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**INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATORS –  
Contribution from Albania**

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This contribution is submitted by Albania under Session III of the Global Forum on Competition to be held on 1-2 December 2022.

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

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## *Interactions between Competition Authorities and Sector Regulators*

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

1. This paper describes the Albanian experience in the way the activity of the Albanian Competition Authority (ACA) is engaged in interactions with the sector regulators while enforcing the competition law and advocacy, in regulated markets.

#### **1. Legal Framework and forms of cooperation**

2. Law no. 9121/2003 "On Competition Protection" applies to undertakings (public or private, and association of undertakings) operating in all sectors of the economy, even in regulated markets, within the Republic of Albania. The ACA established in 2004, enforces the law no. 9121/2003 and over the years has strengthened the collaboration with market regulators.

3. The market regulators in the respective fields mostly are:

- The Authority of Electronic and Postal Services (AKEP) in the telecommunication and postal markets; The Bank of Albania (BoA) in financial and banking markets; The Authority of Surveillance for Financial Market (AMF) in financial and insurance markets;
- The Energy Regulator Authority (ERE) in natural gas and electricity markets;
- The Water Regulator Authority (ERRU) in water supply and wastewater disposal and treatment Sector;
- The Agency of Public Procurement (APP) in public procurement markets;
- The Audiovisual Media Authority (AMA) in the activity of the audiovisual media and their supporting services;
- The Albanian Civil Aviation Authority (ACAA) in the air transport markets;
- The Port Maritime Authority of Durrës (PMA), the Port Maritime Authority of Vlora (PAV), and the Port Maritime Authority of Shëngjin (PASH) in the maritime transport market;
- Ministries of Lines that are responsible for transport, energy, agriculture, mining, and so on.

4. The ACA intervenes in markets *ex-ante* while assessing the legal barriers to entry, or *ex-post* while assessing complaints, monitoring and investigating the markets on antitrust or merger and acquisition cases.

5. As stated in law no.9121/2003 article 69, the ACA assesses the degree of restriction or prevention of competition brought by draft normative acts by central and local administration which, in particular, includes: a) quantitative restrictions concerning trading and market access; 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.

6. Besides based on article 70 in law no.9121/2003, the ACA has its role within the regulation and regulatory reform (RIA) especially: When carrying out the assigned tasks related to the regulation of economic activity within the Republic of Albania, central and local administration bodies, regulatory entities shall ensure fair and effective competition. The ACA assesses the regulatory barriers to competition incorporated in the economic and administrative regulations, for reasons of protecting a general economic interest. In this case, the ACA issues appropriate recommendations. The ACA while enforcing law no.9121/2003 in regulated sectors, co-operates with regulatory bodies and other regulatory institutions.

7. Another aspect of the ACA, that cooperates with market regulators on *ex-post* is related to exemptions of individual agreements based on article 5 of law no.9121/2003 “Exemptions of Individual Agreements” and article 6 of law no.9121/2003 “Exemptions of Categories of Agreements” the Competition Commission is entitled to adopt regulations on the categories of agreements to be excluded from the prohibition. When adopting these regulations, the ACA depending on the category of the agreements collaborates with the market regulator. Nowadays the ACA has in place several categories of agreements as follows:

- on the implementation of article 101(3) TFEU for categories of vertical agreements and concerted practices;
- on the implementation of article 101(3) TFEU for categories of vertical agreements and concerted practices in the motor vehicle sector;
- on the implementation of article 101(3) TFEU for several categories of agreements, decisions and concerted practices in the insurance sector;
- on the implementation of article 101(3) TFEU for several categories of agreements, decisions and concerted practices in the air transport sector;
- on the implementation of Article 81(3) of the Treaty on certain categories of agreements, decisions and concerted practices between maritime transport undertakings;
- on the implementation of article 81(3) of the Treaty on certain categories of agreements, decisions and concerted practices between maritime transport undertakings (consortium);
- on the implementation of article 101(3) TFEU for some categories of specialization agreements; on the implementation of article 101(3) TFEU for some categories of research and development agreements;
- on the implementation of Article 81(3) of the Treaty on categories of technological agreements.

8. While assessing the M&A, based on articles 10-12 of law no. 9121/2003 “Concentrations of Undertakings”, depending on the market, the market regulator has to provide a consent before the competition authority issue a decision on matters of mutual relevance (for example, M&A in the banking sector and insurance sector, the BoA has to provide to the ACA a written consent for banks, non-financial economic operator, or insurance undertakings that are part of a merger; in Telecommunication market the AKEP has to provide a written consent to the ACA that the merging parties are licensed and allowed to participate in a merger).

9. Furthermore when assessing the complaints based on article 29/1 of law no.9121/2003 “Complaint Handling”, and during general investigations as foreseen in article 41 of law no.9121/2003 “Inquiries into sectors of the economy”, and during antitrust investigations based on article 42 of law no.9121/2003 “Preliminary Investigations” and article 43 of law no.9121/2003 In-Depth Investigations, the ACA sends a request for information to market regulators to gain information on the market operators, and legal basis in force and as well as end the investigations by issuing decisions with recommendations.

10. The ACA, during the years, has signed many Memorandums of Understanding (MoUs) with the market regulators mentioned. In the MoUs collaborations are described especially in the form of mutually exchange information on special issues, for which the institutions have a common interest, in compliance with the competition law and sector laws; mutually exchange acts, legal or regulatory interpretations related to sector and competition; organize and participate in joint meetings for the improvement of work in terms of fulfilling the obligations arising from the relevant legislation; organizing any other form of cooperation and exchanges.

11. The market regulator based on the MoU is obliged to send to the ACA any case, which constitutes an indication of a prohibited agreement or abuse of the dominant position by operators exercising their activity in the sector, as well as to cooperate with the ACA to identify cases of prohibited agreements or abuse of a dominant position and forward them for an investigation to the ACA.

12. The MoU also includes the general rule of exchange of information that can be written or electronic. To increase the efficiency and function of the dynamics of the investigated issues, both the ACA and the market regulator have appointed a contact person responsible for the implementation of the MoU and for fast, concrete, and effective communication and exchange of the data.

## 2. Co-operation in practice

13. In terms of operating in practice, the ACA cooperates in three forms:

- *Ex-ante*: The market regulators bring to the ACA legal acts in advance to be assessed if they contain any competition concerns. The ACA after evaluating the legal acts releases a Competition Commission Decision with the recommendations. Collaboration with ERE and ERRU is more frequent, smoother, and more effective: From 2017-2022 the ACA has assessed 165 (hundred and sixty-five) draft normative acts in the energy market for ERE, under Law No. 43/2015 "On the Electricity Sector", Law 102/2015 "On the Natural Gas Sector" and Law No. 138/213 "On Renewable Resources". From 2017-2022 the ACA has assessed 32 (thirty-two) Draft normative acts in the sector of water supply and removal of water treatment, according to law no. 8102, dated 28.03.1996 "On the regulatory framework of the sector of water supply and wastewater treatment:
- *Ex-Post*: During the assessment of the complaints as well as during investigation procedures the ACA request for information from the market regulator to provide the relevant data on market functioning and operators. Generally, the market regulators engage to provide the necessary data within the procedural deadlines. Collaboration has been very effective with them in terms of providing the data. On the other hand, after the investigations finishes, and it concludes that there might be barriers to entry subject to the legal acts, the ACA may recommend to the market regulator to take the necessary measures to regulate the market. The Competition

Commission issues decisions with recommendations to market regulators. The implementation of these recommendations mostly delayed or not partly fulfilled by the market regulators

- *Other Collaboration:* Besides the ACA collaborates with the Market Regulators by participating in mutual events and conferences that both institutions organize. The round tables are a tool that the Market regulator can engage to commit to regulate the market and to restore the competition.

14. The ACA monitor yearly the implementation of former recommendations, but this is still a challenge, even after gatherings in mutual roundtables. From 2018 the ACA issued a total no. 25 decisions of recommendation to market regulators, as follows: to the AKEP 7 (seven) decisions; to the BoA 5 (decisions); to the AMA 2 (two) decisions; to the APP 3 (three) decisions; to the PMA and to the Ministry of Infrastructure and Energy 7 (seven) decisions.

### 3. Final Remarks

15. Although collaboration with the market regulators has been fostered over the years, the main challenge of the cooperation between the competition law and market regulators, remains the fulfillment of the recommendations given by the ACA to the market regulator.