

COMMENT

Competing to Reform: An Analysis of the New Competition Law in Albania

Irena Dajkovic*

Overview

Competition law comprises a set of rules that affect all aspects of the economy. Its context varies from one country to another,¹ depending on the particular need of a given country,² and its regional and international aspirations and obligations. In this context, all of the

* Associate, European Bank for Reconstruction and Development (EBRD); Ph.D. Fellow, University Panthéon – Assas (Paris II). The views expressed in this article are those of the author and do not necessarily reflect the views of the EBRD. The author is grateful for helpful comments from Edlira Baraj, Director, Competition Department, Ministry of Economy, Tirana, Albania and Paul Moffatt, Counsel, EBRD.

1 Though the current trend of harmonising global business law and, *inter alia*, competition law reduces the differences between national competition laws resulting in a similar competition law context. For discussions surrendering this issue, see Prof. Louis Vogel, *Droit Global/Global Law Volume II, La globalisation du droit des affaires: mythe ou réalité?* (Panthéon – Assas, 2001); Joseph Wilson, *Globalization and the Limits of National Merger Control Law* (Aspen, 2003).

2 For more information on the debate of whether small economies need a competition policy, see Michael S. Gal, *Competition Policy for Small Economies* (Harvard University Press, 2004). For information on the debate about whether eastern Europe needs antitrust laws, see Paul Godek, “Protecting Eastern Europe from Antitrust”, *Regulation* (Fall 1992) and Russell Pittman,

latest wave of EU accession countries, which belonged in the twentieth century to the so-called “soviet bloc”,³ have adopted modern EU compliant competition laws and established attendant institutions as part of the harmonisation of their legal framework with the *acquis communautaire*.⁴ The legal basis of this harmonisation is grounded in the European Association Agreement,⁵ subsequently enhanced and reinforced by the EU Commission’s White Paper on the “Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union”.⁶

“Abuse-of-Dominance Provisions of Central and Eastern European Competition Laws: Have Fears of Over-Enforcement Been Borne Out?”, US Dept of Justice Economic Analysis Group Working Paper No.04-1, January 26, 2004 (<http://ssrn.com/abstract=494862>). See also Eleanor Fox, “The Central European Countries and European Union’s Waiting Room: Why must they adopt the EU’s Competition Law?” in *Competition and Economic Integration in Europe* (Edward Elgar, 1998).

3 The EU accession countries are: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia. Cyprus and Malta did not belong to so-called “soviet bloc”.

4 The *acquis communautaire* is defined as “the body of common rights and obligations which bind all the Member States together within the European Union. It is constantly evolving and comprises: the content, principles and political objectives of the Treaties; the legislation adopted in application of the treaties and the case law of the Court of Justice; the declarations and resolutions adopted by the Union; measures relating to the common foreign and security policy; measures relating to justice and home affairs; international agreements concluded by the Community and those concluded by the Member States between themselves in the field of the Union’s activities. Thus the Community *acquis* comprises not only Community law in the strict sense, but also all acts adopted under the second (the common foreign and security policy) and third (police and judicial co-operation in criminal matters) pillars of the European Union and the common objectives laid down in the Treaties” (see, <http://europa.eu.int/scadplus/leg/en/cjg/4000c.htm#c16a>). The analysis of EU competition law influence in accession countries is beyond the scope of this article. However, the author has undertaken a research project entitled “Influence of the EU law on the competition law in Eastern European Countries”, not yet published.

5 e.g. Art.68, Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part (Poland Europe Agreement): “The Contracting Parties recognise that the major precondition for Poland’s economic integration into the Community is the approximation of that country’s existing and future legislation to that of the Community. Poland shall use its best endeavours to ensure that future legislation is compatible with the Community legislation”, signed December 16, 1991 in Brussels and entered into force February 1, 1994 [1993] O.J. L348/2. For more information, see Kirstyn Inglis, “The Europe Agreements compared in the light of their pre-accession reorientation” (2000) 37 C.M.L.Rev. 1173–1210.

6 COM (95), 163, Final, May 3, 1995. White Papers are documents containing proposals for Community action in a specific area. They sometimes follow a Green Paper published to launch a consultation process at European level. While Green Papers set out a range of ideas presented for public discussion and debate, White Papers contain an official set of proposals in specific policy areas and are used as vehicles for their development.

This article focuses on Albania, a European country which, although neither a party to Europe Association Agreements or formal accession negotiations has, nonetheless, endeavoured to adopt, in detailed manner, the principles and provisions of EU competition law.⁷ Given the fact that Albania was, in previous decades, pointed to as one of the worst examples of the communist economic system, recent legislative and framework revisions represent a significant improvement and appear to be a direct consequence of the Albanian Government's efforts to introduce a market economy. This article seeks to analyse the new Albanian competition framework and will look at its approximation with EU law, together with proposing further steps for the modernisation and Europeanisation of its competition law regime.

Introduction

The Albanian economy has gone through many important changes during the last decade. Changes in the economic system have led to a number of sectoral reforms, including those in the market and regulatory environments. Competition is a core element of these changes. Given that foreign investors are mainly attracted by an open market, competition reform, in any country, must include not only the adoption of competition legislation, but also the elaboration of a well defined competition policy, the creation and maintenance of a competitive environment and, in parallel with such reform, the establishment of a modern legal and institutional framework capable of supporting these developments.⁸

What is the situation currently in Albania in the competition reform field?

In 2002, the EU Stabilisation and Association Report for Albania concluded that "the development of competition policy in Albania remains at an early stage,

despite the existence of basic legislation since 1995. Implementation is weak, due in particular to the clearly insufficient resources devoted to this area. [Although the law provides for establishment of an independent Competition Office, this structure does not yet exist and competition issues are dealt by the Department of Economic Competition within the Albanian Ministry of Economy.]⁹ This department remains poorly staffed and, as a result, enforcement of the law is extremely limited."¹⁰

A similar conclusion was drawn by the European Bank for Reconstruction and Development (EBRD). As part of its transition assessments,¹¹ the Bank scored Albanian competition policy "2–" (*i.e.* 2 minus)¹² in 2003, a mark which could be understood as indicating a grossly deficient law. Although the legal framework (*i.e.* "the law on the books") is just one of the components in the scope of the EBRD survey, it should be noted that the survey, organised in the course of 2003, did not consider the more recent legislative changes, *i.e.* adoption of the 2003 competition law. These findings have also been, indirectly, supported by the Albanian Competition Department itself, which noted the following major weaknesses of the competition structure in Albania: (i) lack of an appropriate legal framework; (ii) lack of an independent institution; (iii) lack of sufficient

9 The sentence of the Report in square brackets has been duly contested by the Albanian Competition Department, as legally incorrect, in a letter sent to Brussels—in particular, the letter asserted that there was no provision of the former 1995 Competition Law providing for establishment of an independent competition office. Art.57 of the above law stipulated: "The Economic Competition Directorate, created to protect the competition, is a public institution under the dependence of the Minister of Trade and it is managed by the General Director".

10 See EU Commission's Stabilisation and Association Report of April 4, 2002, COM (2002) 163, p.24.

11 See EBRD Transition Report 2003. For more information on EBRD involvement in the field see M. Vagliasindi, "Competition Policy across transition economies" [2001] *Revue d'Economie Financière* 215–250; Maria Vagliasindi and Laura Campbell, "The EBRD: promoting competition through transition", *Law in Transition*, Spring 2004; Irena Dajkovic and Paul Moffatt, "Transition to a competitive telecommunications market—the application of competition rules into telecommunications sector", *Law in Transition*, Spring 2004, EBRD.

12 The marking system used by the EBRD is as follows: (i) mark "1" is granted when there is no competition legislation or institutions; (ii) mark "2" is granted when competition policy legislation and institutions are set up; there is some reduction of entry restrictions or enforcement actions on dominant firms; (iii) mark "3" is granted when some enforcement actions are taken to reduce abuse of market power and to promote a competitive environment, including the break-up of dominant conglomerates and substantial reduction of entry restrictions; (iv) mark "4" is granted when significant enforcement actions are taken to reduce abuse of market power and to promote a competitive environment; and (v) mark "4 +" is granted when standards and performance are typical of advanced industrial economies: effective enforcement of competition policy; unrestricted entry to most markets.

7 Albania did, however, sign the Trade and Co-operation Agreement on October 26, 1992 [1992] O.J. L343/1 (of a different nature to the European Association Agreements). Since 1999 the relationship between Albania and the EU has been governed by the Stabilisation and Association process. In January 2001, the President of the European Commission, Romano Prodi, officially launched the negotiations for a Stabilisation and Association Agreement between the EU and Albania. These negotiations are presently ongoing. For more information see Stabilisation and Association Report 2003 (http://europa.eu.int/comm/external_relations/see/albania/index.htm).

8 For more information, see John Fingleton, Eleanor Fox, Damien Neven and Paul Seabright, *Competition Policy and the transformation of Central Europe* (Centre for Economic Policy Research, 1996).

and qualified staff; (iv) lack of financial resources in conducting surveys for market data collection.¹³ While some of these deficiencies appear to be resolved by the recent legislative changes, others will depend on the general growth of the Albanian economy¹⁴ and the practical implementation of the formal changes made to the competition framework over the medium to long term.

The recent legislative changes relate to the adoption of a new Law “On Protection of Competition” of July 28, 2003, No.9121, which entered into force on December 1, 2003 (the “2003 Law” or “new law”).¹⁵ This law fully replaced the previous Law “On Competition” of December 7, 1995, No.8044, (the “1995 Law”), generally considered as insufficiently applied given its ambiguity and apparent contradictions.

The initiative for the revisions to the competition legislation came from the Competition Department of the Albanian Ministry of Economy and the drafting work largely involved the assistance of the *Deutsche Gesellschaft für technische Zusammenarbeit* (GTZ).¹⁶ The new law, mainly based on EU competition rules, aims to improve the legal and institutional framework for competition in Albania and permits improved implementation of competition policy. As in a number of other eastern European countries,¹⁷ the 2003 Law deals solely with economic competition, leaving unfair competition to the competency of Albanian Civil Code.¹⁸

13 “Discussion paper—Contribution from Albania”, OECD Forum February 2004 (www.oecd.org/dataoecd/49/48/24742637.pdf).

14 It has been noted by Albanian representatives (see n.13 above) that a small country such as Albania “can afford a competition authority of a small size”. Although the resources available for implementation of competition policy in one country can reflect the political priority that such a policy has in that country, lack of such resources should not constitute the main rationale for impediment to competition.

15 For the purpose of facilitating the easy passage of the law through Parliament, its draft was discussed with a number of the relevant institutions, directly or indirectly associated to competition issues. See also Discussion paper, n.13 above.

16 The GTZ (German society for technical co-operation) is the German government agency for international co-operation with worldwide operations.

17 Although in the light of EU enlargement the reference to “eastern European Countries” appears somewhat archaic, the wording has been used for consistency with others of the author’s research projects. These countries are: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, FYR Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyz Republic, Latvia, Lithuania, Moldova, Poland, Romania, Russian Federation, Serbia and Montenegro, Slovak Republic, Slovenia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

18 The following eastern European countries separated their economic competition legislation from unfair competition: Albania, Azerbaijan, Belarus, Bosnia and Herzegovina, Czech Republic, Croatia, Kazakhstan, Poland, Romania, Slovenia and Slovak Republic. On the other side, the countries which deal with both

Such division of competence is a significant departure from the former 1995 Law.¹⁹

As an obvious improvement, compared with the 1995 Law, the 2003 Law provides for a range of comprehensive definitions. Moreover, unlike its predecessor, the 2003 Law applies to any entity, public or private, engaged in commercial activity, as well as to any associations thereof. Similar to the old framework, in addition to entities established in Albania, the law is applicable to foreign entities whose activities have an effect on the Albanian market (“effect doctrine”).

While, like its predecessor, the 2003 Law applies to agreements and concentrations between entities²⁰ engaged in commercial activity, the significant novelty attaches to the introduction of the concept of abuse of dominant position and the provision of a legal basis for an independent competition authority. These changes, on the face of it, appear to reflect current thinking that the dynamic and constantly changing nature of the modern marketplace requires a continuously evolving competition policy and legal framework.

I. Agreements

More than a decade ago the level of detail required for the alignment of an accession country’s competition legal framework to that of the European Union led to heated discussions throughout central and eastern Europe. One of the most pressing questions was: should the drafters “transfer” every single detail of *acquis communautaire* without deeply examining the competition-related issues which could arise in a particular country, and which—in the majority of cases—arose

economic and unfair competition in one single text of law are: Armenia, Bulgaria, Georgia, FYR Macedonia, Hungary, Kyrgyz Republic, Estonia, Lithuania, Latvia, Moldova, Russian Federation, Tajikistan, Uzbekistan and Russian Federation.

19 See 1995 Law, Pt IV, Ch.I entitled: “Prohibition of illegal acts towards consumers”. Not all commentators share the opinion that two types of law should exist in eastern Europe: those relative to unfair competition on one side, and those aiming to combat restraints on competition on the other side. See, e.g. Prof. Rolf Knieper and Mark Boguslavski, “Concept for Legal Counselling in Transformation States” in *Making Development Work (Legislative Reform for Institutional Transformation and Good Governance)* (Kluwer Law International).

20 The wording “concentration between entities” has its origin in the French wording “*la concentration des entreprises*” and has been used in English version of EU competition law. This is a striking example where EU law has conceptually and linguistically influenced the Albanian legal framework. While official English translations of certain eastern European countries laws refer to mergers—to be understood in its widest sense—others such as Albania, opted to refer to “concentration of entities” or “concentration of undertakings”.

because of specific legal frameworks applying in eastern Europe prior to the demise of the Soviet Union?

More particularly, in a specific area such as competition law, the question was whether legislative drafters should, in the process of harmonisation, refer solely to the EU Treaty and attendant regulations or also include reference to the European Commission's guidelines and the European Court of Justice's jurisprudence? More to the point, what character should competition law have: strict or lax?

While these questions have been largely dealt with, in one way or another, in the context of the greater accession process,²¹ these issues are currently still animating discussion in a number of countries, both within and without the accession grouping; Albania is a recent such example.

Following the model of EU competition law, the 2003 Law is relevant to any type of agreement: formal or informal, tacit or explicit, horizontal (*i.e.* agreements between entities operating on the same level of production) or vertical (*i.e.* agreements between entities operating on different levels of production) which may prevent, restrict or distort competition in the market. Unlike the 1995 Law, the application of the law is no longer restricted to particular sectors, such as the agriculture, forestry or food sectors.²² Furthermore, the new legislation also extends to entities in public services, including electricity, gas and water.²³

A particular novelty of the law is the introduction of a *black list* (agreements falling under the black list are prohibited and are void) and a *grey list* (agreements falling under the grey list are invalid unless the competition authorities issue an exception list).²⁴ To obtain an

exception, entities must notify their agreements to the competition authority. While the law provides for specific treatment of agreements on intellectual and industrial property rights, for which the exception is granted automatically if the competition authority does not reply within three months of notification,²⁵ all other agreements falling under the grey list must be explicitly exempted by the competition authority in order not to contravene the law. It is notable that the new law does not provide for a white list (agreements not restrictive of competition, *per se*). Given the relative infancy of the new law and its application it remains to be seen how the new competition authority will deal with agreements that do not fall under the black or grey lists.

II. Concentrations

A very important innovation in the new law concerns concentration of undertakings. A number of clear provisions have been incorporated in the new Albanian competition framework enabling such concentrations to take place effectively. In this respect the new law appears to have, essentially, replicated the provisions of EU Council Regulation 4064/89.²⁶ That Regulation and its subsequent amendments defines an operation of concentration as: (i) the merger of two or more undertakings or parts of undertakings hitherto independent of each other; (ii) any transaction when one or more undertakings acquires, directly or indirectly, a controlling interest in all or parts of one or more undertakings; or, (iii) joint ventures exercising all the functions of an autonomous economic entity. The EU definition of control has also been introduced in the new law. Such inclusion of EU provisions in this respect has not been the norm in certain other eastern European laws, where interaction with the relevant commercial code did not permit the introduction of the EU "control of undertaking" definition.²⁷

identity and reputation of network in case of franchise); grey clauses include those which, although restrictive of competition, can benefit from an exception. Although the law refers to agreements, if the Albanian Civil code permits (it is often arguable whether an agreement can remain valid where particular clauses are severed therefrom), relevant prohibitions should be interpreted as only referring to clauses that violate the law and not the entire agreement.

25 2003 Law, Arts 7 and 50.

26 [1989] O.J. L395/1, amended [1990] O.J. L257/13, and modified by Reg. 1310/97 [1997] L180/1. Since then, new Council Reg.139/2004 on the control of concentrations between undertakings has been adopted [2004] O.J. L24/1, which came into force on May 1, 2004.

27 *e.g.* Czech Republic.

21 This does not mean that competition law in accession countries gained a definite form. As mentioned in the introduction, competition law is an economic legal field which is continuously subject to permanent modifications and adaptations to market requirements. While a very specific law requires constant modifications, only a very generalised and non-detailed competition law could potentially not require such modification. It is to be noted, however, that in a number of eastern European countries policy-makers have chosen the option of a "specific law" as opposed to "non-specific law". This choice has been motivated by concerns such as: competition law is an unknown field to the judiciary and providing them with substantial powers for implementation could lead to abuse; and, practitioners need specific reliable guidelines as competition law represent a new area for them as well.

22 1995 Law, Art.51.

23 *ibid.*, Art.52.

24 The concept of black, grey and white lists has its origin in EU block exemption regulations adopted in the field of distribution and intellectual property, which distinguish three types of clauses: black, grey and white. The so-called black clauses do not benefit from any block exemption (*e.g.* clause on exclusive purchase, on exclusive distribution or clause limiting price setting freedom of franchisee or licensor); white clauses are those which do not restrict competition (*e.g.* referring to maintaining

The new law replaces the previous merger notification threshold and establishes a new one requiring approximately €500 million (Lek 70 billion) annual worldwide turnover for all entities involved in the concentration (or €5.8 million (Lek 800 million) annual turnover in Albania for all entities involved in the transactions) and approximately €3.6 million (Lek 500 million) annual turnover in Albania for one of the entities involved in the transaction.²⁸ In the new law legislators have duly decided to specify a methodology for calculation of turnover, including situations when participating undertakings (which are also defined)²⁹ are part of a group, as well as for the turnover of credit institutions, other financial institutions and insurance undertakings.

The new law provides for a pre-merger notification procedure. The competition authority must decide on a concentration within a two-month period from the notification. At the end of such period the competition authority is required to take a decision on the proposed merger: either to continue its investigation for another three months or to issue an authorisation.³⁰ If the authority fails to take any decision within two months of the notification, the proposed concentration becomes effective and operational.³¹

III. Abuse of dominant position

This is also an area where core changes to the legislation have been made. Most notably, a dominant position is no longer prohibited *per se*.³² Unlike its predecessor law, the new legislation prohibits only the abuse of a dominant position and provides for a non-exhaustive list of examples of such abuse.³³ It can be further noted that

28 2003 Law, Art.12.

29 The definition of participating undertaking, provided by 2003 Law, Art.12(3) includes: (i) the undertakings merged, in the case of a merger; (ii) the undertakings which acquire control and those subject to the control, in the case of control of acquisition; (iii) part of the undertaking, if the transaction has influence on it.

30 2003 Law, Art.56.1.

31 *ibid.*, Art.56.3.

32 1995 Law, Art.5 states: "Commercial companies which exert an economic activity and have a dominate position are obliged to split in parts in such a way that newly independent companies that are created gain economic independence and preserve their competitive abilities".

33 2003 Law, Art.9.

provisions implementing the concept of "essential facilities"³⁴ have been included in the body of the new law.³⁵ The decision whether or not to incorporate this provision in the main competition law, given its jurisprudential origin in the European Union itself and its sensitive anti-monopolistic character, has been debated in a number of eastern European countries. For example, a similar provision was removed from the draft Czech Competition Law after heated debate in the Parliament.³⁶ Currently, it continues to be discussed by legislators and may be added as a future amendment to the Czech law.

IV. A new competition authority and its increased powers

Much has already been written on the importance of institutional building in eastern European countries and this article does not seek to repeat it. However, it is worth emphasising that successful market openness should be accompanied by full regulatory reform, including an adequate legal framework and strong, independent and democratic implementing institutions, specifically sector-specific regulators and competition authorities. It would appear that the legislature has followed western models with respect to the new competition authority.

Increased enforcement measures

Unlike its predecessor law, which did not provide for appropriate powers of investigating and imposing sanctions, the new law provides such increased enforcement powers. An investigation can now be opened by the competition authority not only on the basis of a formal

34 The theory of essential facility has been progressively introduced into EU law mainly through the EU Commission's decisions and mostly under the name of essential infrastructure. For further references see M. Furse, "The essential facility doctrine in the community law" [1995] E.C.L.R. 469-473; D. Glasl, "Essential Facility doctrine in EC antitrust law: a contribution to a current debate" [1994] E.C.L.R. 463-473.

35 2003 Law, Art.9(2): "Such abuse may, in particular, consist in: . . . refusal to allow another undertaking access to its own networks or other infrastructure facilities of undertakings with a dominant position, against adequate remuneration, provided that without such concurrent use the other undertaking is unable to operate as a competitor of the undertaking with a dominant position".

36 The Czech Competition Law entered into effect in July 2001. For more details see JUDr. Jindřiška Munková, "Czech Republic: Competition rules in transition", *Law in Transition*, Spring 2004.

complaint but also by the authority *ex officio*.³⁷ Further, the new law empowers the competition authority to enter into premises during an investigative procedure,³⁸ seize documents to be accepted as evidence in proceedings,³⁹ compel witnesses to testify or require sanctions to be imposed for a delayed or incomplete provision of relevant documents⁴⁰ by the entity being investigated.

Generally, the sanctions provided for in cases where entities contravene the legislation, range from fines (which have been increased by the new law),⁴¹ obligations to act or refrain from acting in a particular manner, interruption of contractual relationships, to ordering concerned entities to take the necessary steps to restore the *status quo ante*, in particular to conduct the separation of merged entities or rescind from participations or acquired assets.⁴² Criminal responsibility can no longer be imposed in the case of violation of Albanian competition law.

Following a strategy of seeking to reinforce overall enforcement of competition legislation, the new law provides for a significant element of judicial remedy. Parties who have suffered loss through anti-competitive behaviour of a particular entity can seek compensation against that entity from the civil chamber of the First Instance Court of Tirana District. This entitlement to seek a judicial remedy is in addition to the traditional administrative procedure before the competition authority⁴³ and such procedure can run independently of the administrative procedure(s) undertaken by the competition authority.⁴⁴ However, the requests for exemption from prohibition of an agreement and the procedures on control of concentrations are not within the jurisdiction of the courts.⁴⁵ The effectiveness of this new mechanism is yet to be observed.

Establishment of an independent competition authority

An additional core change to the legislation is the revision of the institutional structure responsible for application of the competition law. Unlike the pre-existing structure, where the Directorate of Economic

Competition was part of the Ministry of Economy,⁴⁶ the new law provides for an independent competition authority,⁴⁷ directly appointed by and accountable to the Albanian Parliament.

The new competition authority is to be comprised of two bodies, the Commission and the Secretariat.⁴⁸ The Commission will be the decision-making body of the authority (elected by the Parliament),⁴⁹ whereas the Secretariat is the administrative and investigative body (*i.e.* having market monitoring and investigative powers).⁵⁰ The duties and responsibilities of each body are regulated by the new law.

Based on the investigation results provided by the Secretariat, the Commission can adopt appropriate decisions, which can be appealed within 30 days of the notification of the decision at the administrative chamber of the First Instance Court of Tirana District.⁵¹

The new law also provides all due procedures that allow the effective investigation of cases, fines categorised according to seriousness of infringements,⁵² and provisions related to leniency.⁵³

Another area of the new law which is also worthy of note relates to specific provisions on co-operation between the competition authority and other institutions. This co-operation includes exchange of information with corresponding authorities,⁵⁴ suspension or termination of proceedings in co-operation with other authorities,⁵⁵ the nature of the relationship with other regulatory authorities,⁵⁶ and provision for other bodies to seek the competition authority's opinion on any relevant issues.⁵⁷ The latter provision is of particular importance in the light of international competition advocacy developments.⁵⁸ Relations with other national regulatory bodies are also a crucial point supporting an

37 1995 Law, Art.60.

38 2003 Law, Arts 36 and 37.

39 *ibid.*, Art.38.

40 *ibid.*, Art.63.

41 *ibid.*, Arts 73, 74, 75, 76, 78, 79, 80.

42 *ibid.*, Art.62.

43 *ibid.*, Arts 65–68.

44 *ibid.*, Art.65.

45 *ibid.*, Art.65(3).

46 1995 Law, Art.57.

47 2003 Law, Art.18.

48 *ibid.*, Art.18.

49 See, in particular, *ibid.*, Arts 19–26.

50 See, in particular, *ibid.*, Arts 27–29.

51 *ibid.*, Art.40.

52 *ibid.*, Arts 73 and 74.

53 *ibid.*, Art.77.

54 *ibid.*, Art.71.

55 *ibid.*, Art.72.

56 *ibid.*, Art.70.

57 *ibid.*, Art.69.

58 "Competition advocacy refers to those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanism, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition", definition provided by International Competition Network, Questionnaire on Competition Advocacy (www.internationalcompetitionnetwork.org/advocacyquestionnaire.pdf).

effective and unambiguous application of the legal framework.⁵⁹

V. Future challenges

The new basis for the implementation of competition policy in Albania has now been established. Going forward, it is crucial that these foundations continue to be built upon without neglecting the experience of other eastern European countries. The new legal framework for competition in Albania appears to be an admirable effort at addressing a major part of the legal bottlenecks experienced previously. Representing a significant improvement over the 1995 Law, its successful implementation will determine the overall success of competition structure/policy in Albania. The responsibility for successful enforcement lies not solely with the competition authority, but also with government, the courts and other regulatory institutions and, in certain countries, privatisation agencies⁶⁰ whose willingness to co-operate in implementation is crucial.⁶¹ While a competition culture is developing, the introduction of explicit “legal provisions on co-operation” in the body of competition laws themselves can be seen as a current general trend in

eastern European countries.⁶² In that sense, it is recommended that the Albanian competition authority should not only co-operate regarding cross-border transactions but also seek assistance from international organisations, the European Commission and foreign competition authorities regarding the practicalities of implementation and related problems that can arise.

In the light of international developments in the field, the organisation of international roundtables and seminars in eastern European countries appears to have produced positive results on the general development of the competition culture. These should be continued, replicated on a south-eastern European basis and also organised at national level, in addition to dissemination of information on the internet and through the specialised press.

In conclusion, if a large-scale assessment of Albanian competition law *vis-à-vis* EU competition law were carried out today, Albania would likely achieve a relatively high position compared with other eastern European countries. However, as discussed earlier, an entire competition policy evaluation, such as the one conducted by the EBRD, is not founded solely upon extensiveness (*i.e.* the “law on the books”) but looks also to effectiveness. It has, therefore, yet to be seen whether the implementation of this new framework and any progress in the general introduction of competition to the Albanian market measures up. In that respect, the responsibility lies with the Albanian Government, to demonstrate the political will and commitment to implement fully the framework contained in the law. This it can do in a tangible meaningful form, particularly by dedicating sufficient financial and human resources to support the appropriate implementing institutions.

⁵⁹ See Dajkovic and Moffatt, n.11 above.

⁶⁰ The competition authority had played a role in privatisation process and liberalisation in a number of cases by providing its comments for reforms in strategic sectors of the economy, which could be accompanied by non-competitive effects (*e.g.* in the case of the privatisation of the Savings Bank, Albtelecom, in Albania).

⁶¹ For more information on current difficulties regarding the application of competition rules in telecoms sector see Dajkovic and Moffatt, n.11 above.

⁶² This provision often includes the co-operation between the Competition Authority and regulatory authorities, but also interestingly with international organisations and foreign competition authorities.