

## A LEGAL POINT OF VIEW

*In each issue, the journal will carry one article that is based on a legal perspective.*

# Some Challenges of Competition Authorities of Small Countries toward European Integration: The Case of Albania

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### *Abstract*

The paper considers some important issues that Competition Authorities face in small economies regarding the main objective of Competition Law/Policy in applying rules to make sure that companies compete with each other and, in order to sell their products, innovate and offer good prices to consumers. The paper tries to identify, inter alia, how an anticompetitive behavior (price-fixing, abusing of dominant position and market concentration) affects economic growth and consumer welfare.

### *Introduction*

Albania like other countries in the region such as Montenegro, Macedonia, Kosovo, is a small economy, according to GDP measures, which means that it can support only a small number of competitors in most of its industries. But at the same time, all these countries are in different stages of the European integration process and will face similar challenges in the process of ensuring a free and effective competition in the market.

Since 2004 we have been applying competition law/policy as an economic regulation that affects both the structure of markets and the conduct of market participants. But, as with any form of economic regulation, the effectiveness of

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competition law needs to be examined in terms of the extent to which its goals are achieved, after regulatory costs are considered. To determine effectiveness it is necessary to look at likely outcomes with and without regulatory intervention.

This paper tries to identify, *inter alia*, how an anticompetitive behavior (price-fixing, abusing of dominant position and market concentration) affects economic growth and consumer welfare.

The Albanian Competition Authority prohibits cartels and other anticompetitive behavior in order to improve the rules of the game that facilitate domestic consumer welfare by lowering prices and increasing output.

We are trying to increase domestic competition, by ensuring correct competition of firms with each other in the same market of the relevant product, and in this way we try to also increase regional and international competitiveness of the Albanian businesses.

The implication of business behavior is seen in the case of abuse of dominant position and especially abuses that have as object/effect the exception of competitors from the market. Generally the dominant position of one undertaking leaps as a result of efficiency and its extension in the market, or in regulated markets as a result of denationalizations (in countries coming by the centralized economic system in the free market economy- like the case of Albania).

On the other hand, when efficient firms drive inefficient firms out of the market, thereby increasing concentration, they take part in a competitive process that rewards efficient conduct. The goal of promoting competitive trading may be seen as fair and consistent with protecting competitors, particularly small firms.

Regarding the market power, in small economies like Albania, Competition Authorities should find the equilibrium between the firms' efficiencies and the consideration of the dominant position in the market with the main objective to facilitate a sustainable economic growth.

*Box: Recent developing of Competition in Albania<sup>2</sup>*

If we have a look on the last report of the European Commission regarding the competition issues in Albania, we can find that the Commission underlines that "good progress was made

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<sup>2</sup> Extract from the 2009 EC Progress Report for Albania

in the area of antitrust. The system of public hearings in antitrust proceedings has improved and a unit for fines has been established. Investigations and public hearings were held on anticompetitive agreements in the field of wheat imports and flour production, as well as in the fuel and insurance markets.”

The Albanian Competition Authority (ACA) continued analyzing cases of mergers and acquisitions. It carried out an inquiry into the energy and banking sectors and in November 2008 issued recommendations for the energy market. ACA lodged an appeal with the High Court as a consequence of diverging decisions of the courts of first and second instance on the fines imposed on two mobile telephony companies for abuse of dominant position.

The ACA staff received training on issues related to economic markets, energy sector, vertical restraints and competition law. ACA was also active in competition advocacy in cooperation with the chambers of commerce and industry. Seven complaints were registered in the first four months of 2009 in the fields of telecommunications, pharmaceuticals and procurement.

The Law on Competition is being revised to further approximate it to EU standards. ACA is drafting the regulatory framework on issues relating to fines and leniency, de minimis agreements, horizontal and vertical agreements and mergers, as well as on its internal investigation procedures. However, no new legislation has yet been adopted.

Overall, preparations in the area of competition are advanced. However, further efforts are required to strengthen the institutional capacities for the enforcement of competition rules.

### *The Main Challenges of the Albanian Economy toward European Integration*

Albania was the last country in South Eastern Europe to start implementing the principles of a free market economy after 1990. In the early transition, competition was an inherent phenomenon of the market, and actions related to it were new to Albanians. Competition went beyond the economic aspect: it affected the broader political and social life because the preceding system had excluded competitiveness from all aspects with the main role played by the State, thus completely eliminating competition related to market price or, rather, competition as a regulator of supply

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

In general, in developing countries competition protection policies are at similar stages of establishing or consolidating national competition authorities. The relevant legal framework enjoys a high degree of approximation with European legislation. The limited initial experience, market players' inadequate knowledge of the legal framework, lack of competition education, obstacles to the consolidation of national competition authorities and inadequate law enforcement are some of the common issues for competition authorities in developing countries.

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

### *The Adoption of Competition Law in the Balkans Countries – The Case of Albania*

Competition law comprises a set of rules that affect all aspects of the economy (Low, 2003). Its legal and institutional framework varies from one country to another, depending on the particular economic development of a given country, and its regional and international aspirations and obligations.

The European Union Competition Policy aims to guarantee an undistorted Single Market. The Treaty of Rome recognized that a common competition policy was essential if the consumer was to enjoy the benefits of European economic liberalization. All European Union accession-aspiring countries have adopted modern EU compliant competition laws and established attendant institutions as part of the harmonization of their legal framework with the *acquis communautaire* (Low, 2003).

Sturm (2000), however, pointed out that the 'new regulatory state' became a major issue in debates on the development of statehood at the end of the twentieth century. On their path to consolidating a free market economy, countries of Eastern

and Central Europe have implemented liberalization, privatization and deregulation reforms. It is obvious that privatization and deregulation in these countries were a necessary precondition for their economic recovery, but furthermore those reforms are determinants for a successful integration process in the Single Market (Gruda and Lati, 2010).

After 1990, competition laws and policies were adopted and implemented across transition economies. The adoption of competition policy was relatively uncontroversial at the beginning of the transition. Some saw it as a way to soften the rigors of the market; others as a way to open up markets. But this consensus is dissipating, especially as interest groups realize that competition policy may block transactions that benefit them and so are tempted to bring pressure to bear on the decision-makers.

The group of ten transition countries that became EU member states on 1 May 2004 decreed those laws between 1990 and 1993, with important amendments made between 1995 and 1999, which approximated them to the European Union competition law (Gruda and Lati, 2010). One important element of the amendments was the particular harmonization with Article 81 and 82 of the Treaty of Rome. Special care was paid to administrative procedures related to investigation and law enforcement, and institutional independence and effectiveness, addressing these issues in more detail. Despite their specific differences, competition policies in those countries have three common pillars:

- Competition protection and promotion is useful not only in cases where it is limited, distorted or obstructed by private or public companies through abuse of dominant position and concentration, but also in the cases where obstruction, limitation and distortion are caused by the public administration and regulators themselves. In addition to its implementation, the law also provides fines and sanctions.
- Competition advocacy - this has been an important element of competition policies in transition economies. It reflects comments provided by competition authorities on the impact on competition of other policies, particularly in the areas of privatization and regulatory policies. The benefits deriving from the incorporation of competition principles into laws and regulations have been large, particularly

because transition economies have also privatized infrastructure networks for which there has been inadequate regulatory expertise. Through their comments and recommendations provided to public administrations and regulators, competition authorities have used their official powers as competition advocates in order to embody competition principles in the legislative and regulatory activities and educate all the key competition stakeholders.

- Institutional effectiveness - this element depends on the extent of independence of competition authority, their administrative capacities and transparency, and the effectiveness of the appeals process in the courts.

### *Cooperation between Competition Authorities and European Commission*

The European Commission has engaged actively in cooperation with competition authorities of many countries outside the EU. Cooperation with some of them is based on bilateral agreements dedicated entirely to competition (the so-called "dedicated agreements"). In other cases, competition provisions are included as part of wider general agreements such as free Trade Agreements, Partnership and Cooperation Agreements, Association Agreements, etc (Low, 2003).

The Albanian Competition Authority refers, whenever applicable, to the relevant cooperation agreement(s) in the area of competition concluded between the EU and the country concerned, and to the general agreement(s) concluded between the EU and the third country concerned that contain provisions on competition policy.

The Competition Authority has respected all legal timelines regarding the reporting and progress made on the review of legal initiatives, enforcing acts in the framework of protecting free and efficient competition in the market, as well as in improving administrative capacities that aim at increasing the level of professionalism of the working staff. To improve these lines of reporting, the Competition Authority has participated in the working group for Issues in Internal Markets and Competition, thus assuring CA's commitment to achieve full execution of the Stability and Association Agreement and strengthen ties between the European Union and the Republic of Albania. The European Commission has observed in its report that Albania has made good progress in the field of competition, stressing,

among other things, the role of the Competition Authority in the process (European Commission, 2009).

The field of competition is also included in the membership application questionnaire of the European Union (chapter 8 “Competition Policy”) and competition is an important factor in the creation and well functioning of a common market within the European Union. The Competition Authority has dedicated marginal efforts to complete the chapter on competition, by filling out truly and on time each question directed at this institution. Moreover, in its role as coordinator of chapter 8 of the EU questionnaire, an inter-institutional link was established with line ministries that were given exclusive rights of responsibilities on the questionnaire, thus enforcing the idea that cooperation is very necessary if we aim to have efficient markets in the future.

Additionally, international cooperation has also been one important focus of the Competition Authority, especially in terms of establishing cooperation links in the framework of European integration with such institutions as the regional OECD Center in Hungary, TAIEX Program, and other homologue institutions in other countries.

### *The Adoption of Competition Law in Albania*

After the implementation of political pluralism and beginning of transition toward a market economy in 1991, Albania took a series of structural reforms. Those were the beginnings of the market economy, which means independence of economic agents and their ability to make independent decisions on their economic activity. In addition to economic freedom of enterprises, however, risks related to anti-competitive practices started to become evident (Gruda and Lati, 2010).

#### *The First law on Competition*

On 7 December 1995, Law no. 8044, “On Competition,” was adopted, which concluded the stage of institutionalizing competition policy in Albania. The main concern of the government policy at that stage was the establishment of the conditions for better and fuller implementation of free competition. The law

addressed such issues as monopoly and dominant position and unfair competition. The adoption of the Law on Competition enabled the establishment of the first competition structure at the Ministry of Industry, Transport and Trade, Department of Commercial Legislation.

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

Law implementation and institutional development began to give results in the area of setting competition policy goals and objectives, and coordinating with other economic policies. At the same time, relevant actions were taken to implement the law.

After 2000, it became clear that there was a need for institutional and legal amendments in the area of competition. While the competition policy had developed during that period, the competition legislation had gaps and was a far cry from the European Union competition legislation, institutions and policies. It became clear that mere amendments to the existing legislation would simply not be enough: a new law on competition protection and promotion was needed, in which anti-competitive rules would play a key role, and the implementation of which would be ensured by an independent authority. The fact that the existing law excluded the investigation of important sectors of the economy such as services, telecommunications, mail, transport, insurance, agriculture, etc., indicated the indispensable need for changing it.

### *The New Law on Competition Protection*

Law No. 9121, dated 23.07.2003 “On competition protection” came into force on 1st December 2003. It applies to all enterprises and associations of enterprises/firms, which directly or indirectly have or may have an influence in the market; that exert activities in the territory of the Republic of Albania, as well as to the



firms/enterprises that exert activities abroad, when the consequences of any such activity are demonstrated in the domestic market.

This Law is a pure antitrust law, dealing with the abuse of dominance, the control of concentrations and illegal agreements, such as cartel agreements. The approach in dealing with these issues is the same with the one pursued in European legislation.

The Law is based on three main pillars:

- Agreements of serious consequences on the market (cartels),
- Abuse of dominant position and
- Concentrations.

According to the law, the Competition Authority is an independent public institution responsible for controlling the implementation of competition rules, directly appointed by and accountable to the Assembly. The Law foresees the right of the Competition Authority to initiate investigation proceedings on its own initiative, in all cases for which it finds evidence of infringement of the law.

This law reflects the fundamental principles resulting from the implementation of Articles 81, 82 of the Treaty, Regulations of European Commission on Horizontal and Vertical Agreements, on Concentration Control, Guidelines, and Recommendations issued by the European Commission.

In order to make the Law keep pace with the progressive development of the competitive policies, the Competition Authority has worked in the direction of the completion of the legal framework with by-law acts: drafting and adopting of the secondary legislation on Competition in compliance with European Union principles, completing the legal framework in this area, ensuring the appropriate functioning of the Competition Authority, responsible for the protection of free and effective competition.

### *The Process of Revising of Competition Law to Approximate it with the Acquis*

In the framework of the approximation of competition legislation to *acquis communautaire*, there has also been an initiative for the revision of the provisions of the Law No. 9121, dated 28.07.2003 “On Protection of Competition”.

The revision of legal provisions started in early 2009 and we have proposed some changes regarding the threshold for mergers notification (approximation with regional benchmarks), the time of notification (extend the period from 7 to 30 days) and some other changes.

The draft law has reflected the remarks and suggestions given by the public institutions but the suggestions of the business community and of legal offices have been also taken into consideration. A workshop was organized on the draft law, with the wide participation of interested third parties. Currently, the draft law is subject to approval by the Council of Ministers and shall be submitted to the Assembly.

### *Application (Rule of Law) of Competition in Pre-accession Countries*

#### *Cartel Cases*

Taking into account the fact that the Albanian economy has a short experience in applying free market rules, we have explored a number of cases from naïve cartels (bread producers in the Fier district) to high covered cartel (bid rigging in public procurement).

#### *Case 1 - From Naïve to High "Covered" Cartels*

The bread production and commerce was a market segment which the Competition Authority investigated in a region of the country, Fier, where the degree of informality was high (ACA Decisions: url).

Based on some evidence from the media, the Competition Authority began an investigation on the existence of an agreement that fixes the price of bread among the producers in this region. From the point of view of the Article 4 of the Law "On the Protection of Competition", this is a prohibited horizontal agreement that fixes prices (from 60 to 80 leke/loaf of bread which is about 50 to 60 Euro cents).

The implications in the enforcement of the law from this agreement led up to the decision of the Commission based on the Article 45 of the law for the immediate prohibition of the implementation of the agreement. "Automatically" the participants of this agreement should be penalized from 2-10 per cent of their annual achieved turnover. But careful examination of the case results in an important finding: there is a high probability that in countries like Albania with little experience in the

application of the free market economy (only since 1992) and because of the short time since the coming into force of the law (1st December 2003), the participants in the agreement were not aware of the consequences foreseen in the law at all.

These cases are considered naïve cartels - the participants in the agreement do not try to “cover” the created “cartel” since they do not know that they have committed one of the hardest infringements of the law “On the Protection of Competition” nor are they aware of the consequences for this infringement.

Further market analyses, however, showed a high degree of informal economy with small operators that sold the products in the square of the cities and villages in this district that were not even registered as businesses. This made the definition of the size of the market more difficult because apart from the formal players of the market, informal businesses competed as well. This evidence was utilized by the Fier bread producers as an argument for their agreement pointing to the difficulties of their business due to more competitive prices (lower ones) of bread producers in the informal economy, which do not pay taxes and other expenses. This, according to formal businesses, put them in great difficulty with very low rates of earnings or in the majority of cases, loss as a result of the pressure of the “underground” supply.

During the analysis of the case, two things were taken into consideration. The first thing is that bread baking does not comprise an industry with large invested capital. This industry has low profit rates as well as low failure rates. The second thing is the lack knowledge by bread baking entrepreneurs about the restraints brought to market competition, which is an infringement of Article 4 of the Law “On the Protection of Competition.” From the other point, due to the high degree of informality, which is a result of the high level of “the grey” economy in Albania, and the special qualities of this business, only the head of the Association of Bread Baking was penalized in the assessment of the case. The head of the Association of Bread Baking was the organizer and the initiator of the agreement to increase the price of bread by about 20%. The Competition Authority estimate that barriers of entry in the market do not exist and signaled the fiscal authorities regarding the high degree of informality of this market in the Fier district.

*Case 2: Investigation in the Market of Procurement of New Vehicles<sup>3</sup>*

1. During the preliminary investigation in the procurement of new vehicles, it has been noted that electronic and hard copy evidence exists of coordination between four companies, Alpha, Beta, Gama and Delta for participating in public procurement, which may constitute a coordinated behavior between the companies that operate in the relevant market. The companies use the scheme of covered offers by accepting to offer at a higher price than the bid of the preferred bidder.

2. It has been observed that the companies increase the value of the winning bid from 95%–99%, therefore close to the fund limit, which maybe a result of coordination. In tenders where participation is greater than these four companies, the wining bids result at 83% – 86 % of the fund limit.

3. The results of the preliminary investigation show the possibility of the existence of a coordinated behavior in the meaning of Article 3, paragraph 4 and Article 4 of the Law No. 9121, dated 28.07.2003, titled “On the protection of competition”, between the companies Alpha, Beta, Gama and Delta in the relevant market of new vehicles procured through public funds.

4. Thus the Competition Commission decided to open an in-depth investigation procedure in the market of procurement of new vehicles into the following companies: Alpha, Beta, Gama and Delta to verify the existence of agreements containing offers that restrict competition in the market of procurement of new vehicles.

The Secretariat has finished the report of the in-depth investigation. The report which was sent to parties (deleting the confidential information) and the Competition Commission will organize the hearing session with parties. The CC will take into account the report drafted by the Secretariat and parties’ comments to finalize the decision and will make recommendations to public institutions to identify and prevent bid rigging in public procurement.

### *Abuse of Dominance Case*

In the assessment of competition law infringement, it should be carefully seen the relation between enterprise efficiency and market power or the classification of one

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<sup>3</sup> [www.caa.gov.al/decisions](http://www.caa.gov.al/decisions)

or several enterprises with a dominant position. In the assessment of the dominant position the Albanian Competition Law (which is also used to decide whether to authorize concentrations or not) relies especially on the legal and economic doctrine, and the Commission and European Community law-court decisions.

Implications can be more carefully seen especially in the case of abuse of the dominant position and abuses that have as an objective or effect the ousting of competitors from the market. Generally the dominant position of an enterprise leaps as a result of efficiency and its expansion in the market, or in regulated markets as a result of denationalizations (in countries transitioning from a centralized economic system to a free market economy- like the Albanian case).

It is necessary that the Competition Authority in collaboration with the regulatory entities provide that in markets dominated by one or several competitors, the sectional regulatory policies do not create strong entry or exit barriers from the market.

*Case 3- Abuse of Dominant Position in the Mobile Telecommunications Market by the Albanian Mobile Communication and Vodafone Albania<sup>4</sup>*

1. For the purpose of analyzing the behavior of the enterprises under consideration during a longer period of time, the Competition Authority has analyzed the mobile telecommunications market for the period 1996-2005.
2. The relevant product market is the public service of mobile telecommunications, or the transmission of phone calls to the end user (either generated by the end user, or destined for the end user), offered by each of the mobile telecommunication companies, AMC and Vodafone.
3. Behavior of enterprises in the market: during all the investigation period, the enterprises have applied similar tariffs that have remained quite unchanged, so that there was not any indication of competitiveness. Both enterprises, AMC and Vodafone, have applied national termination tariffs and pre-paid service tariffs that are more than twice higher than the respective average applied by the countries in the region.

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<sup>4</sup> [www.caa.gov.al/decisions](http://www.caa.gov.al/decisions)

4. According to Law No. 9121, dated 28.07.2003, titled “On Protection of Competition”, Article 9, paragraph 1 “... is prohibited any abuse of dominant market power, by one or more undertakings ”, and paragraph 2, letter “a”, “Abuse [of dominant power] may constitute the application, done either directly or indirectly, of excessive purchase or sale pricing, or imposition of any unfair trading condition.”

5. For these reasons the Competition Commission decided to impose a financial penalty on AMC equal to 2 % of the annual turnover of the relevant product in the year 2005. The amount of the financial penalty, expressed in value, is equal to 211 552 000 Lek. In relation to violations of the Law, Vodafone Albania enterprise is imposed a financial penalty equal to 2 % of the annual turnover of the relevant product in the year 2005. The amount of the financial penalty, expressed in value, is equal to 242 633 000 Lek.

6. During the investigation period the Competition Authority has collaborated with the Telecommunication Regulatory Entity regarding the exchange of information and at the end of the investigation CC gives some recommendations to foster competition in the relevant market.

### *Merger Case*

For the notification of a merger/concentration we will see the form of concentration between:

- a) the merger of two or more enterprises or parts of enterprises hitherto independent of each other;
- b) any transaction when one or more undertakings acquire, directly or indirectly, a controlling interest in all or parts of one or more other undertakings;
- c) joint ventures exercising all the functions of an autonomous economic entity<sup>5</sup>.

The second condition for notification is the threshold. The concentrations of enterprises are notified for authorization nearby the Authority if, in the last business year preceding the concentration:

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<sup>5</sup> <http://www.caa.gov.al/legal.asp>

- the combined worldwide turnover of all participating undertakings is more than 70 billion Lek, or the domestic combined turnover of all participating enterprises is more than 800 million lek, and
- the domestic turnover of at least one participating enterprise is more than 500 million lek.

*Case 4- Mergers: The Concentration Realized through the Merger of the American Bank of Albania and the Italian-Albanian Bank<sup>6</sup>*

1. Parties participating in the transaction: The American Bank of Albania and The Italian-Albanian Bank (IAB).
2. On November 6, 2007 an agreement was entered into, which consists of the merger of the American Bank of Albania and the Italian-Albanian Bank. As a consequence, the Italian-Albanian Bank ceases to exist as a juridical person, and all its assets and liabilities, as well as all the agreements and transactions where the Italian-Albanian Bank was a party to, should be transferred at the American Bank of Albania, in compliance with the Law.
3. This transaction constitutes a concentration and therefore fulfills the conditions of becoming subject of review by the Competition Authority, in conformity with the Article 10, paragraph 1, letter “a”, and Article 12, paragraph 1, letter “b” of the Law No. 9121, dated 28.07.2003, titled “On the Protection of Competition”.
4. The assessment of the impact on competition: the transaction consists of the merger, through the takeover procedure, of the Italian-Albanian Bank by the American Bank of Albania. As a conclusion of this transaction, a new bank emerges, the American Bank of Albania (the name remains the same as before), and the Italian-Albanian Bank ceases to exist as a juridical person, and all its assets and liabilities, as well as all the agreements and transactions where the Italian-Albanian Bank was part to, should be transferred to the American Bank of Albania, in compliance with the Law.

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<sup>6</sup> <http://www.caa.gov.al/rdec.asp?id=76>

5. The enterprises participating in the concentration operate at the same horizontal level of the product market. After the concentration, the market share of the new American Bank of Albania is: 16.44 % of the asset market, 16.05 % of the credit market, 7.05 % of the treasury bonds market and 14.35 % of the deposit market. The market is opened to competition, with no entry barriers and is characterized by swift changes, with respect to the geographical extension and the offering of new products.

### *Challenges of an Independent Competition Agency*

#### *Fuel Market Case - CC vs a Government Decision*

Competition Authority in Albania and mostly in all European Countries is an independent institution with certain restrictions on its independence such as the budget (drafted by the Ministry of Finance and approved by Parliament) and the process of electing competition commissioners by political parties (2 members of Parliament), government (2 members must be proposed by government) and one by the President.

The Competition Authority exercises its activity as an independent public institution, with a mission to protect free and effective competition in a functional a market as much as possible, with the final goal of maximizing consumer benefits.

The Albanian Competition Authority has made some significant steps toward an independent institution and the we think that this can be proven by some decision.

We will present case No. 99, dated 30. 12. 2008 on “Recommendation with regard to the revocation of the Decision of the Council of Ministers No. 1110, dated 30.07.2008, with the motivation of limiting market competition”<sup>7</sup>.

In this decision CC noted that through Decision by Council of Ministers No. 1110, dated 30.07.2008, “On the quality of hydrocarbons produced by the refinement of in-country produced crude oil”, the competition in the relevant market of diesel

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<sup>7</sup> <http://www.caa.gov.al/rdec.asp?id=169>



fuel is under restrictions, by means of application of differentiated conditions for the trade of in-house produced goods versus imported goods.

Such differentiation concerns the period January 1, 2009 - January 1, 2010 and the period January 1, 2011 - January 1, 2012. After January 1, 2012, it becomes clear that it is allowed to import, or produce in-country only hydrocarbons whose sulphur content is up to 10 mg/kg.

Therefore, restrictions are placed until January 1, 2012 on the same product that can be both imported and produced by sources available in Albania, which favor the trade of hydrocarbon refined in domestic facilities.

Such differentiation restricts competition in a sense that it puts market competitors in unequal positions, by limiting the supply of goods and favoring a monopolistic setting, in disagreement with competition policies and laws. Further, besides the protection of free and effective market competition, one of the main objectives of competition policies and laws is consumer protection and the harmonization with environmental protection policies.

The Republic of Albania has signed the Agreement for the Amendment and Extension of the Central Europe Free Trade Agreement<sup>1/2</sup>(CEFTA) according to which, the Albanian state, in the meaning of Article 19 of the same, is committed to “...adapt any state-owned monopoly of commercial nature, and state-owned commercial enterprise in order to comply with the dispositions of the World Trade Organization, based on which there should be no discrimination between the undertakings of the parties in relation to the conditions based on which are traded the products.”

Pursuant to Article 20 of this agreement, any practice that is in contradiction of Articles 81, 82 and 86 of the EU Treaty (101, 102 and 106 of the Lisbon Treaty), shall be considered a breach of the appropriate functioning of this agreement to the extent that these practices impact the trade relations between the parties involved. Again, pursuant to the same article, until 1 May 2010, the Albanian state is obligated to regulate free market competition in the meaning of Articles 81, 82 and 86 of the EU Treaty, also foreseen under Articles 27 and 37 of Law.

One of the purposes of this agreement is to ensure fair conditions for competition that have an impact on trade and foreign investment, and to gradually open the markets for public procurement by the parties.

In relation to the above, the Competition Commission notes that Decision by Council of Ministers No. 1110, dated 30.07.2008, "On the quality of hydrocarbons produced by the refinement of in-country produced crude oil" restricts significantly the competition in the relevant market of diesel fuel by allowing only one source for production and supply as created through this normative act.

For the above reason Competition Commission decided to recommend to the Council of Ministers the revocation of DCM No. 1110, dated 30.07.2008, "On the quality of hydrocarbons produced by the refinement of in-country produced crude oil", in order to avoid restrictions, limitations and distortions of competition in the market.

### *Independence and Administrative Capacities*

Competition Authority operates pursuant to Law 9121 dated 28.07.2003 "On protection of competition" (as amended by Law No. 9499 dated 3.04.2006) and the National Competition Policy. Norms and principles of operation of the Authority arise from the mandate given by the Constitution of the Republic of Albania, by the European competition law, by the best administrative traditions gained through the years, as well as best practices experienced by counterpart authorities in other countries with which the Authority cooperates and share their respective experiences.

The Competition Authority carries out its activity through the operation of 34 employees, of whom 20 are technical staff made up of economists and lawyers (11 economists and 9 lawyers). The philosophy of human resource management is based on increasing the level of staff expertise by investing in employee training. This is a determinant factor in the degree of functional independence of the institution. Currently, 10 members of the technical staff have completed graduate-level coursework, while 3 others are currently attending different programs.

The Competition Commission's vision guides the course of actions that are to be taken in order to realize its mission. Its vision consists of objectively evaluating the behavior of operators in the market and the effects of normative acts on the functioning of that market.

Further, the realization of this mission is based on best practices of wider European experience, adjusted and adapted to welcome the specific qualities of the Albanian economy, such as market size, volume of market informality, etc.

This vision has been substantiated by setting goals that are realized through a comprehensive discussion regarding the structure that the Competition Authority should have. These objectives are: creation of a skilled team with deep knowledge in the field of economics and law that is able to apply the methodology to conduct studies and carry out investigations in law enforcement; ensuring full transparency of the decision-making procedures and the implementation of its functional tasks by promoting close collaboration with regulatory bodies, central and local institutions, and judicial authorities. The fulfillment of these objectives is driven by a leadership based on principles of justice, equality and impartiality in the implementation of its functional duties.

The Competition Authority is financed by the state budget and ACA has closely followed the provisions of law nr. 10025, date 27.11.2008, titled "for the state budget of 2009" regarding the use and management of funds, and has also prepared a pro forma budget for the medium term 2010-2012 as it concerns the finances of the Competition Authority.

Undoubtedly, the implementation of competition law/policy is a long and difficult process, but this objective is in a very wide scale depending on administrative capacities. Competition Authority will aim to strengthen institutional capacities in terms of consolidating and improving investigative techniques, as well as increasing the level of expertise in order to reduce the time of completing each investigation process.

To make this happen, IPA 2008 funds will be used to finance the achievement of this objective, which is expected to start at a technical assistance level through a twinning project that considers the organizing of internships for Authority technical staff at similar institutions abroad.

For the first time since the inception of the Authority, its 2010 budget is clearly divided to direct funding in two distinct areas: (i) monitoring the market and ensuring competition and (ii) planning, management and administration. These areas will be divided into subprojects that will ensure an efficient use of resources detailed by cost centers for any investigative procedure that will be initiated by the Competition Authority. This system will enable more direct measurement of performance and increase in employee accountability.

### *Competition Advocacy and Institutional Relations*

Competition advocacy is not only one of the pillars of the law, but is a vital necessity for Competition Authority activities to have a real impact on achieving a functional market. In view of increasing advocacy for the law on protecting competition, several workshops and training seminars are scheduled to be held with international experts financed by TAIEX, with participants including not only Competition Authority staff, but also representatives from various administrative bodies, regulatory authorities, legal firms, and the judiciary system.

The achievements of Competition Authority, pursuant to the Competition Policy and Law, are influenced by the perception and reaction of all market actors who are affected by such achievements. For this reason, advocating and promoting a culture of competition will remain a key priority of Authority's work. In this context, the Competition Authority will continue to cooperate with the business community both at the central and local level. The Competition Authority will also increase cooperation with chambers of commerce that group local and foreign businesses, such as the American Chamber of Commerce, German Chamber of Commerce, the English Chamber of Commerce, and so forth.

The Competition Authority will continue consultations with relevant market agents, such as public institutions and regulatory entities, legal firms and representatives of the justice system, the business community and representatives of central and local governments, in order to improve the legal framework in the field of competition, especially as amendments to the laws or new regulations are adopted.

The Competition Authority will aim to increase cooperation with the media, both in terms of coverage of the activity of the Authority, as well as in terms of media partnerships and involvement in the discussion of issues of particular relevance for competition policy and law, so that appropriate public awareness can be achieved for consumers and journalists alike.

Cooperation with institutions of higher education will be further promoted in order to encourage the study of competition both in terms of the economic and legal aspects of the field. Student involvement in the work of the Competition Authority will be achieved through internships and teaching practices, particularly when drafting and applying various market analysis questionnaires.

### *Conclusions*

A good competition policy should punish abusive actions which ultimately induce increases in prices or reduce product quality and be neutral toward practices making consumers better off. Price increases and reduction in product quality harms consumers.

The lessons from more experienced countries emphasize that this is particularly relevant in countries where the implementation of competition policy is in its early stages. The building of credibility requires consistent behavior over time.

The main challenges of new Competition Authorities in SEE are being financially independent and building a culture of competition among stakeholders and all market participants, particularly firms and consumers.

That is to say, to become credible and reliable, the Albanian Competition Authority aims to show that its decisions are consistently well founded, logically sound and that its authority is not influenced by considerations other than the protection of competition.

The Albanian Competition Authority is working to build a reputation of consistency, accountability and transparency, in order to increase its credibility with society, as well as with government.

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