Intergovernmental Group of Experts on Competition Law and Policy

16th Session
5-7 July 2017
Room XVII, Palais des Nations, Geneva

Thursday, 6 July 2017
Afternoon Session

Agenda Item 3b. Challenges faced by young and small competition agencies in the design of merger control

Presentation by
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Albanian Competition Authority

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Challenges in designing the merger control regime by the Albanian Competition Authority

Prof. Dr. Juliana Latifi
Chairwoman
Albanian Competition Authority
“National Competition Policy” Document

• “Concentration control policy should firmly help to foster and promote developments in Albania’s structural and economic reforms towards the consolidation of the economic market.

• Only a concentration control policy can provide for a sufficient number of undertakings to remain operating in the market, thus providing an effective competition.”
Law no. 9121/2003 “On Competition Protection”

- Law no. 9121/2003 as amended in 2010 has provided a clearer legal arrangement regarding the concept of concentrations.
- Concentrations assessment – test on – “Significant restriction to effective competition”.

IGE Roundtable - 5 to 7 June 2017, Geneva
Since 2010

• Based on this test, the Albanian Competition Authority implements new analysis and in particular:
  • **genuine economic** analysis when reviewing merger control procedures for concentrations assessment.
Concentration control procedure

1. To assess the change in the market structure brought from this concentration;
2. To assess the type of concentration and the relevant market,
3. To assess the impact on the competition in the market, potential benefits to consumers, etc.
Secondary legal framework

• Procedural aspects of Authority’s activity have been regulated in a detailed manner;
  1. regulating **the parties’ right** to prior consultation with the Authority,
  2. proceeding with the concentration **notice**, 
  3. **submit** the necessary additional **documentation** by the parties to ACA.
Ex-ante merger control system

- Albania has adapted the *ex-ante* assessment system of concentrations;
- the parties that are involved in a financial transaction *voluntarily* notify ACA.
Ex-post evaluation with initiative of CC

- When CC finds that the concentration of the undertakings breach the rule to notify,
- CC acts *ex-post* – it evaluates with its own initiative the concentration.
Administrative sanction – fine

• The CC’s ex-post decision in this case is accompanied by the imposition of an administrative sanction – fine –

• up to 10% of the turnover of the previous financial year for the parties that have violated the rule.
The concentration notified to ACA after it has realized

• In this case, the CC after realized the analyze, it allows the concentration; and

• accompanied its decision by a fine – up to 1% of the turnover of the previous financial year, for the parties / party that have violated the rule
Applicable criteria for the concentration assessments

• Two are the main applicable criteria that must appear cumulatively in order to deal with a concentration:

1. a steady change in control of the capital (ownership) of an undertaking, or its decision-making; and

2. the threshold of the previous year’s turnover.
Steady change

1. The merger of two or more undertakings or parts of undertakings independent of one another;

2. Direct or indirect control over one or more undertakings or part of the latter.
3. The acquisition of direct or indirect control by one or more persons who at the same time have control of at least one other undertaking or one or more undertakings over one or more undertakings, or a part of the latter, through the purchase of shares, quotas or assets, contracts or any other lawful means;
Threshold of the previous year’s turnover

- **The threshold** of the previous year’s turnover is decided by law, taking into consideration:
  1. the economic structure of the Albanian market;
  2. the current experience of the assessment of the concentrations in Albania
1. The notified transaction is not a concentration;
2. The notified transaction represents concentration and is authorized as such;
The nature of the decisions of CC

3. The notified transaction shows signs of a **significant restriction** of competition in the market or part of it, in particular as a result of the creation / strengthening of the dominant position, and establishes the start of the **in-depth investigation procedure**;
The nature of the decisions of the CC

4. The notified transaction shows signs of a significant restriction of competition in the market, or part of it, in particular as a result of the creation / strengthening of the dominant position, and places the concentration authorization with remedies.
Applicable principles during control procedures

- Based on legal framework, the ACA respects the **legal principles** which are:

1. *Deadline and form of notice*;
2. *Transaction analysis period*;
3. *Right to access*;
4. *Transparency of the process*. 
The main markets

• The main markets that are **authorizations** of the **concentrations**:

1. retail market (cigarette market, food industry, hygiene products etc.)
2. financial market,
3. construction sector,
4. air transport,
5. fuel market, lottery, etc.
Transactions *(foreign to foreign)*

• ACA has assessed cases of transactions *foreign to foreign*.

**Notifying parties:**

1. Are foreign–owned undertakings,
2. Have a branch, a distributor or indirectly had a turnover in trading their products in the territory of the Republic of Albania.
Statistics (2012-2016)

• **53 cases** of concentrations have been notified and have undergone the merger control procedure;

1. **35 cases** are undertakings (foreign to foreign), their activity have affected the Albanian market;

2. **18 cases** are Albanian undertakings.
### Authorized concentration (2012-2016)

<table>
<thead>
<tr>
<th>No.</th>
<th>Product market</th>
<th>No. of authorizations 2012 - 2016</th>
<th>Foreign companies</th>
<th>Local companies</th>
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<td>Construction</td>
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<td>Retail sales (tobacco, food, cosmetics, etc)</td>
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<td>Corporate and personal banking services (Financial Services)</td>
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### Concentration according to markets & Undertakings Albanian or foreign

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Authorized concentrations for 2016

Financial Market: 4
Construction: 3
Air Transport Infrastructure: 2
Gaming, electronic casinos: 1
Fuels: 1
ACA’s challenges

• Training and preparation of the ACA’s staff in conducting sound economic and econometric analyzes that will allow ACA to pass the second stage;

• The realization of an investigative procedure, where the CC decides with remedies;

• The analysis of authorized concentration, by ACA in past years.
Thank you!