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Afternoon Session

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

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

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“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”.

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.

Steady change

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

The nature of the decisions of the CC

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.

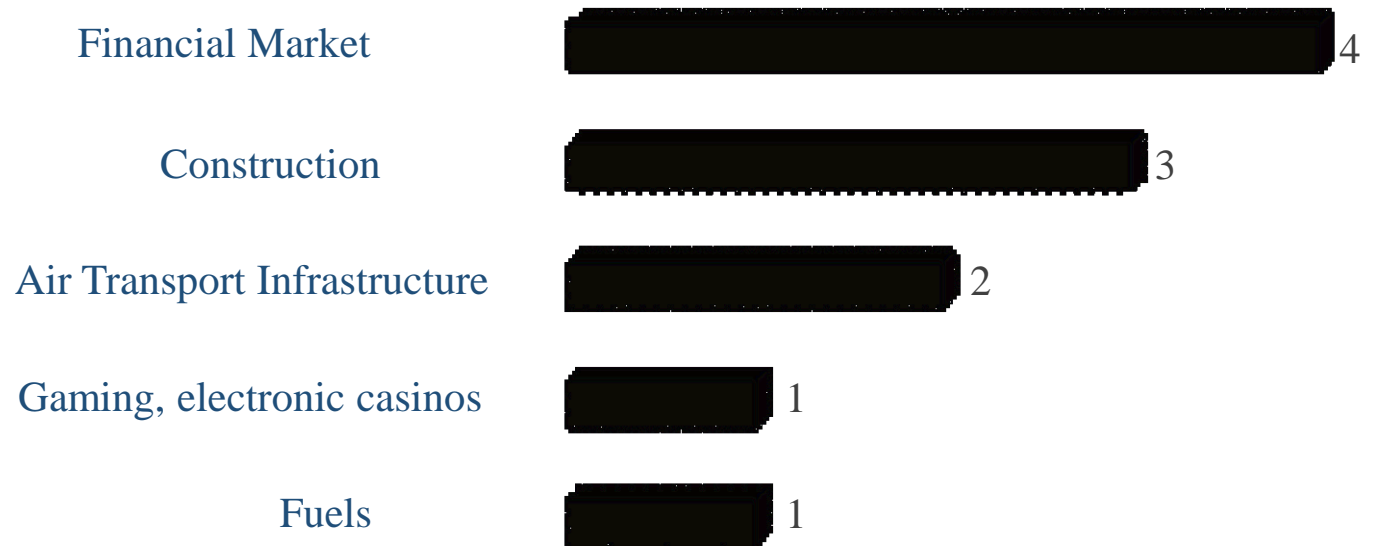
Authorized concentration (2012- 2016)

No.	Product market	No. of authorizations 2012 - 2016	Foreign companies	Local companies
1	Construction	6	3	3
2	Gaming, electronic casinos	3	1	2
3	Automotive products and parts sales	2	1	1
4	Hospitality services and tourism	1		1
5	AudioVisual Media	1	1	
6	Retail sales (tobacco, food, cosmetics, etc)	13	12	1
7	Corporate and personl banking services (Financial Services)	11	5	6
8	Fuels	5	4	1
9	Mineral ore	2	1	1
10	Air travel infrastructure	3	3	
11	Energy	3	2	1
12	Telecommunications	1		1
13	Maritime transport, containers	1	1	
14	Electronic products and IT solutions	1	1	
Total		53	35	18

Concentration according to markets & Undertakings Albanian or foreign

No.	Product Market	2012		2013		2014		2015		2016		TOTAL
		local	foreign	local	foreign	local	foreign	local	foreign	local	foreign	
1	Construction	1		1				2		1	1	6
2	Gaming, electronic casinos	1		1								3
3	Automotive products and parts sales		1					1				2
4	Hospitality services and tourism	1										1
5	AudioVisual Media		1									1
6	Retail sales (tobacco, food, cosmetics, etc)		2		4		2		1	1	3	13
8	Corporate and personl banking services (Financial Services)		2			1	1	3	1	2	1	11
9	Fuels			1			1		2		1	5
10	Mineral ore			1			1					2
11	Air travel infrastructure				2						1	3
13	Energy				2	1						3
14	Telecommunications			1								1
16	Maritime transport, containers						1					1
17	Electronic products and IT solutions								1			1

Authorized concentrations for 2016



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 !