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Albania's Experience in Competition Law

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Albanian Competition Authority

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I. INTRODUCTION

Albania has been one of the most isolated and underdeveloped European countries for centuries, despite its great potential because of favorable geographic position and its relative richness in natural resources. After the Second World War, Albania suffered from one of the harshest communist regimes in the world, and a total isolation in every aspect. When the regime collapsed in 1990, the GDP per Capita of Albania was calculated at \$450, placing Albania between Lesotho and Sri Lanka as the 32nd lowest developed country in the world.²

Although the communist regime invested a lot in the industrial development of the country, production was constrained by the mismanagement and inefficiency that characterize communist systems.³ One of the main reasons for this inefficiency was the total absence of competition as the economic system was strictly centrally planned.

After the start of the transition of the Albanian economy from a planned to an open market economy, the need to introduce rules that assured free and effective competition was imminent.

The first law that dealt with the protection of competition was "On Competition," no. 8044, dated December 7, 1995. The approval of this law is the cornerstone of the institutionalization of competition law in Albania. This law included provisions on monopolies, dominant position, and unfair competition. Also, this law regulated the rights and the duties of all actors of the market: consumers and clients looking for goods or services, as well as undertakings that offer these goods or services. But the implementation of this law in practice was difficult despite the endeavors of the competent institutions.

II. THE NEW LAW "ON PROTECTION OF COMPETITION," AND ITS IMPLEMENTATION.

The process of EU integration of Albania intensified in the early 2000's. This process pushed for a reform of the competition law enforcement in order to comply with the EU legislation (*Acquis*). But, most importantly, Albanian needed to meet market needs for free and effective competition.

The response to this need was the approval of a new law, no. 9121, dated July 28, 2003, "On Protection of Competition." It is based on four pillars: abuse of dominance, forbidden

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² See <http://countrystudies.us/albania/63.htm> last visited on May 24, 2012.

³ *Id.*

agreements, merger control, and liberalization.⁴ A separate law and institutions exist for the control of state aid. The institution in charge of implementing the law is the Competition Authority. It is composed of a Commission (the decision-making body) and the Secretariat (the executive body).

There is no criminal enforcement of the law. But the law has foreseen the private enforcement of competition law. The Competition Authority also considers the fostering of competition culture and advocacy as a very important part of its activities.

Enforcement track record is relatively good considering the historical development of competition law in Albania. The Commission has issued 219 decisions, including decisions imposing fines against big companies that were considered by many to be “too big to be touched.” Such companies include major cell-phone operators, importers and wholesalers of fuel and LPG, producers of concrete, insurance companies, etc. The fines imposed are comparable to the budget of the Authority for several years.

The Authority has also been diligent in regards to undertakings involved in so-called “naive cartels”, especially in the production and sale of bread. In different areas of Albania these undertakings got together to raise the prices of bread and publicized such decisions on the media. However, after the intervention of the Authority they immediately stopped these agreements and committed not to repeat such behavior in the future.

The activity of ACA has been positively evaluated from different institutions. The Consumers Protection Office, an independent association of consumers, has awarded the Competition Authority with the European Consumers Award for three years in a row as one of the best public authorities in safeguarding consumers’ interests. The European Commission, in its progress reports, has also recognized the progress of Albanian Competition Authority.

III. CHALLENGES FACED AND THE WAY FORWARD

The implementation of competition law in Albania has come a long way since the first law was approved in 1995—from an almost non-existent policy to an implementation largely in line with the EU *Acquis*.

However, in practice there are many challenges of implementing the law. The structure of the Albanian economy is favorable for the cooperation of businesses as many important markets are oligopolistic in their nature, with few important players. Finding evidence of coordinated behavior in these markets is very difficult because of the lack of reliable data received from companies as well as public institutions. There is also a lack of complaints from individuals and undertakings regarding situations that fall in the scope of competition law.

This latter problem is a sign of a lack of competition culture and awareness of the damages that come from the impediment of free and effective market competition. However the number of complaints is rising, showing that cultural awareness is rising, and also that trust of individuals and undertakings in the role of the Competition Authority is increasing. It is very important for the Competition Authority to be involved in cultural and awareness-raising

⁴ The liberalization clauses, in line with article 106 of the TFEU, were introduced with the amendments of the competition law in autumn 2010.

activities because its role as an “arbiter” of competition rules in the market is crucial for the businesses themselves.

Cooperation with other institutions is very important for the successful application of the competition law in Albania. The Competition Authority has issued many decisions regarding recommendations on laws and bylaws that may affect competition in the markets. Full implementation of these recommendations will prevent the negative impact of legislation on competition. However, not all legislation is sent to the Albanian Competition Authority in order to review its impact on competition. And not all recommendations of the Competition Authority are implemented by the competent authorities.

Although Albania is a country with a very high degree of liberalization in its economy, there are yet some “dark spots.” In some cases, exclusive rights granted through concession agreements may have detrimental effects for the competition in the relevant market.

Competition law as an academic discipline in Albania is still limited. There are few courses of competition law and also few publications in this area. This shows that there is a need to support the research community as to the development of competition law and, also, to support practitioners in their efforts to become more involved in academic research of competition law.

The role of the courts is one of the most important ones for a proper implementation of competition policy in Albania. The Competition Authority has won many important cases but has lost other important ones. In some of these cases the decision arguments were not clear enough to be useful for the future work of the Authority.

Another major issue is the long time needed for completing all phases of the judicial review. The process may last for different years. However, it is expected that this situation will be improved because of expected reform of the administrative justice system in Albania.

In order to have a successful implementation of competition law and policy in Albania there is need for an integrated approach of all related instruments foreseen in the law, as well as in all related policies and institutions. All these elements should be in place in order to assure a really free and effective competition in the Albanian marketplace.