albania. There is stated in the report that "a certain progress has been marked in the field of competition. The Competition Authority (ACA) has approved regulations and explanatory instructions on the control of concentrations, immunity and fines, as well as horizontal and vertical agreements. At the same time, it has started to evaluate

the merging and purchases which are notified to it. With regard to the implementation, ACA is proceeding with two big files, with regard to the mobile phone communication and insurance of vehicles at border crossing points.

Progress has been marked also with the functioning of ACA. Staff members have been trained and there have been held regional meetings for boosting the awareness of the business community. However, it is still unclear to what extent the Competition authority can work independently. The majority of the staff has been recruited recently and lack experience, and lack of resources has been the obstacle in reaching the objective for recruiting the entire staff. Further attempts are needed for improving the efficiency of the competition control. Albania has assumed considerable commitments in this field in the context of SAA. The preparations in this field are being launched."

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## II. National Policy of Competition

By virtue of Article 24, point a, Competition Commission approved, by decision no 43, dated 28.12.2006, the document of the Competition National Policy.



This is the first document of the competition policy in Albania and it has been compiled based on the similar experience of the regional countries which are a couple phases advanced in the process of European integration (such as Croatia, Bulgaria, Rumania etc), as well as the specific features of the developments in the competition culture and legal infrastructure in Albania.

With reference to these special features, the Competition Authority tried for this Competition National Policy to be all-inclusive. To his effect, this document was subject to a discussion and exchange of opinions with all the interested parties (potential stakeholders in the market), such as: ministries and regulatory entities, business community, consumers' associations, legal firms, etc, reflecting their opinions in this document.

Competition policy represents the short and medium term vision of protection of competition in Albania.

There are reflected the main directions of the activity of Competition Authority in order to explain to the enterprises of the private and public sector, the possibility to carry out their economic activity on the basis of a free, effective and fair competition.

The competition policy aims at preventing the market stakeholders from abusing with their dominant position, to enter into agreements which have as a consequence the setting of prices or establishing a market structure where the competitors join each other (through concentration), thus distorting the competition in the market.

A very important objective of the competition policy is the increase of the economic wellbeing of the society, developing the increase of competitiveness, ensuring equitable rules of game in the market, promoting the technological evolution, increasing the possibility for the selection and quality of the products and services and achieving potentially market equilibriums which are a prerequisite to setting as real prices as possible. In this context the competition policy consists an important factor in the economic development of the country.

At the same time, aiming at steady boosting of competitiveness in the economy of the country, the competition policy can make a very important contribution in improving the macro-

economic indicators such as that of the total level of prices, level of employment and economic increase.

The competition policy, along with the monetary, fiscal and commercial policies, has been considered as the fourth stone of the foundation of the public policies. This makes it necessary that its main principles should be taken into consideration from the various public institutions to draft and implement other economy related policies, to the effect of harmonising their objectives to those of the competition policy, achieving in this way the final aim of governmental performance which is the increase of the sustainable wellbeing.

The Policy of Competition is closely connected to the policy of state aid and for this reason, while dealing with the policy of state aid, there should be taken into account the importance of establishing equal conditions for the enterprises to the effect of promoting competition.

The competition policy should be taken into account in drafting the strategies of regulatory entities in different sectors of the economy and in this context the cooperation of Regulatory Entities is of special importance.

### **III. Organisation and functioning of the Competition Authority**

The Competition Authority is a public authority and independent in accomplishing its own tasks. Its activity in terms of time is short, since it has started to function on 1 March 2004. The Activity of the Competition Authority relies on the law no 9121, dated 28.07.2003 "On protection of competition". The aim of the law is the protection of free and effective competition in the market, in the public interest.

The Competition Authority from the organisational point of view consists of the Commission and Secretariat. The Commission consists of four members and the chairman.

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

The Competition Commission is a collegial and permanent authority, with five year mandate, presided over by the Chairman. The competition Commission has all the necessary competences for taking decisions on its own initiative for issues which restrict, hinder or distort the competition in the market, with regard to the private and public enterprises, as well as the proposal of necessary remedies for the protection of the free and effective competition.

During 2006, the Assembly of the Republic of Albania decided to change

the criteria for the selection of the members of the Competition Commission (reflected in Article 20, point c, of the law “On protection of competition” as well as the competition of the Competition Commission.)

An important development for the Competition Authority was the election of the Competition Commission Chairman on 17 July 2006, round 14 months after the preceding chairman had resigned. During the period of absence of chairman, his tasks were, in accordance with Article 25 of the law no 9121 “On protection of competition” have been carried out by the deputy chairman.

Even during 2006, one of the positions of the member of Competition Commission remained vacant due to the missing proposal from the President of the Republic, which has been provided in Article 21, point a, of the law no 9121, dated 28.07.2003 “On protection of competition”. The Competition Authority has many times approached the President for appointing the fifth member of the Competition Commission, since in this way a more comprehensive decision-making of the Commission can be ensured, but so far there has occurred no development.

An important change in the field of legislation which is connected to the organisation and functioning of the Competition Authority was the withdrawal of the power of the Competi-

tion Authority to approve the organisational structure of the Competition Authority, which was provided for in letter b of Article 24, of law no 9121, dated 28.07.2003 “On protection of competition”. With the approval of the law no 9584, dated 17.07.2006 “On salaries, rewards and structures in independent institutions established by law”, in Article 15, there is repealed letter b of Article 24, of law no 9121, dated 28.07.2003, “On protection of competition” and the structure of Competition Authority shall be determined by decision of Assembly (Article 10 of law no 9584, dated 17.07.2006). This change has brought about an incoherence between the approval of the budget law (connected to the number of employees) for 2007 and the new structure of the Competition Authority which has not been approved by Assembly yet, bringing about delays in the full implementation of the legal commitments and of the action plan of the Competition Authority for 2007.



*Competition Commission*

### III.2. Secretariat

The Secretariat has been presided over by the Secretary General, which is elected by the Commission. The employees of the Secretariat shall enjoy the status of civil servant. The inspectors of the Secretariat carry out administrative investigations in accordance with the Code of Administrative Procedures, law “On protection of competitions” and other effective legislation.

Same as it has been underlined by evaluations of European Commission, the strengthening of the administrative capacities has been under the focus of the competition Authority, in terms of numbers and structure, as well as their professional qualifications. In their entirety, these elements have been insufficient for performing the tasks entrusted by law. The structure of the Competition Secretariat consisted during 2006 of a total number of persons of 15 years from whom 7 persons covered directly the fields of the implementation of the law “On protection of competition”.

In line with the obligations of Stabilisation and Association Agreement, the Assembly and Government have expressed and demonstrated their support to the Competition Authority, through the approval of the additional human and financial resources for 2007. Concretely, the Competition Authority has during the new budget-

ary year 15 new persons, out of whom 80 percent are expert staff.

The Secretariat consisted, during 2006, of three departments, as follows:

#### III.2.1 Department of Market Analysis and Investigation

The Department of Markets Analysis and Investigation does the monitoring, research and investigation of the Markets from the perspective of the protection of free and effective competition in the market, in accordance with the law “On protection of competition” and regulations approved by Competition Commission.



Illustration

In the analysis of the developments in the market, the Department relies on three main pillars of the law “On protection of competition”, such as the abuse with the dominant position, prohibited agreements and concentrations/merging of enterprises.

During 2006, there have been carried out researches in the market structure by this Department, through the performance of economic-financial analysis

and investigations into the identification of anti-competitive practices, cartel agreements harming / threatening / endangering the distortion of the competition or establish and strengthen the dominant position. At the same time, this Department carries out analysis for the evaluation of the economic effects which stem from the merging or granting of exclusive rights.

### **III.2.2 Department for Legal Issues**

The Department for Legal Issues assumes its powers abiding by the strategy of the Competition Authority for a free and effective competition in the market, in accordance with the effective legislation, standing rules of institutions and other subordinate legal acts.

The Department for Legal Issues considers the legislation which runs counter to the competition and analysis the information on the legal obstacles restricting and distorting the competition in the market, as well as proposes to the Commission the respective legal and bylaw changes for reaching an effective competition, as well as interpretation and legal reference of the normative acts in general and those of Competition Authority specifically.



As a priority task of this Department is the translation into the legal language of the Studies and covering the economic analysis with a “legal clothing” and raising arguments of this discipline.

### **III.2.3 Department of Human Resources and Services**

The department of Human Resources has done the recruitment of motivated specialists, in accordance with the general and specific criteria for the employment positions in the Competition Authority. With the support of CARDS project, there have been done some training courses, in order to perform the obligations of the law and developments in the field of the competition field. The recruitment of the qualified staff has been done in accordance with the criteria and procedures provided for in Article 10 of the law no 8549, dated 11.11.1999 “Civil Servant Status”.

In the course of the period July 2004 – July 2006, the Competition Authority has relied on the technical assistance of CARDS project and in this context there have been carried out a series of internal trainings of staff by the project experts and study visits at counterpart institutions.

The managers and specialists of the Competition Authority have been involved in a series of national and inter-

national activities, such as seminars, workshops, conferences etc, where they share a valuable experience in the field of competition.

The effectiveness of investment in trainings is low because of the frequent movements of the staff during the previous periods. Moreover, the institution itself has less than three years experience.

Another direction of the work of this department is the covering of financial activity of the Authority and assuming full responsibility for all the problems which have to do with the administration of budget funds, in line with the financial legislation of the Albanian State.

The annual budget for financing the activity of the Authority, consisting a separate line in the state budget, shall be approved by the Assembly. The revenues collected in accordance with the law "On protection of competition", including the revenues from fines shall be allocated to the state budget.

This Department prepares, in cooperation with the other departments, the draft-budget of the Competition Authority for approval, keeps the expenses and current revenues accounts, performs the analysis of the use of budget funds in line with the Albanian legislation on bookkeeping.

#### **IV. Issues followed up in accordance with the law "On protection of competition"**

In the provisions of the law no 9121, date 28.7.2003 "On protection of competition" there has been clearly provided for the detailed in investigating the agreements, abuses with dominant position or control of concentrations, and fines and sanctions in case of violation of this law.

The main issues which have been followed up by the Competition Authority, in accordance with the law no 9121, date 28.07.2003 "On protection of competition, have been:

##### ***IV.1. Abuse with the dominant position***

The law on protection of competition prohibits the abuse with dominant position or non-dominant position as such.

The law prohibits every abuse by one or many enterprises with the dominant position in the market, specifically in the cases of determining directly or indirectly unfair prices for the sale or purchase, or other unfair conditions of marketing.

The Competition Authority is in the process of deepened investigation for the potential abuse with the dominant posi-



tion in the market of mobile communications, undertaken upon the initiative of the Competition Authority in the second 6 month of 2005. The parties targeted in this investigation are the two companies which operate in the Albanian market, AMC and Vodafone. The work group for the investigation into this case has asked for the cooperation in order to have the data made available, not only by the parties under investigation, but also other public institutions connected to this issue and specifically the regulatory entity of the respective sector.

As it has been announced in the report of 2005, the companies under investigation have adopted different attitudes with regard to the demand of the Authority for making the information available from them. AMC did not make available to the Authority the required data. Under these circumstances, the Competition Commission made use of the single legal alternative, imposing a fine on the company AMC at the amount of 160 million Albanian Lek, a sanction which has been provided for in Article 73 of the law no 9121, dated 21.07.2003, "On protection of competition". The company AMC has taken an appeal against this decision with the First Instance Court – Tirana. The court has rejected the petition of the company AMC, thus upholding the decision of the Competition Commission, due to the violation of procedures by the company AMC.

However, so far, this fine has not been collected by the Tax Police, which has the legal obligation to enforce it in accordance with Article 80, law no 9121, dated 28.07.2003 "On protection of competition". The competition Authority has approached many times officially the Department General of Taxation for the enforcement of this decision.

Against the decision of the Competition Commission for deepened investigation, the company AMC has filed a lawsuit with the First Instance Court of Tirana. In these proceedings, the court has rejected the claims of the petitioner, thus upholding the decision of the Competition Commission. The proceedings are still in the appeal phase by the companies.

The Competition Authority has informed about the procedures and partial results of investigation even the Parliamentary Investigation Committee "On investigating into the monopoly market of mobile telecommunication and preparation of recommendations for the elimination of this monopoly situation". The suggestions of the Competition Authority in general have been taken into consideration generally by the Parliamentary Committee of the Assembly and they have been reflected in the final report.

The deepened investigation in the field of mobile telecommunication is near its completion and it shall be passed over for decision-making to the Competition Commission.

## IV.2. Prohibited Agreements

One of the pillars of the law “On protection of competition” are the agreements between competitors which restrict the competition. These kinds of agreements shall be considered to be prohibited since they are connected to the anti-competitive practices, specifically those agreements which have as their own scope or consequence the setting of prices, sharing of market according to the territory and setting of prices or volume of the sales.

The Competition Authority, relying on one request from the Financial Supervision Authority (FSA) with regard to the licensing of the Vehicles Insurance Agency (VIA) undertook a research for the evaluation of competition in the insurance market and specifically for the obligatory insurance policies.

The insurance market shall be evaluated as a market regulated by the Insurance Supervisory Authority (currently Financial Supervisory Authority). The respective regulatory entity aim, by means of the licensing procedures and supervision of the operators operating in this market, at protecting the public interests and establishment of a competitive environment. For the issues connected to the protection of the competition from the perspective of the control of the non-competitive conduct (cartel agreement, abuse with dominant position) and control of the merging among the entities performing economic activity, regardless of the fact whether they operate in regulated sectors or not, there intervenes the Competition Authority.

In accordance with the law “On protection of competition”, Competition Authority launched a study for the evaluation of the insurance market, specifically pertaining to the offer of the service of obligatory insurance policies. Upon the conclusion of the performed study, there was concluded that the insurance market is not fully liberalised. The state still preserves the control on the prices only in the obligatory motor insurance, such as the third party liability (TPL) for the users of motor vehicles. In addition to this, the restriction of the competition comes as a consequence of the coordinated agreements or practices, coordination of the conduct of companies which bring about the setting of the prices





for obligatory insurance policies, for internal TPL products, border insurance policy and green card. Concretely, the Authority has concluded the procedure for the preliminary investigation and upon the decision of the Commission there is being followed up the procedure for the launched investigation.

### **IV.3. Concentrations**

The third pillar of the law “On protection of competition” is connected to the concentration procedures, which consist one of the main directions of the activity of the Competition Authority. The forms of concentration are the union, merging of two enterprises, benefit of direct control by one enterprise on the other, or the establishment of a joint enterprise, operating independently financially from the enterprises establishing it. Concentration is a part of the industrial restructuring and it is seen as necessary to respond to the challenges of the global economy.

The policy of the control of concentrations should contribute to promote the structural and economic reforms in Albania towards the consolidation of the market economy. Through this policy, there is aimed at preserving a sufficient number of companies in the market, which ensure an effective competition and potentially low prices.

Based on the experiences so far, the Competition Authority has established consolidated practices in the

field of the implementation of the legal framework in the control of the concentration of enterprises. By means of control over concentrations, the Competition Authority prohibits those concentrations which endanger to establish or strengthen the dominating position of one or more enterprises, thus restricting the effective competition in the market considerably.

Year 2006 was characterised by a dynamic development of banking sector. This dynamics is expressed in the structural changes and of the ownership of enterprises which perform an activity in the banking sector. Consequently, during this year, there have been received a considerable number of applications for notification of concentration of banks at the Competition Authority and their merging.

With regard to every case taken into consideration, the Authority has cooperated with the Department of Super-



vision of Bank of Albania, as the regulatory authority in the banking market.

The cases considered in the course of this year are:

*a) Italian - Albanian Bank - San Paolo IMI*

In February 2006, the Competition Authority considered the announcement of the concentration accomplished through the transaction of the sale of 80% of the shares of Italian – Albanian Bank to the company San Paolo IMI spa. The Albanian Government and the company Capitalia, which had respectively 40% of the shares in the Italian Albanian Bank, decided to sell these shares to the company San Paolo IMI Spa. This transaction brought about the full transfer of ownership of Italian Albanian Bank to the company San Paolo IMI spa, as the winner in the public tender organised in 2005 by the Albanian government.



In accordance with the evaluation of the Competition Authority, this concentration did not have negative effects with regard to the competition in the market of the respective product or of the geographic market, and for this reason the

Competition Commission authorised the announced concentration.

*b) National Commercial Bank - Çalik Seker Yatirim Konsorsiyum A.S*

The Competition Authority considered the announcement of the concentration occurring through the sale of 60% of the shares of the National Commercial Bank to the Turkish company Çalik Seker Yatirim Konsorsiyum A.S.

With reference to the data received from the parties, it turned out that the concentration did not bring about any change in the structure of the banking market and for this reason the Commission authorised the implemented concentration. The buyer did not abide by the time periods of notification of concentration . The Commission decided, in accordance with Article 74 of the law, the amount of fine of 2% of the annual turnover of the previous financial year for the buyer, the Turkish company Çalik Seker Yatirim Konsorsiyum A.S., amounting to 6.5 million lek.

The Competition Authority requested, with regard to this decision, from the Tax Police the collection of the fine since, in accordance with the law no 9121, dated 28.07.2003 “On protection of competition”, the Tax Police is an authority tasked with the enforcement of the fine.

The company Çalik Seker Yatirim Konsorsiyum A.S., filed a complaint against the decision of the Commission imposing the fine with the First Instance Court Tirane.

After considering the claims of the parties, the court rejected in December 2006 the lawsuit of the company Çalik Seker Yatirim Konsorsiyum A.S., upholding the decision of the Competition Commission.

#### *c) Emporiki Bank -Credit Agricole*

The Competition Authority considered in September 2006 the announcement for the concentration brought about through the sale of 71.97% of the shares of Emporiki Bank with its seat in Greece and its branches to Credit Agricole S.A with its seat in Paris, France. The procedure for carrying out this concentration started through the publication of the voluntary public offer by Credit Agricole S.A.

Since the Emporiki Bank is present in the Albanian market through its branch, the company Credit Agricole S.A, had to inform about this performed transaction or receiving the authorisation for the concentration even the Albanian Authority of Competition. The procedures followed by the Competition Authority for the control of concentrations are in full compliance with the procedures provided for by the European legislation. Since the parties participating in this transaction were carrying their activity outside the territory of Albania, they were obliged to inform about the concentration even the European Commission and National Bank of Greece.

The above mentioned authorities, since they found this announcement in accordance with the respective legislation, re-

spectively the European and Greek one, granted their approval for the control to obtained by Credit Agricole S.A., over Emporiki Bank. The Albanian Commission of Competition authorised the announced concentration in accordance with the law.

#### *d) San Paolo IMI-Intesa spa*

In December, the Competition Authority considered the announcement of the concentration carried out through the Bank Sanpaolo IMI Spa by Bank Intesa Spa.

The parties involved in this transaction carry out their activity in the Italian Banking market, but since San Paolo Spa is the possessor of 80% of the shares in the Italian Albanian Bank, this transaction was subject to the procedure for Controlling the Concentrations, provided for in Articles 53-64 of the Law. The Competition Authority considered this transaction as the substitution of ownership of Sanpalo IMI Spa through Intesa in BIA, which did not cause structural changes in the banking market and approved the concentration.

#### ***IV.4. Monitoring and research of market***

In compliance with its mission, despite the limited number of personnel, the Competition Authority has launched the performance of two studies:



- in the energy market, specifically for the liquid gas;
- in pharmaceutical market.

The aim of these studies is the evaluation of the present conditions of market, forces operating there, its tendencies, degree of abiding by the rules of game, to the effect of taking the necessary measures in advance (ex-ante) and control after the action (ex-post).

The authority is in the process of consideration of the above mentioned studies to consider them as potential markets of monitoring, analysing and investigation in the future.

## V. European Integration, Advocacy of Competition and Approximation of Legislation

The Competition Authority participated actively in the Albanian negotiating group for the official negotiations for signing the Stabilisation and Association Agreement, which was done on 12 June 2006.

In the meetings held by EU Committee – Albania in the framework of the Task Force Group and the 9th held in June in Brussels and December in Tirana, there was analysed the work done by this Authority in accordance with the organic law and the promotion of liberalising policies, as the policies which lead towards a more effective and free competition in the market. The normal functioning of this institution was considered in these meetings as a step forward towards meeting the obligations of the Albanian party in the process of European integration. These tasks are expressed in Articles 6, 40, 70, 71 and 72 of SAA, or Articles 38 and 39 of the Intermediary Agreement and they pertain to the impact which they bring about in the commercial exchanges between the CE and Albania, through which there is hindered, restricted or distorted competition, as well as the abuses with the dominant position in the market etc.

With the entry into force of the Council of Ministers Decision, dated 05.07.2006 “On implementing the National Plan for



Updating Legislation”, focusing on the field of Competition and State Aid, Sub-field of Competition, there was identified as a task for the second half of 2006 the translation and adjustment of competition legislation by two Regulations of Acquis Communautaire. Concretely, the first Regulation is an adjustment of the Regulation of Council of Europe no 1/2003, dated 16.12.2002 and, being issued by the Council, it has the form of a legal act of the European Union, always in accordance with Articles 81 and 82 of the Treaty. This Regulation provides broad knowledge of action for the Albanian competition Authority with the counterpart authorities of the EU Member States and mainly with the European Commission of Competition in Brussels, specifically for the cases of joint investigations for foreign companies having activity in the markets and geographical territory of the Republic of Albania.

The Second adjusted Regulation has been taken as a translation of the Regulation 773, dated 7.04.2004 of the Commission of European Union (i.e., executive authority of EU, or “government” of this confederative structure). This regulation is nothing else than a “subordinate legal act” in accordance with the “legal act”, above mentioned Regulation 1/2003, dated 16.12.2002, elements of which there shall be included to a certain extent in the national law on competition or national regulations. In this Regulation, which became part

of the law of the Competition Authority in December last year, there were determined the details of activity of the Albanian competition institution in accordance with the coordination of actions of the other authorities of EU Member States, or countries being candidates to accede. There are described the ways of conducting surveys and proceedings with the enterprises or associations of enterprises, which carry out their activity in the countries where above mentioned acts extend their normative effect, such as EU Member States which are not only known by them, but they have become part of their own law.

The Competition Authority has participated in a series of trainings, conferences and seminars for the South-Eastern countries, organised by OCDE, CARDS projects 2002 or 2003, GTZ Project. In all these meetings, the representatives of the authority have taken active part in the discussions connected to the issues raised, as well as they have forwarded the solutions of the cases considered by this Authority, as well as references to our competition law.

The Competition Authority is a member with full rights, since 2003, of ICN, International Competition Network where are participating the majority of the competent jurisdictions of the different countries of the world. Through this network, the Authority

cooperates closely with other international organisations, such as WTO (World Trade Organisations), UNC-TAD (Conference of United National for Trade and Development). In this way, there is aimed at strengthening the international cooperation and the achievement of the convergent policies of competition, through a continuous and concentrated dialogue. In this context, the Competition Authority has been continuously committed and has made its own contribution for the preparation of the materials, in the framework of different researches which are accomplished by this network on the competition issues.

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### ***V.1. Work for approximating legislation***

The Competition Authority has in the course of 2006 worked for identifying and consolidating the national law of competition with other subordinate legal acts, valid for its everyday activity.

In cooperation with the Ministry of Integration, there were identified the ob-

ligations which were undertaken by the Authority in the framework of the Stabilisation and Association Agreement in the plan for the approximation of the Albanian legislation to the Acquis Communautaire. The selection of normative acts for approximation in our legislation was done through the permanent advice, sharing of opinion and assistance of CARDS Program (Community Assistance for Reconstruction, Development and Stability) 2002 and regional CARDS 2003, as well as through the support of GTZ. The obligations of the Competition Authority have been included in the framework of SAA in the governmental decisions in the field of Competition and State Aid, and later in the subfield of Competition.

In line with these obligations, there was planned that for the second half of the year the Competition Authority would translate and approximate two regulations of European Union. The Competition Authority concluded, completely in compliance with the Implementation Plan of SAA, the translation and adjustment of these regulations, which



have become part of the national law of competition and of subordinate legal acts in this field. Them becoming part of the secondary legislation for the competition through the Authority, in compliance with the principles of the European Union, make possible an even more complete legal framework in the Subfield of Competition and functioning of the Competition Authority as an independent public institution for the protection of free and effective competition in the market.

At the same time, the protection of competition by the authority in the aspect of the legislation has been seen in the aspect of the obligations stemming from the implementation of the provisions of Article 69, point 2, of the law no 9121, Article 70 of SAA etc, making its modest contribution in the evaluation of the degree of restriction or hindering the competition which stems from the draft legal acts and drafts of subordinate legal acts which have been addressed to the Competition authority for feedback, or where the Authority, upon its own initiative, has found out obstacles or restrictions of competition in different legal or bylaw acts.

In compliance with the provisions mentioned above, the Authority has requested officially from the respective structures that for every act which could bring about restrictions of the competition, to be asked for feedback and be provided the possibility to have its say on them and these recommendations

be considered, specifically if the case was about the normative acts. From this perspective, the Authority has requested to be included in the list of institutions for which Government has approved sharing their opinion about a subordinate legal act or a legal act, but so far it has not been successful.

Specifically the Competition Authority proposed the amendment of the Instruction of the Council of Ministers no 4, dated 16.06.2005 "ON some addenda and changes in the Council of Ministers Instruction no 1, dated 1.1.1996 "On public procurement", since in accordance with point 2 of this instruction, the Competition authority was tasked with providing the confirmation on the exclusiveness of different companies which could market different goods or take over to provide exclusive services. Such as think was at variance with the organic law of the Authority and its nature of work, which was determined in the law no 9121, dated 28.07.2003 "On protection of competition".

The Competition Authority has provided its opinion on the draft law "On concessions and public private partnership". The Competition authority expressed its own opinion on the problems encountered by the implementation of the free and effective competition in accordance with the law no 9121. First, the Authority expressed its own opinion at the end of the year 2005 on the problems which were brought about by the law which was

in force 7973, dated 26.07.1995 “On concessions and participation of private sector in the public services and infrastructure” for the provisions which consisted in themselves obstacles for the free competition in the field of concessions, which were not eliminated in the new draft law, but they were taken over from the old law. Since the comments of the Authority were not taken into consideration by METE (Ministry of Economy, Trade and Energy), we are obliged to lobby support for our advice to be taken into account.

Another task carried out by the Authority is the forwarding of opinions on the new draft law “On development of tourism”, which have been taken into consideration providing a positive example or the implementation of the law 9121.

The Authority has provided its own opinions even on the draft-law proposed by the Ministry of Economy, Trade and Energy “On Approval of the Procedures of Notification of the legal trade, economic and financial framework in the world Trade Organisation”. The opinion of the Authority is connected to the elimination of a provision it was about the certification of exclusiveness by the Competition Authority, which runs counter to the law “On Protection of Competition”. This was opposed even earlier by us in the instruction of Council of Ministers no 4, dated 16.06.2005 “On some addenda and changes in the Council of Minister Instruction no 1, dated 1.1.1996 “On public procurement”.

The Competition Authority has made in front of the courts the representation of its decisions in the cases when they were appealed by the interested parties. In this respect, we would mention two lawsuits against the Authority by the Albanian Mobile Communication AMC with regard to the decisions of the Competition Commission. AMC sought declaring as invalid the deepened investigation in this company, as well as cancelling of the fine of 160 million lek imposed on this company due to the violations of the law “On protection of competition.

The decisions of the court rejected the claims of the company AMC, thus not overturning the decision of the Competition Commission, despite the law “On protection of competition” is presently in its first phases of implementation.

With regard to the developments of these processes, the Authority has officially informed the Parliamentary Committee “On investigating into the monopoly market of the mobile communication and preparation of the recommendations for the elimination of the monopoly situation”, which was established to investigate into the companies AMC and Vodafone, operating in the market of the Mobile Communications.

Even the consortium Calik Konsorsyumu Yatirim A,S filed an appeal against the decision of the Competition Commission concerning the fine for the delayed notification of the concentration done by this company in purchasing a part



of the shares of NCB (above 60.2%) as buyer of Kent Bank in Turkey.

Even in this field, the First Instance Court did not overturn the decision of Competition Commission, upholding the legal procedures being followed by the commission in making this decision.

## **V.2. Advocacy and Culture of Competition**

The establishment of a competition culture includes the activities undertaken by the Competition Authority for promoting a competitive environment and boosting the public awareness for the benefits from the competition.

The performance of the Competition Authority in the process of advocacy of competition for 2006 focused mainly on:

**A.** Commenting the legislative and interpretation rules; for instance, the simplified description of the rules with the aim of doing them understandable and touchable for the enterprises, preparing notifications on anti-competitive phenomena.

**B.** Undertaking of preliminary investigations and analysis; for instance, identification and elimination of those phenomena in the selected field, which provide every day material goods and services.

**C.** Decision making policies; for instance, being aware of being open in order to use the facilities, as an important element for the collection of evidence

pertaining to the phenomena of cartel, abuse with dominant position etc.

**D.** Promotion on the knowledge on competition; for instance, communication with the central and local administration, businessmen and consumers, providing clear and explanatory messages for the reasons, mechanisms and results of these phenomena in the market, as well as the methods of acting against them by the Competition Authority.

At the same time, by virtue of the law “On protection of competition”, the Authority approaches, while carrying its function, the central and local authorities of state administration in order to have deposited through them all the legal draft-acts, which can contain elements of restriction or distortion of competition in the market. To this effect, it is trying to find an understanding with these authorities in order for this mission to be fulfilled, not simply as an aim in itself for the identification of the Authority and as a legal obligation of these authorities, but as their awareness that this procedure is one of the most favourable and indispensable ones in order to filter the legal acts in terms of restrictions and distortions of competition.

During 2006, the Competition Authority undertook a series of activities in the framework of developing the culture of competition. Among the most important we can mention some seminars in the main towns of the country and the Regional Conference of Competition in Tirana.



*Regional  
Conference of  
Competition*

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Sponsored by regional CARDS program 2003, there was held at the Ministry of Justice in March 2006 the Seminar on the national and European Competition Law with judges, prosecutors and employees of the authorities of the “third power”.

Supported by the CARDS program 2002, there were organised two regional seminars in Durres and Vlora, respectively in May and June, with the participation of the elected persons and local “stakeholders”, for the increase of the sensitiveness of the interest groups for the competition issues. In these seminars there was introduced the law no 9121, dated 28.07.2003, “On protection of competition” and there was highlighted the role of the Competition Authority in establishing competition in the market, as a factor of the economic prosperousness of the society.

In the first 6 month period of the previous year the most important activity was the Regional Competition Conference held in Tirana. There participated delegations from the counterpart authorities of competition from the regional countries and Directorate General of Competition

from European Commission, as well as the member states of the International Network of Competition, where our institution is a member of.

The conclusion of the conference was that it met at best its mission for boosting and increasing the culture of competition in the country and beyond, this making possible the mutual exchange of respective experiences.

To the effect of a more active and known role by the public, the Competition Authority undertook a series of steps for the boosting of transparency of the decisions of the Competition Commission and other issues connected to this field. All the decisions of the Commission have been published in real time in the internet website and they have been distributed to the media. Competition issues have been seen with growing interest by the journalists thus providing for more room in the news editions in electronic media as well as in the newspapers pages.

The Competition Authority has always been active in its public reactions for the cases of violations, restrictions or hindering of competition, this matching its stance to the stances of the other stakeholders. The direct participation in media, and through this in public, by means of interviews, articles or debates in studios has upgraded the public relations of the Competition Authority to a new phase.

## VI. Economic activity of the Competition Authority

The Competition Authority has during 2006 correctly abided by the requirements of the law no 9464, dated 28.12.2005 "On State Budget of 2006" with regard to the use of the budget funds.

The administration of the material values has been considered to be an important part of our work implementing correctly all the legal and subordinate legal acts and the norms for the use of budget funds. The work in the finance sector is connected to the financial operations, as well as with following up and well administration of the budget resources and investments which are connected to the activity of the institution. At the same time, this has ensured data fro the financial activity, as well as it has determined and followed up the realisation of the expenses, revenues, increase of assets of institution. In its entirety this sector has had an impact on the improvement and reaching of objectives and performing tasks of our institution.

A summary of the budget indicators for 2006 are outlined as follows:

The financial data indicate a realisation of 94.8% or 1663 thousand lek less the program at the beginning of the year.

### VI.1. Salaries Fund and Social Insurance Contribution

The salaries fund planned for the Competition Authority was 20 000 thousand lek, from which there have been realised 19 317 thousand lek or 96.5% with a difference of 683 thousand lek less than the program. This shortfall has come about as a result of the incomplete number of employees during the year, and specifically in the first half of the year, where some positions in the organic structure of the institution have been vacant. During the realisation of this budget element, there have been abided by the requirements of the Council of Ministers Decision no 711, dated 27.12.2001, and Council of Ministers Decision no 450, dated 14.06.2006 and of the law no 9584,d dated 17.07.2006 "ON salaries, rewards and structures of independent constitutional institutions and of other independent institutions established by law". At the same time, there have been collected and paid the social,

No	Denomination	Plan	Actual	Deviation	in %
1	Salaries fund, Soc. Ins. Contr.	20.000	19.317	- 683	96.5
2	General materials and services	10.300	9.332	- 968	90.6
3	Investments	2.000	1.988	- 12	99.4
<b>TOTAL</b>		<b>32.300</b>	<b>30.637</b>	<b>- 1.663</b>	<b>94.8</b>

health and salary tax contributions for each employee in accordance with the respective instructions.

### **VI. 2. General materials and services**

For the general materials and services there were foreseen 10 300 thousand lek, which have been realised by 9 332 thousand lek or 90.6%, with a difference of 968 less than the plan. This shortfall has come about due to the funds not used for transport vehicles, where there have been spent 346 thousand lek less for fuel and spare parts. Less than the plan there has been spent for the land line telephone, electrical power, public notifications, travel and per diems, post and other services, etc.

During 2006, there has been paid special importance to the implementation of the law on documentation and circulation of material and monetary values. In small purchases there have been correctly applied the requirements of the law no 7971, dated 26.07.1995 "On Public Procurement" and for the purchases exceeding the limit of 300 thousand lek there have been conducted the processes of tendering in accordance with the requirements of the legal provisions, during the first half of the year.

### **VI. 3. On realisation of investments**

With regard to 2000 thousand lek planned for investments at the beginning of the year, there have been used only 1988 thousand lek or 99.4%, with a difference of 12 thousand lek less than the forecast. The funds used for investments have been mainly for equipment of offices, computers and computer parts, etc, which are necessary for providing for the working conditions for the employees of the administration of Competition Authority.



## VII. Cooperation with the institutions and regulatory entities

The Competition Authority has in the course of its activity evaluated as very important the development of relations with the institutions of the central and local public administration in general and regulatory entities specifically. This cooperation aims at evaluating the barriers and the level of hindering or restricting the competition connected to the legal and bylaw acts in force. In this context, there has been asked from the public institutions and regulatory acts that every legal act stemming from this structure affecting the competition should take into account the opinion of Competition Authority.

The regulatory entities play an important part through their functioning to the effect of implementing the policies in favour of competition in the respective sectors, through the regulation of entering the market (removing discrimination for entering the market), as well as economic regulation. This activity has a direct impact on the competition. In this context, there is intertwined the role of the Competition Authority as the institution ensuring the protection of competition in all the sectors of the economy and of the Regulatory Entities as institutions ensuring the implementation of competition rules in the regulated sectors. To this effect, Article 20, point 2 of the law no 9121, dated 28.07.2003 "On protection of competition", provides for the Com-

petition Authority to make recommendations with regard to the barriers in the economic and administrative regulation. The forms of cooperation have been determined in the Memoranda of Cooperation of the Competition Authority with the Regulatory entities, in accordance with the respective legal framework, aiming at institutionalising the relations through establishing the basic principles for the exchange of information abiding by the respective legal framework, exchange of experience, joint trainings, setting up of joint working groups for certain issues, establishing cooperation relations with the respective institutions etc.

During 2006 there were strengthened the relations between the Competition Authority and the Regulatory Entities through the signing of Memoranda of Understanding, with such institutions as KKRT, AMF, Directorate General of Taxes and there have been concluded the draft/memoranda of understanding, which are expected to be signed with ERE, ERU, ERT, Ministry of Agriculture, Food and Consumer's Protection, Bank of Albania, Ministry of Economy, Trade and Energy, INSTAT etc.

It should be highlighted that this is a very effective way for exchanging experience and information, in order to go closer and resolve the various actual problems

## **VIII. Main aims of activity for 2007**

### ***VIII.1. Improvements of organisational aspects***

The Competition Authority aims at functioning during 2007 and onwards in accordance with a new and more comprehensive organisational structure in the form of human and financial resources. In reliance to Article 78 of the Constitution and Articles 10, point 1, and Article 15 of the law no 9584, dated 17.07.2006 "On salaries, rewards and structures of the independent constitutional institutions and other independent institutions set up by law", upon the proposal of the Competition Authority and Parliamentary Committee and Finance, the Assembly approves the new structure of the Competition Authority. Aiming at boosting productiveness, the Authority has paid special importance to the staffing of the Secretariat appropriately. Moreover, there is aimed at improving the level of professionalism through the approximation to the standards of the counterpart Authorities.

Through the new organisational structure, there is paid special importance to the supervision of the market in accordance with the main pillars of the law "On protection of competition" in accordance with the anti-competition practices and relying on the experience of the member countries of EU or countries in the accession process.

The training and specialisation of the personnel assumes special importance with regard to boosting the efficiency of the institution. In this context, there shall be worked together with important organisations such as OECD, Directorate General of Competition at European Commission, International Network of Competition, counterpart authorities and other donors for conducting a comprehensive process of training the personnel in terms of best practices and codes in the field of competition.

### ***VIII.2. Completion of the legal framework in the context of implementing SAA***

The approval of subordinate legal acts of the Competition Authority, connected to the completion of the necessary standing rules for its full functioning and in accordance with the standards approved in the European Union countries is one of the main tasks for 2007. With reference to the obligations of the Competition Authority for 2007 in the context of SAA, which have become as such by Council of Ministers Decision no 463, dated 05.07.2006 "On implementation of the National Plan of Updating the Legislation", there has been provided for the translation, adjustment and approval of two internal regulations of the Authority. These regulations

shall be drafted based entirely on the counterpart regulations of EU. Concretely, there has been planned the adjustment of the Regulation (CE), no 139/2004, dated 20.01.2004, as well as the Regulation (CE) no 802/2004, dated 07.04.2004.

In addition to this obligation by means of a normative act of the executive, the Competition Authority has planned to prepare this year, including also the collected cases, the explanatory Report of the law "On protection of competition" and the subordinate legal acts for its implementation. The approval of these acts shall serve the recognition and implementation of the above mentioned law, consolidation of the culture of competition and its advocacy.

The Competition Authority started in the course of its activity in this year with the concentration on the details and individualisation of the investigation procedures. From this perspective there has been thought that in accordance with the National Policies of Competition there shall be determined the tactics which are going to be followed this year to make possible the drafting of a "Methodology of Investigation Procedures of Competition".

The Authority aims at playing an active role this year in the process of amending the laws and subordinate legal acts for their implementation, from the perspective of the competition law.

### ***VIII.3. Study of markets and investigation of anti-competitive potential practices***

During 2007 the Competition Authority shall re-dimension the structure of analysis and study of market, setting up a new sector, independent from the directorates, but to the effect of all the investigation processes and analysing of market conditions for a free and effective competition in the market.

The Analysis Sector and Study of the market shall immediately start working with the establishment of a data base for the main sectors of the economy and with special focus on the sectors where there are distortions of the competition, setting of prices, entry barriers in the market, forbidden agreements or abuses with the position in the market. Later on this sector shall pass through a new phase, that of alerting the other sectors of the Secretariat about the anti-competitive practices of the market and it shall assist with its analysis in pointing out the dominant position of a company in a market for going over later to deepened investigation whether the company has abused with this position or not.

A new phenomenon for the Albanian market is the tendency towards the reduction up to the elimination of the competition through forbidden agreements and this is the reason why this sector shall, through the analysis of acts ensured by inspectors, provide the respec-

tive recommendations for the Secretariat and Commission for the interruption of these agreements and taking of measures in accordance with the law.

Even with regard to the process of merging and consolidation of enterprises shall be under the focus of analysis of the market conditions for seeing the changes happening in the structure of the sector where the merging/consolidation happens and for considering the effects in the competition.

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

At the end of 2006, the Competition Commission approved, following a couple of months period of time an reception of feedback and suggestions of institutions/entities connected to the competition issues, the National Plan of Competition. However, the biggest challenge remains putting into practice the assumed commitments in the context of the document and a broader cooperation with all the stakeholders and market factors for the efficient implementation of the national policy of competition.

The document evaluates, as one of the most important ways for the protection of the free and effective competition in the market, the establishment of the competition culture in the Albanian environment. Regardless of the establishment of the Competition Authority and approximation of the competition legislation to the European one, in Albania there does not exist a competition culture in all the levels of the economy, including the drafting of public policies, business community and broad public.

A very important aspect for the accomplishment of this function is the boosting of competition culture and capacities of the staff of the Authority to implement the law and to interpret the decisions in accordance with the international experience and standards. The essence for the accomplishment of this function is the communication with the other institutions, business community, public, with regard to the activity of the authority in general and decision making and implementation specifically.

The Authority shall carry out periodic surveys with the business community and public on the meaning and problems of the implementation of competition in general and law on the protection of competition specifically, aiming at establishing an effective dialogue with them.

Media is considered to be an important partner in conveying the competition policy to the market stakeholders





precisely. Through the direct communication channels and through media, the Competition Authority shall try to convey messages to the community.

#### ***VIII.5. Strengthening of cooperation with the institutions and Regulatory Entities***

The Competition Authority shall be committed to strengthening the cooperation and putting this cooperation with Regulatory entities on institutional basis.

Singing of memorandums of understanding aims at boosting the competition through the concrete cooperation and specific coordination with Regulatory Entities. For 2007, there has been foreseen the signing of Memorandums of Understanding with such institutions as: Regulatory entity of Water, Regulatory Institution of Telecommunications, Institute of Statistics, Office for consumers' Protection, Office for Protection of Citizens, Bank of Albania, Ministry of Economy and Energy etc. The aim for signing them is focusing on the exchange of information and experience, boosting of transparency, strengthening of capacities, joint trainings etc.

#### ***VII.6. Consolidation of international relations of the Competition authority***

The Competition Authority shall, by virtue of Article 71 of the law "On pro-

tection of competition", deepen the cooperation with the counterpart authorities through bilateral and multilateral agreements.

The Competition Authority is cooperating with the structures of European Commission in the field of competition, as well as with the Directorate General of Competition, following up the main developments in this field.

Our objective is to transform the regional and international networks of competition into real partnerships at expert and specialists level. The experience collected with the regional network of Competition Authorities shall be deepened in the direction of cooperation with the neighbouring authorities of the European Union Member States.

In the future, the Competition Authority shall cooperate with the foreign counterpart authorities formalising the cooperation through memorandums of understanding, but also through taking concrete steps in support of the respective laws of competition for the same violation or in markets which contain distortions.

The competition Authority shall be active through the presentation of the cases at round tables or national and international conferences in the field of competition organised by OECD, other organisations or counterpart authorities.





