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***VOLUNTARY PEER REVIEW OF
COMPETITION LAW AND POLICY:
ALBANIA***

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The views expressed are those of the author and do not necessarily reflect the views of UNCTAD or any other national or international institution

DEVELOPMENT OF THE ALBANIAN COMPETITION POLICY

■ Main factors of the development of the Albanian competition policy

- Political and economic changes in the country
- Albania's integration to the European Union

■ Stages of the development – step by step

- The first Competition law of 1995
- The second Competition law of 2003
- SA Agreement with the EU of 2006
- The reform in Competition law of 2010

INSTITUTIONAL FRAMEWORK OF THE ALBANIAN COMPETITION POLICY

■ Legal status of the Albanian competition authority

- Competition Commission – decision-making body
- Secretariat – investigatory body

■ Independence of the Albanian competition authority

- Budgetary provisions
- Inter-institutional responsibilities
- Guaranties for impartiality and objectivity

OPERATIONS OF THE ALBANIAN COMPETITION AUTHORITY - I

■ Areas of competence of the Albanian competition authority

- Antitrust enforcement
- Merger control
- Sector inquiries
- Competition advocacy
- Legislation approximation

■ State aid control

■ Consumers protection policy

OPERATIONS OF THE ALBANIAN COMPETITION AUTHORITY - II

■ **Antitrust enforcement**

- Establishment of infringements and imposition of sanctions
- Notification regime regarding the agreements of undertakings

■ **Merger control**

- Notification regime regarding the mergers and acquisitions
- Appraisal test: SIEC

■ **Sector inquiries**

- Upon request by the Parliament or regulators or on own initiative
- In any sector of the national economy

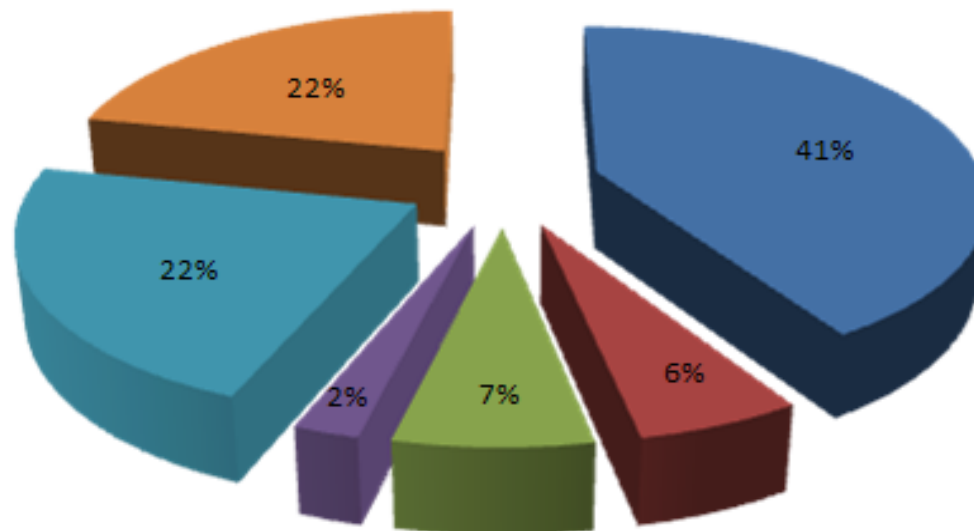
■ **Competition advocacy**

- Competition impact assessment of legislation
- Participation in regulatory reforms

■ **Legislation approximation to EU law**

OPERATIONS OF THE ALBANIAN COMPETITION AUTHORITY - III

The ACA's decisional practice in the period 2004-2013 per type of activity



- | | |
|------------------------------|------------------------------|
| ■ Concentrations | ■ Abuse of dominant position |
| ■ Prohibited agreements | ■ Exemption of agreements |
| ■ Regulations and guidelines | ■ Advocacy recommendations |

SUBSTANTIVE COMPETITION LAW OF ALBANIA - I

- Legal sources of the Albanian competition law
- General objectives and applicability of the law
 - Territoriality and effects principles of applicability
 - Clear legal definitions of the basic concepts: *undertaking, economic activity, relevant market, association of undertakings, etc.*
- Substantive provisions on collusive agreements
 - General prohibition identical to Art. 101 TFEU
 - Individual and block exemptions regime
 - *De minimis* rule
 - Nullity of the prohibited agreements
 - Cartels

SUBSTANTIVE COMPETITION LAW OF ALBANIA - II

- Substantive provisions on abuse of dominance
 - General prohibition identical to Art. 102 TFEU
 - No legal presumption for market dominance
 - Non-exhaustive list of prohibited unilateral conducts

- Substantive provisions on mergers and acquisitions
 - Forms of concentrations of undertakings: *merger, acquisition of control, creation of a full-function joint venture*
 - *Ex-ante* assessment based on an obligation of preliminary notification
 - Appraisal: ‘Dominance test’ replaced by the ‘SIEC test’ as of 2010

PROCEDURAL ASPECTS OF ALBANIAN COMPETITION POLICY - I

■ Initiation of proceedings:

- Upon complaint
- Ex officio
- Leniency applications
- Merger notifications
- Requests by State bodies

■ Investigation on competition cases

- Request for information
- Collection of information from State authorities
- On-the-spot inspections of business and non-business premises
- Seizure of evidence
- Interviews

PROCEDURAL ASPECTS OF ALBANIAN COMPETITION POLICY - II

- Procedural rights and obligations of the parties to the proceedings before competition authority
 - Right to be informed about the proceedings
 - Right to access the case file
 - Right to submit observations and objections
 - Right to be heard
 - Right of confidential treatment
 - Privilege against self-incrimination
 - Obligation to cooperate with the competition authority
 - Obligation to provide correct, complete or non-misleading information
 - Obligation not to oppose the authority's inspections on spot

PROCEDURAL ASPECTS OF ALBANIAN COMPETITION POLICY - III

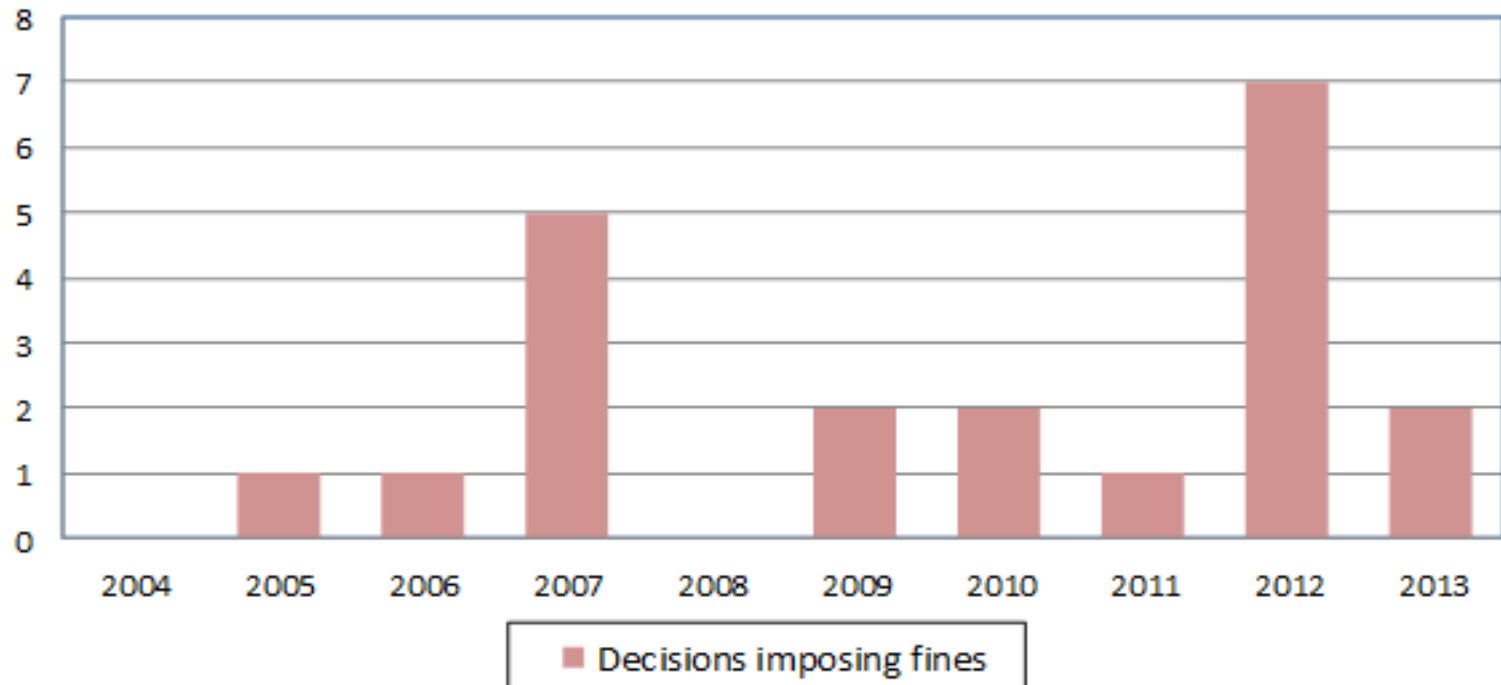
- Decision-making on competition cases
- Judicial review of the competition authority's decisions
 - Three-instance judicial control
 - No specialized courts in competition law
 - General reform in the administrative justice as of 2013
- Civil proceedings on private competition enforcement
 - Right of civil action provided for in the Competition law
 - No cases of private litigation

SANCTIONING AND LENIENCY POLICY

- Sanctions for substantive law infringements
 - Sanctions on undertakings and associations of undertakings
 - Sanctions on individuals
- Sanctions for procedural law infringements
 - Single procedural fines
 - Periodic penalty payments
- Method on setting sanctions
 - Two-step turnover-based approach: *basic amount* and *adjustment*
 - Legal maximum of the sanctions
- Leniency programme
 - In existence since 2004 but no practice
 - Applicability to any type of agreement between undertakings

ENFORCEMENT RECORD

The ACA's fining decisions in 2004-2013 with total amount of the sanctions imposed: ALL 1 036 999 298 (US\$ 9 430 000)



MAIN FINDINGS AND CONCLUSIONS

- Albania has a modern legal and institutional framework for competition protection
- The national competition policy is constantly aligning with the latest developments in EU competition law
- There is a need to increase the competition culture of economic operators in the country
- Continuous efforts by the competition authority are needed to assist policy makers to refrain from taking measures that may adversely affect competition
- The involvement of the competition authority in regulatory reforms and the implementation of competition advocacy give beneficial effect
- The effectiveness of the anti-cartel enforcement requires improvements in the leniency policy as well as common actions against bid-rigging
- Increasing the administrative capacity of the competition authority's staff is essential for the effectiveness of the national competition policy

RECOMMENDATIONS

- Continue to align the national competition framework with the EU standards in competition policy
- Create institutional capacity for effective State aid control
- Increase the effectiveness of consumer protection
- Reduce the criteria for election of competition authority members
- Continue safeguarding the independence of the competition authority
- Consider abolishing the notification regime for agreements between undertakings
- Increase public awareness of anti-cartel policy
- Enhance leniency policy in cartel cases
- Fight against bid-rigging by coordinating actions with the relevant authorities for public procurement and anti-corruption policies
- Continue strengthening tools for competition advocacy
- Enhance the competition culture of economic operators in Albania

RECOMMENDATIONS

- Introduce detailed rules on commitments decisions
- Increase public awareness of private competition enforcement
- Strengthen capabilities to conduct on-the-spot inspections in competition cases
- Institute the function of Chief Economist to facilitate the use of economic analysis in competition cases
- Establish workable systems for the execution of sanctions imposed by the competition authority
- Introduce a precise system for career planning and extra incentives for the competition authority's staff
- Continue to seek technical assistance and training activities for the competition authority's staff
- Training activities for judges on competition law
- Institute a library within the competition authority

Thank you for your attention!

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