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## Global Forum on Competition

### QUESTIONNAIRE ON THE CHALLENGES FACING YOUNG COMPETITION AUTHORITIES

Contribution from Albania

-- Session III -

*This contribution is submitted by Albania under session III of the Global Forum on Competition to be held on 19 and 20 February 2009.*

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## QUESTIONNAIRE ON THE CHALLENGES FACING YOUNG COMPETITION AUTHORITIES

--Albania--

### 1. Countries that have been actively enforcing a competition law for a relatively short time

#### 1.1. Organising your agency and preparing for work

This is a unique point in the life of a competition agency – creating a new organisation and preparing it to enforce a new law. Necessary tasks include recruiting senior officials and professional and administrative staff, obtaining office space and equipment, setting goals and priorities for the initial months and years, establishing internal procedures and creating regulations and guidelines implementing the new law.

##### *1. Describe how you conducted this organisational phase. What went well, and what didn't?*

The new Law on competition protection, approved on 28 July 2003, came into force on 1 December 2003. The institution started its activity in March 2004. The Albanian Competition Authority (hereafter referred to as ACA) is a public entity, independent in performing its tasks. The ACA is comprised of two bodies, the Commission and the Secretariat. The Commission is the decision-making body of the Authority, whereas the Secretariat is the administrative and investigative body (having market monitoring and investigative powers). The duties and responsibilities of each body are regulated by the Law on Competition Protection.

In its early stages the ACA had limited human and financial sources and only in May 2007 the Parliament approved the new structure with a total number of 35.

#### 1.2. Competition culture and competition advocacy

Establishing a competition culture in a country new to competition enforcement – creating in the public awareness of and support for competition policy and the work of the competition agency – is vital to the success of a competition policy. In countries new to competition policy such a culture does not exist, and the competition agency performs an important educational role in helping to create it.

##### *2. Describe the efforts that your agency made in its first years in promoting a competition culture in your country. Did you have any measurable success? What resistance did you encounter?*

Albania has little experience of market economy and for this reason we have a lack of competition culture. For this reason, one of the main objectives of the Competition Commission was to improve the competition culture through a number of activities, such as: road shows with business community supported by GTZ in the most important districts; comments and opinions regarding the law and competition policy; publications; seminars; Internet access of different users of our webpage, etc.

The business community has no information about law and institutions regarding competition and at this stage it is difficult to apply the law and competition policy in all areas of the economy and to secure the necessary cooperation.

#### 1.3. Conduct cases and investigations – abuse of dominance and restrictive agreements

Prosecuting conduct investigations and cases can be difficult at first. Both the competition agency and the business community are unfamiliar with the legal and evidentiary standards that the law has created, and investigators lack important experience in developing cases of this kind. The investigation tools (fact

gathering) and sanctioning powers (fines and remedial orders) provided by the new law may not be adequate for the task. Case handling procedures may be cumbersome and inefficient.

*3. What problems did you encounter in investigating and prosecuting abuse of dominance and non-cartel restrictive agreements in your early years, and how did you address them? What were your successes, and what factors can you identify that contributed to those successful outcomes?*

Regarding the abuse of a dominant position at the very first stages of investigation we did not have the cooperation parties because one of undertakings refuses to give the requested information.

Regarding the restrictive agreements, we find some difficulties because a number of undertakings were not aware of competition law and policy, so we had to deal with naïve “cartels” such as in bread producers.

We think that the success was that we identified the infringements of competition law and we suggest a number of remedies for undertaking behaviour. Also, we identified the administrative problems and made our suggestions to government and regulatory bodies to open the market for competition.

*4. What difficulties did you encounter in developing an anti-cartel programme, and how did you address them? How long did it take for your anti-cartel programme to begin to show results?*

We have not yet applied the anti-cartel programme. We made offers to undertakings and explained the leniency program to them and what benefits they will gain, but so far no applications have been made.

#### **1.4. Mergers**

Some countries, especially those with small economies, elect not to incorporate merger control into a new competition law. They conclude that it would require too many resources compared to the benefits to competition that could result. They may plan to begin merger control at a later time. Most countries do adopt merger control at the beginning, however. For some the initial phases of this programme proceed relatively smoothly. Others, however, encounter problems associated with inefficient review procedures, over-inclusive notification regimes or uncertain application of substantive rules.

*5. If your new law did not provide for merger control, have you encountered any problems because you don't have this power? What are the benefits to you, if any, of not having merger control?*

Our law is in compliance with *acqui communautaire* and such does provide for merger control procedures.

*6. If you have merger control, did it cause resource problems for you in your first years of operation, that is, requiring you to spend more resources on merger review than you thought efficient? If so, what did you do about it? If not, how did you avoid this problem? 7. If you have merger control, was it an important and useful part of your agency's activity in its early years? What were your successes in implementing your merger control programme? Your problems?*

We build up a sector in charge of merger procedures and our staff has the necessary experience to deal with concentration procedures. We had notified approximately 10 cases per year of merger control.

*7. If you have merger control, was it an important and useful part of your agency's activity in its early years? What were your successes in implementing your merger control programme? Your problems?*

The Competition Commission had taken a number of decisions in its early years with the intention to not allow the enforcement of any dominant position in the market. We have had a successful experience in control of mergers and the decisions of the CC have contributed to free and effective competition in the market.

### **1.5. Judicial appeals**

In most countries decisions of the competition agency can be appealed to the courts. Judicial systems vary across countries. In some, competition cases are appealed, at least in the first instance, to a court having special jurisdiction, perhaps extending only to competition cases or more broadly to commercial cases. In others, competition cases are heard by courts of general jurisdiction. While in some countries the judicial process proceeds relatively smoothly and predictably, in others judicial review has proved to be a major impediment to the efficient and effective enforcement of the competition law. Judges may be unfamiliar with the principles of competition analysis. The competition agency may find itself losing an unacceptable number of its cases in court. The judicial process may take much too long, effectively frustrating enforcement of the law.

*8. Can decisions of your agency be appealed to the courts? If so, have you been satisfied with your rate of success in court cases? With the amount of time that it takes for cases that reach the courts to be finally decided? If you have encountered problems, what are the reasons for them, in your opinion? To the extent that you have experienced success, what factors contributed to it?*

The decisions of CC are subject to appeal before the first instance court of Tirana. We must emphasise that the jurisdictional system in Albania is independent and the decisions of the court are based on the court objectivity and their judgment. In so far the decisions of the court in some cases have been in favour and the same with the decision taken from the Competition Commission of Albania. The court procedures need a lot of time to be issued and this may be a problem especially in cases of the execution of the fine (where the CC has given a sanction decision against the undertakings). Problems have been raised and are encountered because the competition field is a new one for both judges and the business community alike. However, it must be said the Competition Authority has had success in the court procedures, because the representatives of the CA has explained in detail how the law provides and functions and what the behaviour of undertakings consist of and that was against the law "On Competition protection".

*9. Did your agency develop a programme for interacting with judges and helping them to become familiar with competition analysis? If so, please briefly describe.*

The Competition Authority is trying to organise workshops and seminars with judges, the Magistrate School and legal offices etc, to explain the competition law, the competition policy and also to respond to every unclear issue that may arise. In the coming year we plan to organise a workshop with all the above parties when we will explain the primary and secondary law.

### **1.6. Resources**

Every competition agency encounters budget problems. A new competition agency may be especially vulnerable in this regard, as those who set its budget probably do not fully understand or appreciate the agency's mission.

*10. Did your agency have sufficient resources, financial and personal, to begin your enforcement activities? Did it have resources to grow in subsequent years? If you felt that your budget was inadequate what strategies did you employ to try to increase it?*

In 2007 the Albanian Assembly approved the new structure of the Competition Authority and in 2008 the Competition Authority had a new and complete staff, in order to act according the law and its enforcement. It must be emphasised that the financial resources are not enough to enable all training necessary, but ACA, through OECD (RCC), GTZ, TAIEX etc, has been able to train its staff and to share experience with the most experienced countries in the EU.

### ***1.7. Independence***

A competition agency should be independent as much as possible from other parts of government and from special interests, whether in terms of budget, management or law enforcement.

*11. As a new agency, did you feel that you had sufficient independence? If not, what were the reasons, in your opinion, and what did you do about it?*

The Competition Authority of Albania is an independent one. The Competition Commission is elected from the Albanian Assembly and has the necessary power to take decisions independently regarding the market and the potential infringement of the undertakings in the market. Also, according the law the Competition Commission can give recommendations to public institutional and the government regarding decision, orders or legal acts that impede or restrict the free and effective competition in the market.