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Abstract

Albania is in the initial phase of enforcing the new law on the protection of competition entered into force in December 2003. The new law improves the legal framework by introducing a new independent competition authority and detailed rules on agreements, on abuse of dominant position and merger control, and on procedure. It also provides for broad investigative powers for the Competition Authority and sanctions in case of infringements of the law. The implementation of the law reveals itself promising, with a number of important and difficult decisions taken by the Albanian Competition Authority, and with the courts reacting positively toward its decision making practice. The enforcement of the law remains a difficult task, but it is the only way to ensure an effective competition policy in the interest of consumers.

L'Albanie est dans la phase initiale de l'application de la nouvelle loi sur la protection de la concurrence entrée en force en décembre 2003. La nouvelle loi améliore le cadre réglementaire en introduisant une nouvelle autorité indépendante, des règles détaillées concernant les accords, l'abus de position dominante et le contrôle des concentrations d'entreprises, et des règles sur la procédure. Elle prévoit également de larges pouvoirs d'investigation pour l'Autorité de la Concurrence et des sanctions en cas de violation de la loi. La mise en œuvre de ladite loi se révèle prometTant, avec certaines décisions importantes prises par l'Autorité de la Concurrence ; les tribunaux réagissent positivement à l'encontre de ces décisions. L'application de la loi constitue une mission difficile, toutefois elle est la seule voie pour assurer une politique efficace de la concurrence dans l'intérêt des consommateurs.

* The author has advised the Albanian government of the drafting of the new law on the protection of competition of 2003.

1. Albania first adopted the law on the protection of competition in 1995.[1] The law included antitrust rules, unfair competition provisions, and rules on consumer protection. It created the basis for a competition policy in Albania, although it included numerous sectoral exemptions, from banking to forestry, and lacked a proper deterrent mechanism. During the initial period of economic transition from a central planning economy to a free market, Albania was guided by the principles of the Washington Consensus, which gave little weight to competition policy. The main objective was to open the market, privatise state companies and maintain a macroeconomic stability. It was apparent that the first law was guided by what can be called a "step-by-step approach", which aimed to introduce basic rules with a low level of sanctions at the initial phase of transition and which presented a high risk of non-implementation.

2. The transition period was characterised by high commodity prices, the privatisation of state monopolies, high concentration in many markets, and the apparent activity of import cartels.[2] Foreign investment, and hence new entry figures, remained low, which made it very difficult to contest the strong position of recently privatized monopolies. One of the de-concentration provisions included in the first law remained unenforced, due, among other reasons, to a low incentive to break up monopolies before the privatisation process.[3] It was the lack of enforcement that increased the awareness of the need for rules to guarantee competition in the market and created a favourable environment for adoption of strong competition rules in the early 2000s.

3. The negotiation of the ASA with the European Union gave a fresh impetus to the cause of the protection of competition.[4] It also created the conditions for the Department for Competition and Consumer Protection within the Ministry of Economy to have a proactive role, to modernise the law, and to create an independent authority that could ensure its implementation.[5]

4. The new law on the protection of competition in Albania was implemented in December 2003 (hereafter referred to as "LPC").[6] It was based on the EC Treaty and the EC regulations on competition law, with which it is fully compatible. Such

1 See law Nr. 8044 of 7 December 1995, "On competition", *Fletorja Zyrtare*, 1995, Vol. 25 1153. The law was modelled on the German law on the protection of competition (GWB; BGBl. I 1998, 2521, according to the 5. GWB-modification of 7 December 1989, BGBl I, S. 2486 f.).

2 Civil society and media increasingly referred to competition rules and pointed out the links between the owners of big undertakings and politicians as a threat to democracy. In 2004, the implementation of competition law entered as a political objective in the programmes of political parties.

3 The Ministry on the Economy was responsible for both competition policy and the privatisation of state assets. State firms possessing strong market position were capable of yielding more revenues from the privatisation, which lowered the incentive to reduce their market share by divestments.

4 Under Article 70 and 71 of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part, Albania undertakes to ensure that its existing laws and future legislation in the field of competition and State aid shall be gradually made compatible with the Community *acquis*.

5 Under Article 71 of the Stabilisation and Association Agreement, Albania shall ensure that an independent public body is entrusted with the powers necessary for the full application of competition rules.

6 Law Nr. 9121 of 28 July 2003, "On the protection of competition", *Fletorja Zyrtare*, 2003, Vol. 71, 3189. For a summary of the law in English, see L. Bianku, "Albania", *Cahill, Cooke, Wils* (edit.), The Modernisation of EU Competition Law Enforcement in the EU, FIDE 2004 National Reports, Cambridge University Press, Cambridge 2004, p 21. See also V. Chimienti, "The Abuse of Dominance in the New Albanian Competition Act", *European Competition Law Review*, 2005 26(3), p 151; I. Dajkovic, "Competing to Reform: An Analysis of the New Competition Law in Albania", *European Competition Law Review*, 2004 25(12), p 734; V. Chimienti, "The Control of Concentrations in the New Albanian Competition Act", *European Competition Law Review*, 2004 25(9), S. 538 ff; see also P. Këllezi, "Das neue Wettbewerbsgesetz in Albanien", *Monatshefte für Osteuropäisches Recht*, 2005(6), p. 415.

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compatibility is important to enhance the legal security for domestic and foreign firms wishing to invest in Albania. Nevertheless, the application of European competition law standards raises the question of whether this model is appropriate for small markets. Some effort was made to create more explicit rules on abusive behaviour, and to enable a dynamic and broad application.

5. The law on the protection of competition covers merger control and anti-competitive behaviour (agreements and abuse of dominant positions). The law forms the basis for an independent competition authority, includes detailed rules on administrative and civil procedure, and provides for fines.

6. The definitions and the general provisions include standard rules on the definition of undertakings and the extraterritorial effect of the law.[7] The law aims at the protection of free and effective competition (Article 1 LPC). Free competition refers to the freedom of market participants to offer or acquire goods and services without restriction, and bases itself on the principle of market economy as provided for in the Albanian Constitution.[8] This makes competition law a fundamental legal basis for the functioning and the guaranteeing of the market economy. The objective is the protection of effective competition, which will be used as a general benchmark towards the maximisation of the social welfare.

I. Substantive provisions

1. Agreements between undertakings

7. Article 4 mirrors Article 81 EC by prohibiting agreements which have as their object or effect the prevention, restriction, or distortion of competition. Under Albanian law on the protection of competition, the undertakings should file a request for exemption from that prohibition (Articles 5, 6 and 7).[9] The possibility to ask for an exemption was introduced to offer more legal security to undertakings, but until now it has been used only sporadically.[10] While one could think of suppressing the obligation to notify, in a revised law it could also be offered as an option for undertakings that seek more legal security. The more the law will be enforced, the more undertakings will need legal security.

8. The exemption may be granted if the restriction of competition, in the sense of Article 4, can be justified on grounds of economic efficiency. The agreement should be the most appropriate way for reducing costs and exploiting resources more rationally, increasing productivity, and for promoting research and development or small and medium undertakings. These benefits should be shared with consumers, and the agreement should not substantially restrict competition. The wording of this latter condition is softer than the corresponding condition of Article 81(3) EC (the agreement should not eliminate competition) to avoid misunderstandings and to enable a flexible application by the Courts. There is, however, no difference in substance.

9. Article 6 gives some examples of vertical agreements that can be exempted, and Article 7 LPC announces some special conditions for licence agreements. The examples were introduced to clarify and inform the business community on the types of agreements that could be exempt, nevertheless the examples for vertical and technology transfer agreements are not representative of the most common types of agreements.[11]

10. In June 2008, Albanian Competition Authority[12] (hereafter referred to as "ACA") exempted an exclusive agreement between *American Express* and *Alpha Bank* on the distribution of credit cards in Albanian currency.[13] ACA noted that the bank had a low market share of 2.3% in the credit card market and that in addition, barriers to entry were low, and new entries were expected in the coming years. It also noted that an exclusivity of five years would allow *American Express* to enter the market and offer new services to consumers. ACA also highlighted the fact that the agreement did not include a non-compete obligation.

11. Hard-core agreements between undertakings are not rare in Albania, and in this initial phase of the enforcement of competition law, the companies do not maintain them in secret. This was the case with two price-fixing agreements concluded within two trade unions, which were announced in the press by their instigators. ACA prohibited and fined a price-fixing agreement within the association of bread makers in Fier.[14] In this case, ACA used two types of sanctions foreseen by the law: it fined all the members for price fixing, and it pronounced an individual sanction against the president of the trade union who was also the instigator of the agreement.[15] ACA prohibited another price-fixing agreement in the concrete market; nevertheless, it refrained from imposing fines since the agreement was not implemented.[16] ACA issued a guideline on fines and a leniency program for hard-core agreements, but the latter has not yet been used.[17]

7 Article 1 states that the law shall apply to all undertakings and associations of undertakings that exert activities in the territory of the Republic of Albania, or apply to the undertakings that exert activities abroad, when the consequences of this activity are demonstrated in the domestic market. The notion of undertakings and association of undertakings are broadly defined at Article 2.

8 The Law is based on Article 11 of the Constitution of the Republic of Albania (*Fletorja Zyrtare*, 1998, Vol. 28, 1073), which defines the economic system of Albania as a market economy and guarantees the freedom of economic activity.

9 There are no sanctions for failure to notify.

10 To our knowledge, only two requests have been filed and one exemption is already granted.

11 For licensing agreements, Article 7(2) LPC provides a white list including commitments which are not caught by the prohibition.

12 All ACA decisions and regulations are available at the Internet site http://www.caa.gov.al.

13 ACA Decision of 10 June 2008, *American Express (AMEX)/Alpha Bank*.

14 ACA Decision of 1 October 2007, *Shoqata e bukës*.

15 ACA Decision of 24 December 2007, *Shoqata a bukës/sanksion individual*.

16 ACA Decision of 18 December 2007, *Tregu i betonit*. However, a number of trade union members of concrete producers were fined for not providing the necessary information to ACA (see decision of 18 December 2007 and of 18 December 2007); decisions were upheld by the Court of First Instance of Tirana (see judgment of 28 March 2008).

17 OCDE, *Challenges facing young competition authorities – Contribution from Albania*, DAF/COMP/GF/WD(2009)7, January 2009, p. 3.

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12. ACA also investigated the car insurance market, where eight out of nine insurance companies on the market created a pool for the distribution of car insurance policies, which fixed at the same time the minimum and the maximum price of the insurance policy and other trading conditions.[18] The case was particular in that the Ministry of Finance approved the agreement and the sharing of the income between the eight participating undertakings.

13. ACA prohibited the agreement and sanctioned the participating undertakings with a fine of 2% of their turnover. The case is important for two reasons: first, it marked an important development from a procedural standpoint, when the Court of First Instance of Tirana annulled the decision to open an in-depth investigation and ordered the suspension of proceedings.[19] The insurance companies claimed that their right to be heard was infringed, and that the decision to open an in-depth investigation was adopted without inviting them to give their standpoint and to consult the files. Nevertheless, Article 42(2) LPC expressly foresees that the companies have no right to consult the files during the preliminary investigation.

14. ACA therefore continued the proceedings and made a final decision on the case. After sixteen months of procedure before the Court of Appeals of Tirana, the latter quashed the decision of the lower Court that had annulled the decision on the in-depth investigation.[20] The Court of Appeals held that the decision to open an in-depth investigation was a preliminary administrative decision which did not affect the rights and obligations of the parties, and consequently did not constitute a challengeable act.

15. Second, the case law clarified the relationship between competition rules and sectoral regulation (in this case, supervisory powers of the Ministry of Finance). The Ministry of Finance did not have any competence to it to exclude the activity of insurance companies from competition, and nothing in the specific law provided for the possibility to approve the tariffs applied by insurance companies. Consequently, there was no direct conflict of competences between the Ministry of Finance and Competition Authority. The latter considered that it had all the powers to prohibit an agreement that was approved by an authority acting outside its competences. However, the Court of First Instance that examined the final ACA decision on the finding of a price-fixing agreement did not discuss the scope of powers of the Ministry of Finance.[21] The Court simply declared that the law on the protection of competition empowers the ACA to protect competition and control anti-competitive behaviour, such as the behaviour undertaken by insurance companies, and this control extends to all undertakings having economic activity, independently of the fact that they operate in regulated sectors. It added that sectoral regulatory bodies have specific powers, which do not preclude the intervention of the Competition Authority. This clarification is an important step toward the recognition of broad and unrestricted powers of the Competition Authority in regulated sectors.

2. Abuse of dominant position

16. Contrary to the previous law which made mandatory the structural separation of undertakings in a dominant position, the new provisions prohibit the abuse of dominant position, not the dominant position in itself. The new law does however expressly provide for structural remedies as one of the measures that can be adopted in case of abusive conduct. Although the law was drafted and adopted before the enforcement of the new Regulation 1/2003, the Albanian law introduced a similar provision to the new Article 9 Regulation 1/2003.

17. Article 8 LPC presents the criteria for the appraisal of a dominant position: the relevant market share of the investigated undertaking/s and that of the other competitors; the barriers to entry; the potential competition; the economic and financial power of the undertakings; the economic dependence of the suppliers and purchasers; the countervailing power of buyers/customers; the development of the undertaking's distribution network and access to the sources of supply of products; and the undertaking's connections with other undertakings. The law refers to other characteristics of the oligopolistic markets such as the homogeneity of the products, the transparency of the market, the cost and size symmetries, the stability of the demand, or the free production capacities.

18. The relevant market is defined in Article 3(7) LPC and the Competition Authority has issued guidelines[22] on the definition of the relevant market, also based on the Commission's notice on the relevant market.[23] The guidelines state that Competition Authority will use the concept of a hypothetical monopolist and the SSNIP test methodology to define the marker and identify market power.[24] It is hoped that these guidelines will also serve as guidance to the Competition Authority on individual decision, which normally includes only general and brief considerations on the definition of the relevant market.

19. During the drafting of the law, the possibility of introducing market shares above which a single or a collective dominant position could be presumed was duly considered. It is generally believed that presumptions based on market shares would be of help to new competition authorities, and protect them from badly trained judges. However, the definition of the relevant market and the calculation of the market shares are far from being easy tasks, and it does not eliminate the risk of under-intervention. This was made clear in one of Albania's

18 ACA Decision of 21 March 2007, *Polica kufitare*.

19 Court of First Instance of Tirana, Decision of 3 April 2007.

20 Court of Appeal of Tirana, Decision Nr 5586 of 24 September 2008.

21 Court of First Instance of Tirana, Decision of 16 June 2008, upholding the final ACA Decision of 21 March 2007, *Polica kufitare*.

22 ACA, Guidelines of 7 April 2008, "*Për përcaktimin e tregut përkatës*," available at http://www.caa.gov.al/.

23 The guidelines are based on the Commission Notice on the definition of relevant market for the purposes of Community competition law, [1997] OJ C 372/5, and give further simple explanations on different concepts.

24 ACA Guidelines on the relevant market (n 22), point 11.

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first cases in which the Courts were faced with concepts such as market shares and significant market power. The Telecommunication law referred to a market share as 25% for the finding of operators with significant market power. The Albanian Communication Commission declared the (only) two operators that shared the mobile telecommunication services market as operators with significant market power and placed interconnection fees under their control. The decision was quashed by the Court after defining the relevant market as including fixed telecommunication services, and after finding that the mobile operators held less than 25% of the market. This shows that even very low market shares cannot offset against a wrong definition of the relevant market. Some two years later, the Competition Authority itself is succeeding in the finding of a collective dominance of the same operators on the mobile telecommunication markets and in the finding of excessive prices (see point 24 below).

20. In this respect, it should be recalled that market shares are only a proxy for market power. Their importance varies from market to market; the economic context, the structure of the market, and the specifics of the case count as much as market shares.[25] The dominant position of an undertaking should be examined taking into account a range of factors. A thorough assessment of the position of the undertaking and the market relations is much more important than procedural expediency.

21. The approach of giving a number of criteria for the finding of dominance is flexible enough to cover particular situations such a economic dependence. Article 8 LPC expressly mentions the economic dependence of the suppliers and purchasers, and it can be interpreted as covering cases falling short of dominance, such as a supplier which is economically dependent on a buyer and vice versa.

22. Article 9(2) LPC is based on Article 82 EC and includes examples of abusive conduct. However, it was necessary to change the wording to make it clear for undertakings, and add to the list some other examples of abusive conduct such as the refusal to contract or the refusal to give access to essential infrastructures.[26]

23. The Law expressly gives to dominant undertakings the possibility to prove that they had objective grounds to adopt a certain conduct. Under Article 9(3) LPC, a conduct is not considered as abusive if the dominant undertaking justifies it on objective grounds, such as technical or legitimate commercial reasons. While such a clause was not intended to include an efficient justification for abusive conduct, it gives a legal basis that would enable Albanian authorities to adapt to the recent developments in the enforcement of unilateral conduct in Europe.[27]

24. The investigation of the mobile telecommunication market was one of the most important cases handled by ACA and was widely covered by the press. ACA held that two mobile telecommunication providers, AMC and Vodafone, abused their dominant position and applied excessive prices to the market for mobile telecommunication services.[28] ACA based its finding of the dominant position on the market for mobile telecommunication services, where AMC held a market share of 52%, and Vodafone held 48%. ACA stressed the high barriers to entry, the absence of potential competition, and the stability of the position of both companies in the market. With regard to excessive pricing, in the absence of data on the costs of companies,[29] ACA based its assessment on two main findings. First, the companies had not applied a decision of the ERT (Albanian Telecommunication Regulatory Authority) to reduce their reciprocal interconnection fees.[30] ACA stated that the final price should at least be lowered, and reflect the level of termination fees that both companies should have applied since that decision.[31] Second, the companies applied high prices, compared to the prices of similar companies in the region. ACA compared the profit rates of both companies and found that the rates were higher than many European mobile operators. Then, ACA compared the final prices for mobile telecommunication in the region and found that the prices applied by the only two mobile telecommunication operators in Albania were by far the highest in the region and above the average price for the whole EU area.[32] The ACA decision has been challenged by both undertakings, and the Court of First Instance rejected the appeal by AMC in January 2009.

25 Case 85/76 *Hoffman-La Roche & Co. AG v Commission* [1979] ECR 461, para. 41.

26 According to Article 9(2), abusive conduct may consit of: directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; limiting production, markets, or technical development; applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations; the under-cutting of prices or other conditions which have as their object or effect the prevention of entry or the exclusion from the market for specific competitor(s) or one of their products; refusal to deal or refusal to license; refusal to allow another undertaking access to its own networks or other infrastructure facilities of undertakings with a dominant position, against adequate remuneration, provided that without such concurrent use the other undertaking is unable to operate as a competitor of the undertaking with a dominant position.

27 See the Commission's Guidance on exclusionary conduct (DG Competition, Communication from the Commission, Guidance on the Commission's Enforcement Priorities in Applying Article 82 EC Treaty to Abusive Exclusionary Conduct by Dominant Undertakings (Brussels, 3 December 2008), http://ec.europa.eu/comm/competition/antitrust/art82/guidance.pdf), which accepts the possibility of taking into account efficiencies and suggests the application of the Article 81(3) EC criteria.

28 ACA Decision of 9 September 2007, *AMC/Vodafone*.

29 The opening of the formal investigations in the mobile telecommunication sector tested ACA's capacity to handle difficult cases but also the deterrent mechanisms of the law. In fact, one of the companies (AMC) ignored ACA's request for information and showed no willingness to cooperate in the investigation. ACA fined AMC 1% of its turnover (which amounted to approximately 1,5 million Euros) for refusal to give information (see ACA Decision of 12 December 2005, AMC). In a very publicized show accompanied with press releases, AMC sent ACA around 70 boxes of documents, containing bills and other documents with incomprehensible accounting papers, which made it impossible for ACA to calculate the costs.

30 ACA Decision of 9 September 2007, *AMC/Vodafone*, paras. 5 and 66ff.

31 ACA Decision of 9 September 2007, *AMC/Vodafone*, para. 59.

32 ACA Decision of 9 September 2007, *AMC/Vodafone*, paras. 73ff.

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3. Merger control

25. The new law strengthened the provisions of a prior notification and authorisation of concentrations between undertakings and considerably raised the thresholds. Concept of concentration covers mergers of two or more undertakings or parts thereof, the acquisition of a controlling interest in all or parts of one or more other undertakings, and joint ventures exercising all the functions of an autonomous economic entity.[33]

26. Mergers should be notified if the combined worldwide turnover of all participating undertakings is more than 70 milliard Lek,[34] or if the domestic combined turnover of all participating undertakings is more than 800 million Lek.[35] The law foresees that in addition, the domestic turnover of at least *one* participating undertaking should be more than 500 million Lek.[36] Therefore, the acquisition by an undertaking, operating outside the territory of a controlling participator, in a company having an activity in Albania above the threshold, should notify the Competition Authority for authorisation. Such a system was introduced to also allow the ACA to supervise the privatisation of important Albanian companies. Although the law does not foresee the obligation to break up companies before the privatisation, the law expressly provides for structural or behavioural remedies in the context of merger control, which could also be used in these cases. The ACA has issued a simplified notification form that applies to these types of transactions.

27. From the beginning, the new Authority faced a number of notifications and has gained experience in rapidly dealing with mergers. The introduction of a prior authorisation procedure enabled the Authority to assess the conditions of competition in diverse markets, particularly in the banking sector where Albania experienced a wave of mergers and acquisition in 2007 and 2008, and witnessed entries from foreign banks and other financial institutions.

28. The Competition Authority has carried out considerable work to improve the legal framework by issuing implementation regulations and guidelines and by constantly updating them. Of particular interest for the business community are the implementation regulations on procedural rules[37] and the guidelines on the notification forms.[38]

29. Concentrations should be notified within one week from the conclusion of the contract or of another type of binding obligation.[39] The obligation to notify is accompanied by a standstill obligation and its violation is sanctioned with fines.[40] In 2006, ACA fined for the first time a company which notified the transaction two months after signing a binding agreement on the transfer of shares.[41]

30. The substantial test relates to the creation of a dominant position in the market: ACA has the competence to prohibit concentrations that risk creating or strengthening a dominant position by one or more undertakings,[42] which makes clear that both individual and collective dominance (or coordinated effects) are covered by the law. Although the dominant position is in the center of the substantial test, the causal link between the transaction and the dominant position foresees a risk relationship, which is to a certain extent weaker than the proof of creation of a dominant position and was designed to avoid a stringent standard of proof.[43]

31. The law has foreseen a special provision dealing with the failing-firm defense, thereby accepting implicitly that in those cases, there is no causal link between the concentration and the creation of a dominant position. Article 13(2) LPC states that ACA may not prohibit concentrations where one of the undertakings seriously risks bankruptcy. However, ACA should assess whether this undertaking is in such a situation that without the concentration, it would exit the market in the near future with no serious prospects of re-organizing. In addition, the parties and the authority should consider whether there is no alternative that is less anti-competitive.

32. The law provides expressly for the possibility of ACA to accompany the authorization with conditions and obligations.[44] ACA may impose any remedy enabling the elimination of anti-competitive effects or any measure enabling the correct application of conditions and obligations. The provision states that the remedies should be proportional to the anti-competitive effects of the concentration.

33. From a procedural point of view, the law foresees a two-step procedure; ACA should decide within two months from the notification whether or not to open the in-depth procedure, which lasts three months.[45] The deadlines can be prolonged with the agreement of the parties.

33 Article 10 LPC. The concept also covers the acquisition of a controlling participation by a natural person (see the definitions of "undertaking" and "economic activity" at Article 3 LPC).

34 Approximately 0,5 billion Euro (March 2009).

35 Approximately 6 million Euro (March 2009).

36 Approximately 3.8 million Euro (March 2009).

37 ACA, *Implementing regulation on the control of concentration* ("Rregullorja për zbatimin e procedurave të përqëndrimit të ndërmarrjeve"), which replaces the regulation of 2004, available at http://www.caa.gov.al.

38 ACA, *"Udhëzim mbi formën e njoftimit të përqëndrimeve"*, 23 June 2008, available at http://www.caa.gov.al/.

39 Article 12(2) LPC.

40 Article 14 LPC states that a concentration shall not be put into effect before its notification nearby the Authority, or until it has been authorized by the Authority, or until conditions attached to the authorization are fulfilled.

41 ACA Decision of 16 May 2006, Calik Seker Yatirim; the fine amounted to 1.2% of the turnover. Under Article 74, ACA may impose on undertakings fines from 2% to 10% of the total turnover of the preceding business year for the infringement of standstill obligation.

42 Article 13(1) LPC.

43 There have been no prohibitions, and the test has not been tested before the courts.

44 Article 61 LPC gives as example the sale of parts of undertakings and any kind of participation in an undertaking activity, the interruption or the conclusion of contractual relationships with third parties, and the granting of licenses or, in general, the obligation to act or not to act in a certain way.

45 Articles 56 and 57 LPC.

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II. Institutional and procedural provisions

34. The law set up a new independent Competition Authority. The Authority is composed by the Commission, which has the decision-making power, and its Secretariat.[46] Five members elected by Parliament comprise the Commission.[47]

35. The new law gives ACA and its Secretariat a number of investigative powers, which would allow pursuing investigations and gathering the necessary information. Undertakings are under a duty to provide any requested information to ACA.[48] The investigators may enter into the premises of undertakings.[49] They can also enter the homes of the heads of the undertaking, including administrators, managers, directors, and other staff members, provided the investigators have the approval of the courts.[50] If necessary, the investigators of the Authority may seize objects, which may be of importance as evidence in the investigation.[51]

III. Role with regard to regulatory reform

36. ACA may give recommendations and issue opinions to central and local government on the anti-competitive effects of the envisaged legislation. In particular, ACA should assess whether the draft law creates or raises the barriers to entry on the market.[52] The law expressly requires central and local administration structures to notify ACA of any draft normative act that, in particular, deals with quantitative restrictions concerning trading and market access, the establishment of exclusive rights, or special rights in certain zones, for certain undertakings or products, including the imposing uniform practices in prices and selling conditions.[53]

37. To this effect, ACA issued a guidance on the impact of legislation on competition.[54] The aim is to provide local and central governments and other authorities with the necessary tools and a clear methodology for the assessment of the possible competitive impact of their draft laws.

38. In addition to the assessment of the possible impact of draft legislation, ACA should cooperate with other sectoral regulatory authorities on the application of the law to regulated sectors and on the regulatory reform undertaken by these authorities.[55]

39. The aim of these provisions was to create a center of competence, which would use its expertise in relation to the application of competition law to ensure that the regulation itself does not raise barriers to competition or otherwise create conditions to restrict competition in the market.

IV. Conclusive remarks

40. The new law on the protection of competition creates the legal framework for an effective competition policy. The initial phase of the implementation of the law reveals itself as promising, with a number of important and difficult decisions taken by Albanian Competition Authority. In addition, although low in number, the cases upheld by the courts show that the latter are taking a positive approach toward the decision-making practice of the Competition Authority. It is apparent in those decisions that the judges understand the objectives of the law, together with the control mechanisms and the powers of the Competition Authority.

41. The future challenges of the ACA include the improvement of the decision-making practice, with the aim of offering to the business community coherent and well-reasoned individual decisions, which is an important tool to raise awareness on competition policy, and offer more legal certainty. ■

46 Article 18(2) LPC. Currently the secretariat has a staff number of 35.

47 Article 19. It is the Parliament that sets the budget (Article 31 LPC).

48 Article 33 LPC.

49 Article 36 LPC.

50 Article 37 LPC.

51 Article 38 LPC. However, ACA may retain the seized documents for only 72 hours, and the court can extend that deadline for a maximum of 6 months.

52 Article 70 LPC.

53 Article 69 LPC.

54 ACA, *Guidelines of 24 December 2008 on competitive impact assessment* (“Udhëzimi mbi vlerësimin e pasojave të legjislacionit mbi konkurrencën”).

55 Article 70(3) and 71 LPC.

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