Manual

Competition Compliance and Telecommunications

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Note

The project “Fostering competition law and policy and competition culture in Albania” aims to strengthen the effective implementation of competition law and promote a culture of compliance among public institutions and private sector stakeholders in Albania. Implemented by UNCTAD in cooperation with the Albanian Competition Authority, the initiative contributes to enhancing market efficiency, consumer welfare, and sustainable economic development.

A key component of the project is capacity-building and advocacy, including the organization of specialized training activities for judges and public officials, and awareness-raising activities targeting the business community.

As part of its advocacy and outreach efforts, the project has developed sector-specific competition compliance manuals for the telecommunications and health sectors, as well as for business associations. These manuals provide practical guidance to companies on identifying and preventing anti-competitive conduct, implementing internal compliance programmes, and aligning business practices with national and international standards.

The manuals are the result of over 30 interviews with Albanian stakeholders, including representatives from public institutions, business associations, private enterprises, lawyers and academics, ensuring that the recommendations reflect the specific realities and challenges of each sector.

AUTORITETI I
KONKURRENCËS

Acknowledgements

This manual was coordinated by Valentina Rivas, Programme Management Officer, under the guidance and leadership of Teresa Moreira, Head, Competition and Consumer Policies Branch, Division on International Trade and Commodities, UNCTAD, with the valuable contribution of Iratxe Gurpegui, Compliance Expert and founder of Naltilia, and Mimoza Kodhelaj, Albanian Competition Authority, within the framework of the technical cooperation project “Fostering competition law and policy and competition culture in Albania.”

UNCTAD gratefully acknowledges the collaboration and support of the Albanian Competition Authority and other national stakeholders who contributed through consultations and participation in project activities.

UNCTAD gratefully acknowledges the financial support of the European Bank of Reconstruction and Development (EBRD) and the Swiss State Secretariat for Economic Affairs (SECO), which made the implementation of this project possible.

More information on the project is available at : https://unctad.org/project/fostering-competition-law-and-policy-and-competition-culture-albania. (email: ccpb@unctad.org)

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Foreword

This guide provides practical advice for telecommunications operators in Albania, in particular those present in the mobile telecommunications markets, on how to implement effective competition compliance programs. It focuses on how to navigate both compliance with competition law and compliance with sector-specific regulation, which is mostly based on competition law principles. It also provides practical recommendations tailored to the industry and market context on how to prevent and detect competition infringements.

!? Common Misconceptions About Competition Compliance

- "Are we really concerned by competition law? We are a regulated sector"
- "Are we obliged by law to design and implement a compliance program? It is costly and takes time and we already spend a lot of resources in complying with sector specific regulation"
- "Is it worth? In my opinion, there is no anti-competitive behaviour in our sector, we are closely monitored by the telecommunications regulator, AKEP"

But...

💡 Why Compliance Still Matters

"Telecommunications operators can be held liable for anti-competitive conduct even if they comply with sector-specific regulations"

"Investors and business partners are asking questions about the measures we have implemented to prevent competition infringements"

"Other telecommunication operators have been sanctioned at European Union level, and we are being investigated by the Albanian Competition Authority (ACA)"

Telecommunications operators do not have a legal obligation to design and implement a competition compliance program, but have an interest in doing so because:

- A strong compliance program helps build trust with investors, business partners and the regulator.
- It has a positive impact on your reputation and, therefore, on clients' retention.
- It enhances your ability to attract talent, because staff feels more committed to companies that have values, such as respecting a fair level playing field, and act accordingly.
- The consequences of an infringement of competition law can be very costly (high fines, civil damages, individual fines, etc.) and, yes, sector-specific regulated companies can also be held liable for competition law infringements.
- It ensures understanding of a company's risk landscape for informed business decisions;
- It guarantees that all departments apply competition rules consistently and coherently.

1. What is competition law and how does it interact with telecommunications regulation?

1.1 The intersection of competition law and telecommunications regulation

Telecommunications regulation aims to establish rules and obligations for companies with significant market power to prevent anti-competitive conduct from materializing.

In telecommunications, regulators often create regulation that is designed to increase competition in the market. For example, they may require the incumbent operator to grant new entrants fair access to its legacy network infrastructure. Even though telecommunications regulation is based on competition law principles and aims to prevent anti-competitive conduct, it cannot anticipate and prevent every possible competition infringement. Consequently, competition law will continues to apply whenever a telecommunications operator engages in anticompetitive practices despite the preventive measures established by regulation.

Therefore, telecommunications operators cannot rely solely on compliance with telecommunications regulation, adherence to competition law must also be a fundamental part of their business strategy.

1.2 The fundamentals of competition law

As telecommunications regulation, competition law protects the competitive process (i.e. a fair level playing field). It is not about protecting **specific companies or specific competitors.**

By protecting the competitive process, competition rules **maximise consumer welfare**, this means:

- **Lower prices for all:** Companies generally aim at profit maximization and can sell more goods by lowering prices.
- **Better quality:** Businesses can attract more customers and expand their market share, by improving their quality of goods and services. Quality can mean various things: products that last longer or work better, better after-sales or technical support, or also or friendlier and better service.
- **More choices:** In a competitive market, businesses will try to make their products stand out from the rest. This results in greater choice for customers, which allows them to select the product that offers the right balance between price and quality.

- **Innovation:** To produce new and better products, businesses need to be innovative in their product concepts, design, production techniques, and services, among other things.
- **Better competitors in global markets:** Competition within national markets also helps make national companies stronger outside the country — and able to hold their own against global competitors.

In Albania, competition is regulated by Law no. 9121, the Albanian Competition Law, first adopted in 2003 and last amended in 2010. This framework aligns with international and European Union competition law principles, aiming to promote market efficiency and protect consumer welfare.

Under competition law there are different types of infringements:

1.2.1 Restrictive horizontal agreements – illegal relations with competitors

Agreements between two or more competitors (real or potential) are prohibited when their purpose or effect is to restrict competition. As a general rule, the following agreements between competitors are considered to have such purpose or effect:

- Price fixing or setting harmful commercial conditions.
- Market sharing (products, customers, or geographic zones) or sources of supply.
- Limiting production, capacities, investments, or technical progress.
- Boycotting a supplier, customer, or business partner.

For competition purposes, the term “agreement” is very broad. It includes not only a formal written agreement (for example, a contract or letter of intent), but also an oral declaration of intentions, a verbal agreement, gentlemen’s agreements, a tacit agreement (for example, exchange of opinions or information), or uniform and conclusive conduct by two or more parties.

1.2.2 Restrictive vertical agreements – relations with distributors, suppliers and manufacturers

Vertical agreements are arrangements between companies operating at different stages of the production, distribution, or supply chain—such as manufacturers and retailers, or suppliers and distributors.

Not all vertical agreements are illegal—only the ones that seek to restrain competition are problematic. Therefore, the assessment of pro-competitive and anti-competitive effects of vertical agreements is complex and must be done on a case-by-case basis.

In general, vertical agreements where the supplier's and buyer's market share exceeds 30 per cent may be considered harmful and should be carefully assessed. Moreover, competition law prohibits vertical relations involving hard-core restrictions, such as:

- **Resale price maintenance** - when working with distributors or other third-party retailers, competition laws generally prohibit companies from fixing resale prices for their products or services to end customers. Maximum or recommended prices are permitted.
- **Restrictions on sales to certain customers or in specific territories** - in general, and with some exceptions, competition rules prohibit suppliers from imposing restrictions on the customers or territories where a distributor can resell their products.
- **Preventing effective use of the Internet** - In general, and with some narrow exceptions, competition law does not permit the supplier to prevent the effective use of the Internet by the buyer or its customers for selling the acquired goods or services.

1.2.3 Abuse of dominant position

Competition law also prevents companies that have a dominant position in a relevant market from engaging in practices that can distort competition.

A company holds a dominant position when it can significantly influence market conditions — such as prices, output, or innovation — without needing to align its behaviour with what other market players do.. The existence of a dominant position derives from a combination of several factors that, taken separately, are not necessarily determinative:

- The existence of **large market shares**. In particular, this is the case where an undertaking business or other actor holds a market share of 40 per cent or above.[1]

[1] Guideline On the applicability of articles 8 and 9 of Law 9121 dated 23.07.2003 'On the Protection of Competition"; Guidance on the Commission's enforcement priorities in the application of Article 82 of the EU Treaty to abusive conduct by dominant undertakings (2009/C 45/02) (OJ C 45, 24.2.2009, p. 7–20). Available at: https://caa.gov.al/wp-content/uploads/2023/05/Udhezimi_per_poziten_dominuese.pdf

- The existence of **barriers to market expansion and entry** that prevent competitors from expanding their activities in the market or that prevent potential competitors from entering the market.[2] Barriers to expansion and entry may consist, for example on the existence of tariffs or quotas, sector-specific regulations, licensing requirements, authorisation requirements, intellectual property rights, an established distribution and sales network, economies of scale and scope, vertical integration, access to critical raw materials or high sunk costs.
- Customers with **countervailing buyer power.** Countervailing buyer power refers to the ability of one or more customers—because of their size, strategic importance, and credible outside options (e.g., switching suppliers, multi-sourcing)—to negotiate terms and constrain the supplier's conduct. Countervailing buyer power can prevent even an undertaking with a high market share from acting to an appreciable extent independently of customers.

Having a dominant position is not illegal under competition law. However, when a company uses that position to eliminate competition, exploit customers, or prevent others from entering the market, it is considered abusive. This can manifest in several ways:

- **Excessive or predatory pricing**: A company may set unreasonably high prices to extract significant profits unjustly. Alternatively, it might set prices very low to drive competitors out of the market (known as predatory pricing), intending to raise prices once competition is weakened or eliminated.
- **Exclusive dealing and loyalty rebates:** Dominant firms might tie customers to exclusive deals or offer rebates conditional on buyers purchasing exclusively or primarily from them. This practice can limit the ability of competitors to access the market.
- **Refusal to supply:** A dominant company could refuse to supply essential products or services to competitors, or sell them at unfairly high rates.
- **Tying and bundling:** This involves forcing buyers to purchase a non-core product when buying a core product.
- **Limiting production or development:** A dominant firm may limit production, supply, or technical development to gain an advantage, affecting innovation and consumer choice adversely.

[2] Judgment of 14 February 1978, United Brands and United Brands Continental v Commission, Case 27/76, EU:C:1978:22, paragraphs 122 and 124; judgment of 13 February 1979, Hoffmann-La Roche v Commission, Case 85/76, EU:C:1979:36, paragraph.

2. What is compliance?

Compliance encompasses all actions taken by a company around three fundamental axes:

- **Prevention** involves all initiatives aimed at establishing clear policies and building awareness and compliance culture inside an organization to deter potential violations before they occur.
- **Detection.** The "risk zero" does not exist and violations may still occur despite prevention effort. Compliance will, therefore, also focus on detecting any wrongdoing.
- **Remediation.** Compliance must also serve to correct identified problems, refine policies, and take action to minimise harmful impact.

For many companies, compliance goes beyond respect for the law, it includes also a commitment to business ethics, integrity and sustainability.

According to best practices, competition authority guidelines, and international standards, an effective compliance program should include several key elements. However, there is no one-size-fits-all approach; a compliance program designed for one company may not be effective if simply implemented in another. A compliance program must be tailored over time to the specific context and particular compliance risks of the organization. Therefore, the first step in creating and implementing a context specific program is to use a risk assessment.

The elements of a compliance program are the following:[3]

- **Risk assessment.** A firm should identify and evaluate its compliance risks by considering their likelihood and potential impact on the company's activities. Risk assessments should be reviewed regularly, especially when a company enters a new market. Companies must prioritize risks, determine appropriate treatment actions (mitigation, acceptance, avoidance, transfer) and assign responsibility to units and individuals. This approach enables the organization to allocate resources effectively, address specific vulnerabilities, and implement targeted measures.

[3] OECD (2021), Competition Compliance Programmes, OECD Competition Committee Discussion Paper. Available at: http://oe.cd/ccp

- **Positive tone at the top.** Effective compliance programs require clear and visible support from the company's leadership—including the President, Board of Directors and Chief Executive Officer. The commitment of resources to a compliance program, such as a dedicated and empowered compliance officer in larger firms, exemplifies this commitment. When leadership shows its support, it reinforces the importance of compliance and encourages employees to adhere to established policies and practices.
- **Clear policies and controls.** The company must put in place guidelines and directives on how to conduct business processes and manage relations with stakeholders (including clients, competitors, suppliers and distributors) to avoid violations of competition law and unethical behaviour.
- **Training and communication.** Mandatory compliance training is a critical component of any effective compliance program. Compliance training should be required for all staff in positions with identified risks, as well as part of new employee training process. The training content must be adapted to reflect the company's unique risk profile. In addition to training, the company and its leadership should communicate regularly on the company's commitment towards compliance engage in zero tolerance for any of competition law violations. Compliance with competition law can sometimes be complex, and companies often designate a contact person through whom staff can raise concerns or questions regarding the alignment of business decisions and practices with competition regulations.
- **Whistleblowing channel.** The company should create a whistleblowing channel where staff and other stakeholders can confidentially report suspicions of competition law infringements. Under this program, people who report potential violations must be protected from retaliation.
- **Disciplinary regime.** The organisation must establish a set of rules, procedures, and sanctions for misconduct. Disciplinary measures to address violations of compliance policies must be consistently enforced.
- **Auditing and evaluation.** A commitment to continuous improvement should be central to the compliance program. Regular monitoring is essential to ensure the program remains current, effective, and aligned with its core objectives, which should also be regularly evaluated. Program effectiveness can be assessed through surveys, training evaluations, and interviews with key personnel to gauge their knowledge and attitudes toward compliance and illegal conduct.

3. Why should telecommunications operators have a competition compliance program?

The benefits of designing and implementing a competition compliance program for telecommunications operators are as follows:

- **Building and maintaining trust with investors**. A strong compliance framework demonstrates the company's commitment to ethical business practices and adherence to competition law, reducing the risk of legal penalties and reputational damage. This proactive approach reassures investors and business partners that the operator is managing risks effectively, which fosters confidence in the company's stability and long-term viability. A proven track record of compliance can enhance the company's credibility in the financial markets, attracting further investment. Similarly, it can be a catalyser to attracting business partnerships.
- **Building a strong reputation.** Building a competition compliance program significantly enhances the company's reputation by demonstrating a commitment to ethical and fair business practices. This creates trust among customers, who are more likely to stay loyal to a brand that is perceived as transparent and responsible.
- **Building trust with the regulator.** As highly regulated entities, telecommunications companies regularly interact with the sector-specific regulator. A strong compliance program that not only ensures adherence to sector-specific regulations but also proactively prevents potential competition law infringements. This helps to build and maintain a trustworthy relationship with the regulator that can lead to more constructive engagement and a smoother regulatory process.

Another reason to develop and implement a compliance program lies in the fact that a competition law infringement can be very costly. For example:

- **Fines** of up to 10 per cent of the annual turnover in the previous financial year.

Examples of a telecommunications operators being fined for an anti-competitive conduct

Telefónica and Portugal Telecom

In January 2013, the European Commission imposed fines of € 66 894 000 on Telefónica and of € 12 146 000 on Portugal Telecom for inserting a clause into a contract agreeing not to compete with each other on the Iberian telecommunications markets, in breach of European Union competition laws.

Slovak Telekom

In October 2014, the European Commission imposed a fine of € 38 838 000 on Slovak Telekom and its parent company, Deutsche Telekom, for having abused its dominant position for more than five years by shutting out competitors from the Slovak market for broadband services, in breach of European Union antitrust rules. In particular, the Commission concluded that Slovak Telekom refused to supply unbundled access to its local loops to competitors and imposed a margin squeeze on alternative operators.

Sources: European Commission, Decisions AT.39839 and AT.39523.

https://competition-cases.ec.europa.eu/cases/AT.39839

https://competition-cases.ec.europa.eu/cases/AT.39523

Abuse of Dominant Position in the Mobile Telephony Market (2004–2005)

In 2007, the Albanian Competition Authority (ACA) concluded its investigation into abuse of dominance in the mobile telephony market, involving the two operators: AMC and Vodafone. The investigation, initiated in September 2005, found that both companies abused dominant positions between 2004–2005 by applying unfair pricing practices.

Using a set of analytical tests—including price comparisons with product value and international benchmarks—the ACA determined that the prices charged were unreasonably high and not justified under normal competitive conditions.

The Competition Commission fined AMC 2 per cent of its 2005 turnover from the relevant market (211,552,000 ALL~ 1,711,245 Euro), and Vodafone Albania 2 per cent of its 2005 turnover (242,633,000 ALL~ 1,962,660 Euro).

https://caa.gov.al/ëp-content/uploads/2023/05/raporti-2007.pdf

- **Sanctions on individuals** of up to 5 million lek.[4]
- **Civil damages for anti-competitive conduct**. Any person or company affected by the anti-competitive conduct can claim damages before the competent court to a company that has been condemned by the Albanian Competition Authority for having infringed competition laws.

[4] According to Article 78 of the Albanian Competition Law the Commission may impose fines on individuals not exceeding 5 million lek on individuals, if they, intentionally or negligently, carry out or co-operate to carry out actions sanctioned in accordance with article 73, paragraph 1 and article 74, paragraph 1.

4. What is ACA's policy regarding compliance programs?

The Albanian Competition Authority (ACA) views the adoption of competition compliance programs by businesses positively. Reflecting a broader trend among European Union competition authorities, the ACA issued guidelines in 2017 encouraging companies to develop robust competition compliance programs. [5] The 2017 guidelines offer numerous practical tips for designing and implementing effective compliance measures. The present guide complements ACA's 2017 compliance guidelines by providing further practical tips on how to tailor compliance programs to telecommunication operators' most common competition risks in the Albanian context.

The ACA does not offer immunity or fines reductions solely for the adoption of compliance programs, as may be the case in other jurisdictions. Instead, it believes that the reward for a well-implemented compliance program is the early detection of anti-competitive conduct and the possibility for companies to leverage the leniency program to obtain immunity or reduced fines. This approach aligns with the policy adopted by the European Commission.

The leniency program allows companies that are part of an agreement among competitors to benefit from immunity or a reduction of fines in exchange for uncovering the anti-competitive conduct and cooperating with the ACA during the investigation.

[5] https://caa.gov.al/wp-content/uploads/2023/05/Programi_i_prpuethshmris_red.compressed.pdf

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LINIENCY PROGRAM:

WHO, WHY, WHAT, HOW

Who can apply for leniency

- Companies operating in the market that are part of anticompetitive agreements

Why apply for leniency

- Inmunity from hine - first applicant and not a leader of the cartel
- Reduction of fines (50% to 20%)

What is required to apply for liniency

- Application before the investigation initiated
- Commission deso not have sufficient data
- Immediately make the evidence available

How to apply for leniency

- Via the form www.caa.gov.al
- Email us: competition@caa.gov.al
- Call us : +355 4 22 34 504

Source : https://caa.gov.al/wp-content/uploads/2023/06/Fine_Leniency_Programme.pdf

5. What are the competition compliance risks for telecommunications operators?

5.1 Competitive dynamics in the Albanian telecommunications sector

Albania's telecommunications sector transitioned from a state monopoly to a liberalized market in the early 2000s and since then the sector is governed by sector-specific regulation and supervised by AKEP, the Albanian telecommunications regulator.

The fixed and the mobile telecommunications markets in Albania present very different competitive dynamics. This divergence has implications on how the competition compliance program should be designed and implemented. While the fixed broadband market is fragmented with more than 250 local Internet Service Providers (ISPs) authorised by AKEP, the mobile services market is concentrated in two operators.

In 2016, there were four mobile operators. In 2017, one went bankrupt. In 2022, two operators (One Telecommunications and Albtelecom) merged. This merger, which resulted in the creation of the second largest operator (One Albania), was approved by ACA with commitments.[6] As part of the commitments, One Albania is obliged to grant access to its infrastructure to Mobile Virtual Network Operators (MVNO).[7] So far, no MVNO applications have been submitted.

Currently, the two mobile operators hold very similar shares in the mobile services market.[8]

Operator	SIM Share	Data Volume	Internet Users	Revenue Share
Vodafone Albania	47%	54%	56%	56%
One Albania	53%	46%	44%	44%

[6] Available at: https://caa.gov.al/wp-content/uploads/2023/05/Vendim_nr._855_dat_14.01.2022.pdf

[7] A Mobile Virtual Network Operator (MVNO) is a telecommunications provider that offers mobile services to customers by leasing network infrastructure from a major, physical network operator, without owning the physical network itself.

[8] AKEP Annual Report. Available at: https://akep.al/wp-content/uploads/2024/07/AKEP-RAPORTI-VJETOR-2023-FINAL.pdf

In terms of coverage, both Vodafone Albania and One Albania's 3G network cover 99 per cent of the population. With regards to LTE (4G), Vodafone Albania's network covers 97 per cent of the territory and 100 per cent of the population and One Albania's network covers 96 per cent of the territory and 99 per cent of the population.[9]

Both Vodafone Albania and One Albania are present and leading the fixed broadband market with shares of up to around 20 per cent. Being present in both the fixed and the mobile telecommunications markets allows these operators to offer multiple play offers bundling fixed and mobile telecommunications services. Moreover, One Albania is one of the two suppliers of access to broadband network (in particular, access to its unused optical fibre infrastructure). One Albania held 76 per cent of this market in 2022.[10]

Operator	Market Share (in terms of subscribers, 2023)[11]
One Albania	~22 per cent
Vodafone	~20 per cent
A.S.C	~10 per cent
Abissnet	~7 per cent
Digicom	~5 per cent
Nisatel	~4 per cent
Other (OA)	~32 per cent

The market is characterized by high barriers to entry. In the mobile and fixed telecommunications markets, new entrants face substantial capital investment requirements and burdensome administrative processes to build their own networks. However, entry by new operators is effectively facilitated through access to existing legacy infrastructure.

The ACA has already intervened in the telecommunications market. In January 2025,[12] it launched an investigation for a potential collusive agreement between Vodafone Albania and One Albania regarding pre-paid package services. In June 2024, the ACA launched an investigation into the provision and access of Internet services in residential complexes. The investigation aims to address allegations that administrators of residential premises would be limiting consumer choice by requiring residents to contract exclusively with an ISP, thereby restricting consumer choice.[13] In 2022, the ACA adopted a decision against Vodafone Albania for having abused its dominant

[9] ibid

[10] AKEP 2024 broadband wholesale market analysis. Available at: https://akep.al/wp-content/uploads/2024/07/AKEP-draft-BB-market-decision-EN-v2_8.4.2024.pdf

[11] ibid

[12] Available at: https://caa.gov.al/vendosen-nen-hetim-paraprak-vodafone-albania-sha-dhe-one-albania-sha-ne-tregun-me-pakice-te-sherbimeve-celulare/

[13] Available at: https://caa.gov.al/wp-content/uploads/2024/05/VENDIM-NR-1078-1.pdf

position in the wholesale international call termination market. [14] The ACA ordered Vodafone Albania not to: (i) impose unfair selling prices or trading conditions, (ii) limit product, markets and technical developments (iii) impose discriminatory terms and conditions; and (iv) anti-competitive tying.

5.2 Competition risks in the mobile telecommunications markets

Due to the limited number of players, there is a higher likelihood for collusion in the Albanian mobile telecommunications market, in order to maximize profits.

Other characteristics of the mobile telecommunication market make coordinated behaviour more likely to occur. Telecommunications mobile markets present high barriers to entry such as the need for securing scarce spectrum licenses, navigating complex regulatory approvals, and huge investments for building and maintaining network infrastructures. This means that only a few incumbents with deep pockets can enter and compete in the market. Those established players also benefit from strong, recognizable brands that new entrants would struggle to match. Second, the absence of MVNOs (mobile virtual network operators) entering the market—and no other credible challengers—removes the threat of potential competition. With few players able or willing to disrupt the status quo, incumbents face little pressure to compete aggressively on price or quality, making it easier for them to coordinate.

Moreover, with market shares close to 40–50 per cent in retail markets and a monopoly position in certain wholesale markets (for example, wholesale call termination), telecommunications operators may be holding a dominant position. This special situation, combined with the high entry barriers mentioned above, increases the risk of abuse of individual or collective dominant positions in the Albanian mobile telecommunications market.

In particular, telecommunications mobile service providers in Albania could inadvertently or deliberately breach competition law in several ways. The most common competition risks would include:

- **Refusal to supply:** Albanian mobile telecommunications operators control access to the networks necessary for MVNOs to provide retail mobile services. In this context, mobile telecommunications operators should not deny access to essential infrastructure in a way that would hinder the entry of potential competitors or the expansion of existing ones.

[14] Available at: https://caa.gov.al/sot-ne-date-24-06-2022-komisioni-i-konkurrences-bazuar-ne-legjislacionin-per-konkurrencen-mori-vendimin-nr-894-date-24-06-2022-per-hapjen-e-procedures-se-hetimit-te-thelluar-ndaj-ndermarrjes-vod/

- **Price squeeze:** Telecommunications operators that control indispensable infrastructure should not set access prices so high that equally efficient competitors are unable to compete in the retail market, because of the prevailing retail prices charged by the incumbent operators.
- **Tying and bundling:** Albanian mobile telecommunications operators are active in both the fixed and mobile telecommunications markets allowing them to offer multiple play offers bundling fixed and mobile telecommunications services. While multi-play offers can generate efficiencies in production or distribution that benefit consumers, operators should avoid practices where tying (making the purchase of mobile telecommunications services conditional on the purchase of fixed telecommunications services) or bundling (offering both services at a discounted price) results in the foreclosure of competitors in the fixed telecommunications market.
- **Predatory pricing:** Albanian mobile telecommunications operators should refrain from pricing below cost in a manner that would force equally efficient competitors to incur unsustainable losses and exit the mobile telecommunications market. Predatory pricing may also be used strategically to deter the entry of a promising and credible MVNO, particularly when such entry appears realistic and imminent.
- **Price fixing or market sharing agreements**: Operators should remain vigilant to avoid engaging in or facilitating price-fixing or market-sharing agreements. The risk is particularly heightened due to the market structure with few players and limited competitive dynamics.
- **Coordination to boycott market entry**: Similarly, Albanian mobile telecommunications operators must not coordinate to prevent, restrict, or limit the entry of MVNOs into the market.
- **Sharing commercially sensitive information**: Operators should avoid or appropriately manage any situations that could lead to the exchange of commercially sensitive information.
- **Exploitative conduct**: Albanian mobile telecommunications operators must not exploit their position in the market by directly harming consumers with excessive prices or unfair contractual conditions.

5.3 Competition risks in the fixed telecommunications markets

Anti-competitive conduct does not appear to be a top compliance risk in the Albanian fixed retail telecommunications market. The market is highly fragmented, with over 250 Internet Service Providers, and barriers to entry are relatively low. These characteristics reduce the likelihood of a dominant position in the market or coordinated practices or collusion among competitors. Instead, compliance resources should be focused on other areas with higher risk exposure—particularly consumer protection, including transparency of contract terms, billing practices, and quality of service.

However, in the market for access to fixed broadband networks, One Albania holds a significant market share which, combined with its role as a retail broadband provider, could create incentives for anticompetitive conduct, such as refusing to grant network access to new entrants. To mitigate this risk, One Albania should adopt appropriate compliance measures to prevent unjustified refusals to provide access to its unused fibre infrastructure (see Section 6 for specific recommendations on how to address this).

The guidelines therefore focus primarily on competition compliance in the mobile telecommunications market**,** where the structure is more concentrated and the risks of anti-competitive conduct are significantly higher

6. How can Albanian mobile telecommunications operators mitigate competition compliance risks?

To prevent competition risks, Albanian mobile telecommunications operators should focus on fostering a compliance culture of zero tolerance toward anti-competitive conduct and establish clear rules to embed that culture within the company. This guide offers some recommendations for mitigation actions and controls that mobile telecommunications operators could adopt. As mentioned above, there is no “one-size fits all” in compliance, therefore, each company should carefully assess its own context and governance structure in order to adapt these recommendations to suit its unique circumstances:

- ✓ **Adopt a code of conduct or competition statement** where the leadership of the company commits to a zero-tolerance policy against anti-competitive conduct.
- ✓ **Set-up a communications strategy** of the zero-tolerance commitment against anti-competitive conduct. For example, by communicating it at strategic business meetings, team building or townhall-type events.

- ✓ Adopt a **competition compliance manual** that clearly sets and explains the internal rules, controls, and procedures to prevent anti-competitive conduct. The manual should set a general statement prohibiting:
  - Coordination or exchange of sensitive commercial information with competitors,
  - Abusive pricing strategies to exclude actual or potential competitors,

- Refusal to provide access to essential infrastructure with the effect of limiting or
- Impeding entry and conduct to exploit customers.

✓ **Establish rules and procedures regarding the price-setting strategy of the company**.

- Wholesale and retail units should adopt pricing strategies separately.
- Implement information barriers between wholesale and retail units to avoid the exchange of information regarding pricing policy and strategy. Similarly, implement information barriers in product development and information regarding network access.
- Competition compliance team should be strongly considered when pricing discussions take place among different functions (e.g. strategy, finance, and marketing) to ensure anti-competitive behaviour is not occurring.
- Document the rationale and cost structure behind pricing decisions.
- Competition compliance or legal references should authorise pricing strategies by conducting (with the help of finance or accounting):

  - **Internal margin squeeze tests**:

    – Ensuring that wholesale and retail pricing leaves a sufficient margin to an equally efficient operator to be able to trade profitably in the downstream market.15

  - **Predatory pricing tests**

    – Avoid setting prices below average variable cost or long-run average incremental cost, because this may indicate predatory intent.

    – Where prices are low (e.g., introductory offers), document legitimate reasons such as promotional campaigns or seasonal discounts.

    – Ensure low pricing is time-limited and not selectively applied to target rivals.

[15] The benchmark which the European Commission generally relies on to determine the costs of an equally efficient competitor are the Long Run Average Incremental Costs of the downstream division of the integrated dominant undertaking.

- **Excessive pricing tests:**
  - Benchmark prices and contract terms against comparable markets (neighbouring or similar European Union countries or MVNO offers)
  - Enquire about the justification of significant price increases.

✓ **Establish internal rules and procedures for bundled or multi-play offers:**

- Competition compliance team should be strongly considered when product development or design discussions take place among different functions (e.g. strategy, finance, and marketing) to understand the context and the underlying reasons for the design of offers.
- Document the rationale and cost structure of all multiple play offers.
- Require competition compliance/legal references to check and approve all multiple play offers by:
  - Ensuring that the tied product (in this case fixed telecommunications services) is also offered separately under transparent and commercially reasonable conditions.
  - Establishing a pricing test to verify that multi-product discounts in the bundle do not make standalone offers unviable for competitors.

✓ **Establish internal rules and procedures to prevent refusal to supply:**

- Set up a standardised reference offer under which access will be granted to new entrants containing among other the scope of access, prices, technical specifications, service level agreements (SLAs), duration, other commercial conditions and technical requirements.
- Set up an internal procedure for handling access requests including roles and responsibilities, a timeline for internally reviewing and responding to access requests along with clear procedures for installation and activation.
- Establish a dedicated contact point or portal for new entrants requesting access to your network.
- Document all decisions related to access (acceptance, negotiation, rejection)
- The competition compliance team should review the processes for all access requests.

✓ **Establish internal rules and procedure to prevent anti-competitive agreements or tacit collusion such as price fixing, coordination to boycott market access or sharing of commercially sensitive information.**

- Implement rules for participating in trade associations, sector-specific events, working groups, business partnerships, and formal or informal meetings where staff may be in contact with your competitor:
  - The competition compliance or legal team should conduct due diligence on a trade association or working groups before joining to ensure that these structures use an adequate competition compliance system.
  - Only staff that have completed competition compliance training may be allowed to represent the company in such meetings.
  - For key meetings, competition compliance or legal teams should review the agenda to ensure topics are legitimate and prohibit participation if this is not the case.
  - Establish clear rules on communications and on topics that cannot be discussed. Prohibited topics may include: (i) current or future prices, discounts, pricing strategies; (ii) customer allocation, market shares, or territories; (iii) commercial terms; (iv) MVNO access requests, conditions and deals; and (iv) investment or product launch plans.
  - Set up a protocol in case prohibited topics are discussed. Request staff to:
    - Immediately object to the discussion.
    - Exit the meeting and ask for this objection and end of the meeting to be recorded in the minutes of the meeting.
    - Report the incident to the competition compliance or legal team without delay.
  - Keep internal records of all attended meetings with competitors, including the agenda, a list of the participants, and key discussion points.
  - Review or retain official minutes where available, and request corrections if needed.
  - For informal contacts, establish a clear prohibition against any “off-the-record” discussions involving commercially sensitive topics.

Competition Compliance and Telecommunications

✓ **Design and implement a competition compliance training plan consisting of:**

- Mandatory annual training for all employees (legal, commercial, regulatory, strategy, pricing, marketing, and product development) on the fundamentals of competition with a focus on key risks in the telecommunications sector, as well as the dos and don'ts in interactions with competitors and other business strategies.
- Targeted training modules by function, for example:
  - Wholesale and retail teams should be trained on the boundaries of wholesale and retail pricing, information barriers, internal procedures for pricing strategies, and handling MVNO access.
  - Pricing, strategy, finance, and marketing teams should be trained on internal pricing review processes, rationale of introductory or promotional pricing and the importance of documenting pricing rationale and cost structures.
  - Product development teams should be trained on how to structure, test, and validate multiple play offers and pricing strategies.
- Briefings for any trade association or working groups participation to discuss acceptable conduct, prohibited topics, and what to do if sensitive issues are raised and discussed.
- Onboarding training activities for new employees should include an introduction to the company's competition compliance manual and core competition risks in the telecommunications sector.

✓ **Set up a whistleblowing channel for reporting suspicious patterns:**

- Adopt a whistleblowing policy containing at least:
  - The purpose and scope of the whistleblowing channel, including the type of reportable issues (e.g. anti-competitive conduct) and,
  - The rights and protections offered to whistleblowers, including confidentiality, anonymous reporting, and anti-retaliation measures.
- Set up a secure, confidential, and accessible tool that enables the submission of anonymous or identified reports.
- Offer alternative reporting channels: telephone, e-mail, physical mailbox, and in-person reporting.

- Communicate about the whistleblowing channel and whistleblower protection policy to all employees (and possibly third parties like contractors or partners)
- Set up the roles and responsibilities for the handling and follow-up of reports.

7. Consumer Protection and Competition Compliance

Competition law and consumer protection reinforce one another. In markets, where there is effective competition, producers have incentives to align with consumer protection objectives, for example, to attract customers away from rivals they are likely to provide the necessary information to reduce switching costs. At the same time, when consumers can exercise their choices effectively, they can act as a competitive discipline upon producers. In some jurisdictions, like Spain, competition laws include consumer protection aspects, and it is not uncommon for companies to include consumer protection as part of their competition compliance programs.

Compliance should not operate in silos. Many of the initiatives, actions, and procedures outlined above can be leveraged to address consumer protection concerns. For example, when developing multi-play offers, telecommunications operators should not only consider potential foreclosure effects but also respect consumers rights. They must ensure that the conditions of the offer are clearly communicated, that bundle prices are comparable to those of individual components available on the market, and that contract duration as well as the termination terms do not hinder or discourage switching providers. Telecommunications operators should ensure fast and effective number portability so that changing providers does not place an undue burden on consumers.Training programs can be designed to cover both compliance and consumer protection topics, ensuring a cohesive understanding across teams.