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## Global Forum on Competition

### **USING MARKET STUDIES TO TACKLE EMERGING COMPETITION ISSUES – Contribution from Albania**

- Session IV -

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This contribution is submitted by Albania under Session IV of the Global Forum on Competition to be held on 7-10 December 2020.

More documentation related to this discussion can be found at: [oe.cd/mktcomp](http://oe.cd/mktcomp).

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## *Using market studies to tackle emerging competition issues*

### *Market Study in Higher Education Market*

#### **- Contribution from Albania -**

This paper describes the Albanian experience when conducting a market study and a recent market study that has been concluded in the Higher Education Market.

#### **1. Legal Framework and methodology**

1. The Law no.9121 dated 28.07.2003 “On competition Protection”- as amended (competition law) applies to undertakings (any legal or natural person, private or public, which performs an economic activity) and to undertakings association (any kind of legal or factual association, legal or natural person, private or public, profitable or not profitable, which represents the interests of undertakings member), operating in the Republic of Albania.

2. Albanian Competition Authority (ACA) has enforcement powers to identify any violation or distortions of the competition law. Besides, ACA may conduct a market study or open a general investigation in a sector of the economy to get the know-how on markets that weren't previously under investigation. Legal assessment, identification of market players and market shares, market regulators, barriers to entry or exit, and so on are included in the report of market study/general investigation.

3. The legal bases are foreseen on article 28 of the competition law “Responsibilities of the Secretariat..., the Secretariat shall: a) monitor and analyze the conditions on the market to the extent necessary for the development of free and effective competition” (market study); and article 41 of competition law “Inquiries into sectors of the economy” (general investigation): 1. ACA may conduct a general inquiry in any sector of the economy, on its initiative or following a request by the Parliament or other regulators, if the rigidity of prices or other circumstances suggest that competition is being restricted or distorted in the market. 2. ACA may request undertakings or associations of undertakings to provide all the information required for conducting the inquiry. 3. ACA may publish a report on the industry-wide inquiry results. ACA may invite interested parties to comment on the inquiry results.”

4. The methodology that ACA uses on market studies is based on the best practices from the OECD roundtables<sup>1</sup>, the Handbook of the International Competition Network<sup>2</sup>, European Commission publications<sup>3</sup>, also the SCP methodology (structure, conduct, performance).

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<sup>1</sup> <https://www.oecd.org/daf/competition/market-studies-and-competition.htm>

<sup>2</sup> <https://www.internationalcompetitionnetwork.org/working-groups/advocacy/market-studies/>

<sup>3</sup> [https://ec.europa.eu/competition/publications/reports\\_en.html](https://ec.europa.eu/competition/publications/reports_en.html)

5. A market study/general investigation may end up with the Competition Commission Decision either to open, in-depth investigation, or giving recommendations for the market regulators or giving obligations to undertakings to improve the market without using enforcement actions.

## 2. Market Study in the Higher Education Market

6. The Parliament of the Republic of Albania annually assesses ACA activity through publishing the “Resolution for the assessment of ACA’s activity”, and requests ACA to intervene, investigate, or to scan markets that have a high sensibility for the consumers and high social impact. During 2018<sup>4</sup>-2019<sup>5</sup> the Higher Education (HE) sector was requested by the Parliament’s Resolutions to be studied as this sector has a very important role in the overall socio-economic sustainable development and has effects on the entire society.

7. Nowadays the HE main focus is the demand for higher quality HEIs and scientific research-oriented. As stated in European Commission Progress Reports in 2018<sup>6</sup> related to HE: “Albania has made some progress and has some level of preparation in terms of capacity to cope with competitive pressure and market forces within the EU. Albania’s capacity for research, development, and innovation remains low” and in 2019<sup>7</sup>: “...Some progress was made in this area, especially by improving the online application for recognition of diplomas... in implementing curricula and legislation”.

8. These reasons lead the Competition Commission through decision no. 573, dated 26.11.2018 “On opening of General Investigation procedure in the HEI”, as amended, to open a general investigation to assess the level of competition of the services offered in the HE market and to collect know-how from a market that ACA didn’t have any case before.

9. In order to collect all the necessary data, ACA sent Requests for Information (RFI) in both public and private HEIs, Ministry of Education, Sport and Youth (Ministry), and the Agency for Quality Assurance in Higher Education (Agency). The analysis in this market was based on research and qualitative analysis. A questionnaire was conducted as well.

## 3. Legal assessment and Barriers to Entry/Exit of HE

10. In Albania, there are both public and private HEI. The HE market is regulated by law no.80/2015 “On higher education and scientific research in HEI in the Republic of Albania” and all sub-legal acts. This law defines some criteria that have to be met to open a new private HEI according to academic standards, the necessary financial assets that ensure for each registered student to complete the studies, and other criteria related to the quality of the study programs and other activity of the HEI.

11. There are 13 public HEI and 26 private HEI in all territory of Albania. In Tirana, there are 30 HEI, which is the city with the higher number of students compared to other cities in Albania.

<sup>4</sup> <http://www.parlament.al/Files/Akte/20190404150138rezoluta%20e%20AK-se,%20dt.%203.4.2019.pdf>

<sup>5</sup> <https://www.parlament.al/Files/Akte/20200609132733rezoluta%20e%20AK-s%C3%AB,%20dt.%204.6.2020.pdf>

<sup>6</sup> <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf>

<sup>7</sup> <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf>

12. Public HE operates by quotas offered to students based on the results of the State Matura examination, and the choices of the program by the students.

13. Private HEIs are organized in the form of private undertakings as Private Limited Liability companies (Ltd.), Public Limited companies (S.A.), or HEI that function as a non-governmental organization in the form of a Foundation. Private HEIs created as Ltd. or S.A. have a unique identification number (NIPT) of the undertaking registered to the National Center of Business, and that is used for tax purposes. In case they operate as a Foundation they have the NIPT of the Foundation. There are 4 private HEIs (out of 26) that operate as Foundation.

14. Private HEIs can offer possibilities to all interested students also based on their quotas. The main difference between public and private HEIs is related to the pricing of the service offered, private HEIs apply higher fees.

15. In the HE market, there are legal barriers to enter the market due to the legal and regulatory licensing framework and economic barriers because HEIs have significant fixed costs, high variable costs, and high expenditures are needed to develop the necessary infrastructure to secure degrees in specific fields and research. However, in Albania, the high number of HEIs that exist in the market and the fact that HE in the Republic of Albania is a liberalized market shows that fulfilling these types of criteria is feasible and has not limited the entry of new HEI into the market.

#### 4. Market Regulators

16. The Ministry acts as a market regulator with the mission to design and implement policies that ensure the quality of the education system, perspective development of education, respects the interests of the individual, community & society, and equipping them with the necessary knowledge to cope with the requirements of a market economy, in line with national and European priorities, the creation, transmission, development, and protection of knowledge through teaching and services. The Ministry is also responsible for the accreditation, licensing of new HEI, opening, closure of an HEI, reorganization, and opening of new study programs.

17. HEIs are responsible for compiling policies and procedures, in order to ensure internal quality. Ensuring the outside quality is done periodically by the Agency through outside accreditation processes, analytical and comparative evaluations, as well as other processes that promote and improve quality. This evaluation is done every three years by the Agency and is monitored continuously through the National Students Survey.

#### 5. Relevant market and Market structure (supply vs demand side)

18. Defining the relevant market in HE is very difficult in terms of supply and demand side, because of the diversity of study cycles, different programs, and forms of study. The relevant market, in this case, is defined as the market of offering services from HEIs, by including not only the education services but also other services linked to the education in the Republic of Albania.

19. Based on different literature reviews, regarding the market structure, in EU the HE market is considered to be a mix of *monopolistic competition* and *oligopoly*, because of the heterogeneity of the supply side, and a widespread in terms of geographical territory, and programs within a degree. At the same time, the HE market can be similar to an oligopoly as there are significant barriers to entry and barriers to exit.

20. In Albania, the HE market structure is *monopolistic competition* because of the high number of HEIs offering similar study programs but differentiated from the quality services perspective.

21. From the *demand side*, the students want to follow one of the study cycles: bachelor, master, or Ph.D. and one of the forms of studies: part-time or full-time. Private HEIs and public HEIs are substitutes from the demand side as the characteristic of the services they provide and their function is the same but are not substitute regarding the price.

22. From the *supply side*, all HEIs operate in any of the forms like a University, Academia, Higher University Colleges, and Higher Professional Colleges. HEIs compete to gain students, budgets, and professors. Even the competition has been developed, by finding other means to compete, the competition in HE has become institutional, by transforming the way HEI compete with quality rather than pricing. From the supply side, private HEIs are substitutes for public HEIs when they offer the same programs and degrees. Besides, the quality or price of HEIs might be evaluated depending on the academic performance and the level of graduated students with standardized exams. HEIs might compete through choosing better students.

23. From a *consumer's perspective (students)* they can choose between private and public HEIs close to their residence, choose between different programs and cities and switch providers if they find the same product with better quality and lower prices in an alternative HEI. That's why HEIs have to compete with better choices, quality, innovation, and intensity of competition through prices. The fact that private HEIs exist is because students are willing to pay for these alternative services that offer better conditions in terms of infrastructure, than public HEIs. Besides their choices are based on provided information by public institutions like the Ministry and Agency and by HEIs but the information is not full and not transparent, since not all HEIs have published a full price listing for each program or service they provide. Public HEIs are cheaper, and Private HEIs are more expensive. A student can choose an expensive private HEI only if it provides better services than the public one. This information has to be provided correctly and transparent because only this way it can be more reliable and offer better choices.

24. After the data analysis, it results that regarding the market shares calculated based on the number of students, the biggest HEI holds around 20% of the market, and the concentration index  $CR_3$  is approximately 40%, and the HHI index is around 995. This shows that there is no dominant player in the market, and the level of concentration is moderated.

25. Public HEIs have around 83% of market shares in the HE market related to registered students, and private HEIs have 17% of market shares.

## 6. Transparency and information asymmetry

26. According to the OECD<sup>8</sup> report, in education markets exist the problem of information asymmetry. Consumers are likely to have difficulty in observing the quality of the education provided, because the quality of the education may be personal or an idiosyncratic experience, it cannot be assessed without any direct personal experience. This problem of information asymmetry causes the need for review, evaluation, and independent accreditation services.

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<sup>8</sup> [https://one.oecd.org/document/DAF/COMP/GF\(2017\)7/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2017)7/en/pdf)

27. Regarding the information transparency that was checked in the HEIs websites, it resulted that the information was not fully transparent as the HEIs partially publish the study fees but no costs or fees of other services that they provide.

## 7. Studying Fees in public HEI vs. private HEI

28. The studying fee is composed of the registration fee and the tuition fee. The fees for public HEIs are annually approved by a Council of Ministers Decision, where the maximum value is defined for each study program at the same University and between different Universities. The public HEIs are free to appoint their fees below this maximum fee.

29. Private HEIs, which have financial, academic, and organizational autonomy as well as can choose their staff, appoint their fees for each study program, registration fee, and tuition fee.

30. The private HEIs registration fee is on average 7 times higher than the public HEIs registration fee: public HEIs registration fee is 1,600 ALL ~13€ vs. private HEIs registration fee is ~100€

31. The private HEIs tuition fee is around 10 times higher than the public HEIs tuition fee: public HEIs tuition fee is 40,000 ALL ~325€ vs. private HEI tuition fee is ~ 5,000€. Also, private HEIs compete on differentiated prices by applying different tuition fees.

## 8. Recommendations Given

32. This case ended with the Competition Commission Decision no.706 dated “On the closure of the general investigation in the HE market; giving some recommendations for Ministry of Education, Sport and Youth, National Institute for Statistics (INSTAT), public HEIs and private HEIs, as well as giving some obligations to private HEIs” as follows:

### 8.1. To Recommend the Ministry of Education, Sports, and Youth:

1. To conduct a comprehensive market study to define the demand for student/specialist, that should be published **before the beginning of each academic year** and should provide:
  - a) Orientation of HEIs for the opening of new study programs;
  - b) Balancing supply and demand in the labor market;
  - c) Reduction the inflation of professionals in certain degrees;
  - d) Protection of consumer interests, by orienting the demand toward supply, which will guarantee employment in a short time after graduation.
2. To ensure free and effective competition in the market, according to law no. 9121/2003 "On the protection of competition", as amended and law no. 80/2015 " On higher education and scientific research in HEI in the Republic of Albania", the Ministry of Education, Sport, and Youth has to draft and propose the necessary legal framework for funding sources of private HEIs in order to:
  - i) Revenues obtained from these private HEIs from:
    - a) payments of students for education,
    - b) income from services rendered,

- c) income generated from relations with other parties,
  - d) public funds
  - e) donations and other legitimate sources of funding,
  - f) scientific research activities, consultations, as well as any income that are obtained through the activity where the academic staff participates; to be divided between the academic staff and the private HEI, according to the regulation approved by each private HEI.
- ii) Each private HEI has to regulate with their internal acts the way of using the funds created from the above revenues.
  - iii) The deadline for fulfillment of this recommendation is September 2021.
3. To request the evaluation of ACA, according to article 69 of law no. 9121/2003 "On protection of competition", as amended, for each project-normative act that specifically relates to:
    - a) quantitative restrictions concerning trading and market
    - b) establishment of exclusive rights or special rights in certain zones, for certain undertakings or products;
    - c) imposing uniform practices in prices and selling conditions.

## 8.2. To recommend to public and private HEIs:

1. To calculate the cost per student for each study program and to make public tuition fees, for each academic year.
2. To make transparent the usage of their funds by publishing on their official websites.
3. To make transparent the research fund, the criteria and procedures that main units, basic units, and individual researchers have to follow, in order to obtain financial support for scientific research.
4. To enable the provision of information on the quality of the HEI, before the beginning of each academic year to facilitate the choice of customers (students), based on:
  - a) Academic performance of graduate students, as well as the level of their employment in the relevant labor market;
  - b) Evaluation / Reputation of HEIs based on objective data - the existence of research centers, libraries, and laboratories;
  - c) Collaboration with recognized national or international universities or centers;
  - d) General services - campuses;
  - e) Prices as a mechanism to balance supply and demand.
5. HEIs must inform ACA, for the implementation of point II of this decision **within March 2021**.

**8.3. The obligation of private HEIs to:**

1. Separate their economic account with a separate NIPT from the economic account of the undertaking (Ltd. /S.A.) or the Foundation that has created and financed it.
2. The implementation of the obligation of point III.1 of this decision, should be completed **within March 2021**.
3. Private HEIs must inform ACA, for the implementation of this obligation within the deadline defined in point III.2.

**8.4. To recommend to the National Institute for Statistics (INSTAT):**

1. Collect data on higher education and enable the provision of comparative information on the quality of HEIs for each academic year, to facilitate student's choices, for:
  - a) graduates level of employment in certain areas; and
  - b) their profiles in the relevant domestic labor market.

**8.5. The Competition Authority will address the Ministry of Education, Sports, and Youth in case of non-compliance with points II and III of this decision by HEIs, which violates free and effective competition in the market, requesting their fulfillment.**

33. Monitoring the implementation of this decision by Ministry, public and private HEIs, and INSTAT for a period of 2 years.