



Albania ❖

One of Europe's poorest countries, Albania is located in South-eastern Europe, bordered by the Adriatic Sea and Ionian Sea and lies between Greece, Macedonia, Serbia and Montenegro. The country has a rich blend of religions, cultures and landscapes.

Albania ended 46 years of Communist rule during 1990-92 and established a multiparty democracy. The transition has been difficult, as successive governments have tried to deal with high unemployment; wide spread corruption; dilapidated infrastructure; powerful politically well-connected organised crime networks; and disruptive political opponents.

The international community observed the Parliamentary elections in 2001, and local elections in 2003, as acceptable and a step towards democratic development, but identified serious deficiencies. Many of these deficiencies have been addressed through bi-partisan changes to the electoral code in 2003 and 2005. In 2005, the Democratic Party and its allies returned to power, pledging to fight crime and corruption, decrease the size and scope of government, and promote economic growth. As a set procedure, elections are held every two years. On June 28, 2009, Albania held Parliamentary elections. The Organisation for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) described these elections as progress over past elections and found that the elections met most OSCE standards.

Albania joined NATO in April 2009 and is a potential candidate for EU.

Economy

The agriculture sector has been the engine of growth and continues to account for about half of the GDP. The country has made significant progress, since its transition from rigid communism to a market economy. It has pursued far-reaching structural and economic reforms, and has made advances in establishing democratic institutions. The potential for growth and income generation appears to be

PROFILE	
Population:	3.2 million***
GDP (Current US\$):	11.7 billion***
Per Capita Income: (Current US\$)	3,960 (Atlas method)*** 8,840 (at PPP)***
Surface Area:	28,750 sq. km
Life Expectancy:	77 years***
Literacy (%):	98.7 (of ages 15 and above)***
HDI Rank:	70***
<i>Sources:</i> - World Development Indicators Database, World Bank, 2011 - Human Development Report Statistics, UNDP, 2011 (***) For the year 2011	

good in sectors, such as the agro-business industry; transit trade; exports of light manufacturing; and tourism.

The Government has taken measures to curb violent crime and to spur economic activity and trade. The economy was bolstered by annual remittances from migrant workers abroad of US\$600-US\$800mn, mostly from Greece and Italy which helped offset the towering trade deficit. However, after peaking at US\$1305 in 2007, such remittances had declined to US\$1090 in 2009.¹

Agriculture is often, unfortunately, held back because of frequent droughts; the need to modernise equipment; to clarify property rights; and to consolidate small plots of land. Energy shortages, as well as antiquated and inadequate infrastructure make it difficult to attract and sustain foreign investment. There has been an increase of direct FDI by 23 percent in 2010 compared to 2009 mainly in the privatisation initiatives of the government in the fields of energy, banking and telecommunications.²

The planned construction of a new thermal power plant near Vlore, has finished but it is rarely used since the recent

❖ Original paper written (2006-07) & updated (June 2012) internally by CUTS International.

years have been good for the energy production with hydropower plants. Also there are different major investments in the field of small hydropower plants as well as Ashta hydropower plant the biggest investment in this field in Albania since the 1990. Production, transmission and distribution has been unbundled and distribution has been privatised.

In addition, the Government is moving slowly to improve the poor national road and rail network, a long-standing barrier to sustained economic growth. The situation has improved a lot. There have been many road constructions and reconstructions, the new highway connecting the port of Durres with Kosovo, coastal roads and many rural roads that have helped in the development of tourism and trade.

On the positive side, growth was strong in 2003 and 2004. Reforms have been under taken especially since 2005. In 2009, Albania was the only country in Europe, together with San Marino and Liechtenstein, to have economic growth. Further, in April 2009, Albania achieved full membership in NATO. According to the Global Competitiveness Report 2006-2007, Albania was ranked 98th on the competitiveness index out of 125 countries.

Although the economy continues to grow, the country is still one of the poorest in Europe, hampered by a large informal economy and inadequate energy and transportation infrastructure.

Competition Evolution and Environment

Competition law is a new concept for the Albanian statute, considering the centrally planned economy of the country during the past 50 years. Thus, the absence of competition culture in Albania has constituted the root cause of impediments to competition. Already, in the first years of free market economy, the need for effective regulation of competition issues had become increasingly evident.

The Albanian Parliament adopted *Law No. 8044, of 7 December 1995 'On Competition'*. This constituted the first attempt towards building a competition culture. But, this move remained isolated, due to the absence of effective implementation measures at the administrative and institutional level, as well as the limited use and enforcement of this Law by public and private bodies.

Although the Law was not sufficient in covering all issues related to competition practices in Albania, such as monopolies and abuse of dominant position, it was still a step in the right direction. The Law prohibited monopoly and dominant position, by defining a dominant position as any situation in which an undertaking, or a group of undertakings, holds more than 40 percent of the market share.

These provisions have not conformed to European criteria in this field. The application of the Law has encountered

many problems in resolving cases of privatisation and liberalisation of strategic sectors. The Law has exempted the public sector, including utilities, banks and some other institutions, from its application. There was no specific provision made in the Law, detailing when Competition Department could open a case under its own initiative.

Furthermore, the Competition Department was neither empowered to enter into business premises during investigative procedures; to seize the documents to be accepted as evidence for the case; to compel witnesses to testify; to require the production of documents, or written responses, to investigative questions. It could also not impose sanctions, either for the timely or complete provision of documents. Finally, there were very insignificant fines for infringement.

The main problem with the 1995 Law was that it was difficult to apply in day-to-day practice, especially due to

Box 1: Public procurement investigation exposes concerted bid-rigging practices

In July 2009, the Competition Authority started a preliminary investigation into domestic public procurement of new auto vehicles. The investigation's findings appear to have resulted largely from irregularities in the bidding documents, as identified by the authority staff during the execution of its bid proceedings.

The authority found evidence that several of the companies operating in the domestic auto procurement market had established concerted practices that would potentially constitute prohibited agreements under the Law on the Protection of Competition (9121/2003). The authority, therefore, started an in-depth investigation into certain undertakings operating in this market, for business transactions that took place between January 1, 2007 and December 20, 2009.

During the in-depth investigation proceedings, the authority analysed the concerted practices of the undertakings under investigation, based on the Organisation for Economic Cooperation and Development guidelines for fighting bid rigging in public procurement.

As a result of the in-depth investigation, the authority declared that the practices under investigation were anti-competitive and applied fines for serious infringements of the Competition Law. Under Article 74(1) these amounted to between 2 and 10 percent of the turnover of the preceding business year for each participating undertaking.

Source: International Law office, January 20, 2011

its unclear language, contradictory requirements, and wide scope of application. Specifically, the weaknesses, which affected the competition regime, were:

- lack of an appropriate legal framework;
- lack of an independent institution;
- lack of sufficient and qualified staff; and
- lack of financial resources in conducting surveys for market data collection.

For a small country in transition, one of the main challenges for its competition authority is also related to the small size of the population. There are few major businesses and, thus, explicit collusion is easier to hide and tacit collusion happens easily.

The application of this law, as mentioned before, had encountered lots of problems in resolving the cases of the existing transformed economic situation. In particular, the privatisation and liberalisation of strategic sectors has necessitated approximating the competition law with European competition legislation.

Competition Policy and Institutions

The new era, which Albania entered into, with the opening of negotiations for the Stabilisation and Association Agreement with the EU, emphasised the need for a new, complete and effective legislative regime for competition issues. Competition is one of the primary areas where Albania has to approximate its domestic laws with EC Law. In doing so, the Albanian Parliament adopted a new law, the *Law No. 9121, 'On Protection of Competition'*, on July 28, 2003, which was enacted on December 01, 2003. The 1995 Law has since been abrogated.

Although the new law is in line with other European countries' competition legislation, and is harmonised with the EU competition rules, the provisions of the EU/EC Treaties do not legally bind Albania. The Law and the implementing regulations (adopted for the Albanian Competition Commission) constitute the legal framework for competition issues in Albania.

They focus on competition issues, leaving out unfair competition practices, which are regulated by provisions of the Albanian Civil Code. Thus, as in all European competition legislation the main pillars of the new law are agreements, abuse of dominant position, concentrations and merger control and liberalisation (in line with art 106 of the treaty on the functioning of the EU).

As in the article 101/1 of EC Treaty, restrictive agreements are prohibited, whilst for the others, the conditions for exemption are stipulated in the law. Instead of block exemptions, the new law provides for individual notifications. The prohibited agreements, and those not exempted by the decision of Competition Commission are not valid.

The principal national authority competent to apply and enforce the Albanian competition rules is the Competition Authority, which in accordance with Article 4, Section 8 of the Law is 'the structure charged with the control of the application of this law'. The Competition Authority comprises of two bodies, and the duties of each are clearly defined by the new law:

1. *The Commission*: Decision making structure of the Authority, and
2. *The Secretariat*: Administrative and investigative body.

Besides the Competition Authority, the Tirana District Court is also empowered to apply competition rules. The court can take action even if the competition authority initiates action. But, requests for exemption from prohibition of an agreement and the procedures for the control of concentrations are not within the jurisdiction of the court.

Improvement is evident when compared with the previous Authority– the Directorate of Competition–that was under the control of the Ministry of Economy.

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

The Competition Authority can make its contribution to those processes through its active participation in the development of public policies, providing comments and intervening in regulation procedures.

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.

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 organised on the draft law, with the wide participation of interested third parties.

The amendments were approved from the Parliament in September 2010. The main changes include a different system of fines, lower merger thresholds, *de minimis* rule, block exemption rules, introduction of liberalisation (art. 106), the value of the decisions of ACA as an executive order etc.

Currently, the draft law is subject to approval by the Council of Ministers and shall be submitted to the Assembly.

National Competition Policy

The Competition Commission formulated and approved the National Competition Policy (decision No 43, dated 28.12.2006), the first ever document of competition policy in Albania, which aims at fostering competition by ensuring the improvement of market efficiency and the minimisation of the negative impacts on resource distribution related to market power.

Box 3: Investigation into Coordinated Pricing Practices

The Albanian Competition Authority began a general investigation of the electricity, hydrocarbons and gas markets at the end of 2007, to determine the level of competition in the energy market, increase market efficiency and introduce greater consumer choice.

After consultation with interested parties, including the Ministry, ERE, industry and the TSO (Transmission System Operator), the Albanian Competition Authority issued recommendations directed at opening the markets for greater competition, and in 2008 launched an in-depth investigation of the hydrocarbons market that revealed undertakings had engaged in coordinated pricing practices.

Source: <http://www.ebrd.com/downloads/legal/irc/countries/albania.pdf>

It has been compiled based on the similar experience of the regional countries which are more advanced in the process of European integration as well as the specific features of developments in the competition culture and legal infrastructure in Albania.

This document primarily underlines several objectives such as protecting the freedom of economic activity of market participants; reducing market entry barriers, in order to establish a friendly environment for the promotion of entrepreneurship and the growth of small and medium sized enterprises; and fostering fairness in business relations.

The ACA has planned to revise the National Competition Policy in order to reflect the changes in the law and practice of the ACA.

Anticompetitive Business Practices

The initial Law for competition explicitly prohibited monopolistic practices, as well as various unfair commercial practices. The Parliament adopted a law that establishes an open system of public tender for government procurement contracts. According to a 1998 survey of enterprises by the Albanian Centre for Economic Research,

more than half of the firms claimed that they did not participate in specific government procurement because the competition was unfair.

Distinctly, the new Albanian Law No. 9121 challenges abuse of dominant position rather than the dominant position itself, and is dealt with under the chapter entitled 'Abuse with the dominant position'. In principle, existence or creation of a dominant position is permissible by the law, while abuse of such dominance is punishable.

The measures the competition authority can take against companies abusing their dominant position include: fines; imposing obligations on enterprises to act or not act in a particular manner; the interruption of contractual relationships; as well as to order a divestiture of companies units. Furthermore, the law introduces a pre-merger notification procedure.

Sectoral Regulation

The necessity to integrate the country's economy in the world markets has pushed the Albanian authorities to undertake a multitude of reforms in a number of sectors, including the market and its regulatory framework.

Postal Services

In February 2004, a Draft Law 'on some amendments to the Law no.8530, dated 23.09.99, on the Postal Service in the Republic of Albania' was submitted to the Council of Ministers for approval, aiming at improving the legal framework in the postal service.

The amendments were approved at the Council of Ministers Meeting held in 2009.

Power Sector

During January-February 2004, work was carried out in order to fulfill the objectives of the Power Sector Policy Statement, the National Energy Strategy and Action Plan for 2004.

In conformity with the Law 'on the electricity' and in accordance with the Athens Memorandum the Commissioners of the Electricity Regulatory Entity (ERE) were elected in 1995 and function based on Law Nr. 9072 date 22.05.2003. The Electricity Regulatory Authority is responsible for approval of tariffs, licensing of companies in electrical/energy sector and monitoring of their activity.

In June 2008, ERE's regulatory authority was extended to the gas sector and a new gas law was enacted. New amendments to the Power Sector Law was approved in December 2010.

ACA has issued several recommendations on improving competition in the energy market and has suggested different amendments to legal acts in the Energy sector. Such measures taken by the Albanian Government are very

important for their structure in land development of the Energy Sector, in conformity with the demand of Albanian consumers and to cope with EU standards.

Telecommunications Sector

During September December 1999, a new draft law for telecommunications was designed. The 'Telecommunication Regulatory Entity (TRE)' monitors the regulatory frame work set out by this law and also by the sector policy approved by the Council of Ministers.

This law created possibilities for a good legal and regulatory environment, for possible future investors in the telecommunications market. The new draft law is in accordance with the Telecommunications Development Policy. The draft law also helps to provide a harmonised and a competitive environment for a free liberalised market.

The amendment, dated November 06, 2006, to Law no. 8618, has brought about a change in the areas for licensing of the fixed telephony operators.

Further, the country's accession to the European Union (EU) has benefited its telecoms sector through closer scrutiny of its regulatory regime and through the injection of funding to help modernise infrastructure.

Financial Sector: Banking & Insurance

In February 2004, a new regulation 'on money laundering prevention' was approved by the supervising council of the Bank of Albania (BoA). This regulation replaced the previous guidelines, and defines obligatory measures to be implemented by banks and other entities licensed by the BoA. In collaboration with the World Bank, USAID is supporting the BoA to develop a legal and regulatory framework.

ACA has issued several decisions on recommendations about the financial and insurance markets such as increasing the transparency of the commissions charged from the banks, the introduction of an ombudsman for financial services, etc.

ACA has started an investigation for an alleged price fix in cartel in the obligatory car insurance market.

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

The Albanian Parliament approved the law 'on licensing and supervision of insurance, reinsurance and intermediary undertakings' on March 07, 1996, to regulate the licensing and supervision of the insurance undertakings by the State in protection of the insured. Based on this law, in 1998, the Insurance Supervisory Commission was established as the sole authority to license and supervise the insurance

Box 4: Investigation into Mobile Telephony Operators

The investigation started by the Competition Authority in 2005 into the possibility of the mobile telephony operators abusing the dominant position is still under process.

The Competition Authority is conducting an assessment of the market and to that end, the Competition Authority is examining information on the level of prices, differences in prices, differences in time, cost, efficiency, innovation, production and profit.

It has also deemed very valuable the information on structural peculiarities concerning market segments, concentration, buyer power, players' conduct in the market, and market entry barriers.

Source: http://www.caa.gov.al/file/publikimet/POLITIKA_eng%5B1%5D.pdf

and reinsurance activities in Albania. The enactment of this law would certainly facilitate the effective operation of the insurance market.

Consumer Protection

The new Albanian law No. 9135/2003 'On Consumer Protection', passed by the Parliament, in September 2003, was drafted with the support of the German Government, implemented by the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, in close cooperation with the Ministry of the Economy.

The law is intended to emulate European legislation, through aligning the European Directives of recent years, with consumer protection principles. The law entitles consumers the right to legal protection from relevant agencies and judicial organs, in case their defined rights are violated. This, when compared with the 1997 Consumer Protection law, anticipates sanctions in case of any violations.

Since the adoption of the new law the efforts of Albania towards EU membership intensified. Further, in the framework of the implementation of Article 76 of the Stabilisation and Association Agreement, which directly concerns consumer protection policy, further legal reforms were required to make Albanian consumer legislation fully compatible with the European directives.

Thus, Law No. 9902 of 2008 on consumer protection was adopted by the Albanian Parliament on April 17, 2008. The law, together with its implementing acts or Council of Ministers Decisions, ensures a much closer approximation of the provisions of the Albanian law to the relevant European directives.

Law No. 9902 of 2008 on consumer protection deals with Consumer information, Unfair Commercial Practices, Unfair Advertisement and Unfair terms of contract.

Concluding Observations and Future Scenario

The Law on Competition is being revised to further approximate it to EU standards. Albanian Competition Authority 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. It has been adopted in 2010 as explained.

The Albanian Competition Authority (ACA) continued analysing 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.

The ACA staff received training on issues related to economic markets, energy sector, vertical restraints and competition law. Besides, it is also essential that the ACA should consider the specific features of the Albanian markets and particularly the market structure.

With the signing of the Stabilisation and Association Agreement on June 12, 2006 and the coming into effect of the Interim Agreement, the National SAA Implementation Plan envisages the development and approximation of a series of regulations and guidelines with the EU legislation.

The Albanian Parliament has also approved the Law No. 9374 'On State Aid' recently. In particular, the Albanian Competition legislation prohibits: all agreements between undertakings and concerted practices which prevent, restrict or distort competition; abuse by one or more undertakings of a dominant position in Albania; any public

aid which distorts or threatens to distort competition by favouring certain undertakings or certain products.

Albania should commit itself to ensure transparency in the area of state aid, *inter alia*, by reporting annually to the EC on the total amount and the distribution of the aid given; and by providing, upon request, information on possible aid schemes.

Taking into account the lack of tradition, adequate institutions, know-how, and human and technical resources to implement the above requirements, technical assistance is being given under the Community Assistance or Reconstruction Development and Stabilisation (CARDS) programme, for both competition and state aid matters, to support the Albanian efforts to comply with the requirements of SAA.

The organisation of roundtables, workshops, media interaction on competition related information and/or conceptual problems, as well as discussions of concrete cases, would be effective instruments to achieve a more efficient, fair and competitive market.

The promotion of competition requires the cooperation of all government and regulatory institutions to reduce the barriers to entry.

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 role of the courts as well is of utmost importance. More training is needed in order to improve the knowledge of judges on competition law and on the role of the Albanian Competition Authority to promote and enforce free and effective competition in the markets.

Endnotes

1. Migration and Remittances Factbook, 2011, 2nd edition – World Bank
2. 'Investment in Albania' KPMG Edition 2011.

Suggested Readings

1. Paper on "Albanian Competition Policy" by Ledi Bianku, University of Tirana
2. "Albania: A new law on competition" jointly written by Eris Hoxha & Shpati Hoxha, Attorney of Law, Boga & Associates.
3. Albanian Regulatory Developments
4. *Progressive Report 2003-2004*, Albania
5. Website of Energy Regulators Association
6. *GTZ Newsletter, Vol.6, March 2004 edition*
7. *Albania's Experience in Competition Law - Ernal Nazifi*
<https://www.competitionpolicyinternational.com/albania-s-experience-in-competition-law/>
8. *Petrina Broka, Ernal Nazifi 'ECONOMIC CONSTITUTION' IN PRACTICE: THE ENFORCEMENT OF COMPETITION LAW IN ALBANIA*
9. Dr. Servete Gruda and Pajtim Melani Some Challenges of Competition Authorities of Small Countries toward European Integration: The Case of Albania,
10. Servete M. Gruda & Lindita Milo (Lati), SMEs development and competition policy in Albania
11. Pranvera kellezi "Albania: Introducing competition law" Eriona Katro & Kestrin Katro Analysis on the recent amendments of the Albanian Law "On competition protection" in Albania