PANORAMIC

MERGER CONTROL

Albania

LEXOLOGY

Merger Control

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UPDATE AND TRENDS

Key developments of the past year

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QUICK REFERENCE TABLE

The table below is for quick reference only.

Voluntary or mandatory system?	Mandatory system. The filing of a notification with the Competition Authority (the Authority) is mandatory in cases where the applicable turnover thresholds are met.
Notification trigger/filing deadline	Concentrations have to be notified within 30 days of the date of entering into the merger agreement or the agreement pursuant to which a controlling interest is acquired, or of the date of publication of the public offer to purchase or exchange shares.
Clearance deadlines (Phase I/Phase II)	PA preliminary proceeding (Phase I) applies where a merger is unlikely to restrict competition in the relevant market, especially through the creation or strengthening of a dominant position. The Authority has to decide on the merger within two months of the working day following the confirmation of receipt of a complete notification. A fast-track proceeding has been available since June 2016. An in-depth (Phase II) proceeding applies where the transaction gives rise to concerns regarding a dominant position being created or reinforced. The Authority must investigate the case and issue a decision within three months of the start of such Phase II proceeding (which can be extended by up to one month). If, within these time limits, the Authority does not issue a decision, the concentration is deemed to have been approved.
Substantive test for clearance	The Authority assesses whether the concentration may lead to a substantial lessening of competition in the market or a part thereof, especially by the creation or strengthening of a dominant position in the relevant market.

Penalties	If the undertakings that are required to notify the merger fail to duly file within the set time limits (late filing), the Authority may impose fines of up to 1 per cent of their annual turnover in the most recently completed business year. If the undertakings concerned fail to notify or close the transaction prior to clearance and the transaction leads to lessening of competition in the market, the Authority may impose fines amounting to up to 10 per cent of each participating undertaking's previous annual turnover.
Remarks	Although the Albanian merger control regime is still rather young, it has recently experienced a clear increase in activities by the Authority in enforcing merger control law (and competition law in general).

Law stated - 8 April 2024

LEGISLATION AND JURISDICTION

Relevant legislation and regulators
What is the relevant legislation and who enforces it?

The legal basis for regulating merger control in Albania is found mainly in Law No. 9,121 on the protection of competition dated 28 July 2003 (the Competition Act), published in Official Gazette No. 71 of 1 August 2003, which aims to protect free and effective competition. The Competition Act was amended by Law No. 10,317 of 16 September 2010, published in Official Gazette No. 135 of 7 October 2010. The amendments became effective on 23 October 2010. There are also guidelines and regulations that supplement the legislation, which are based on EU regulations and guidelines.

The Competition Authority (the Authority) is principally responsible for enforcing the Competition Act. It consists of the Commission as its decision-making body, and the Secretariat as the executive body. The Commission is responsible, among other matters, for overseeing the Secretariat, making decisions and drafting the guidelines and regulations. The Secretariat monitors market conditions to ensure effective competition, conducts investigations and oversees the implementation of the Commission's decisions.

Law stated - 8 April 2024

Scope of legislation
What kinds of mergers are caught?

Articles 10-17 of the Competition Act are responsible for regulating mergers. Under the Competition Act, any of the following causing a lasting change of control constitutes a merger:

- the merger of two or more undertakings, or parts of undertakings, that were previously independent of each other;
- any transaction in which an individual that has control over an undertaking, or one or more undertakings, acquires, directly or indirectly, a controlling interest in all or parts of one or more undertakings; or
- the establishment of a new joint company acting as an independent economic unit.

Law stated - 8 April 2024

Scope of legislation
What types of joint ventures are caught?

The establishment of a joint venture is caught by Albanian merger control rules if the new joint venture company will be acting in the market on a lasting basis as an independent economic unit.

Joint ventures will not be considered as concentrations under the Act if its objects include, or it results in, the coordination of competitive activities between two or more independent undertakings. In this case, the joint venture would be assessed under the agreements section, equivalent to Art 101 TFEU.

Law stated - 8 April 2024

Scope of legislation
Is there a definition of 'control' and are minority and other interests less than control caught?

Pursuant to the Competition Act, control may be acquired by rights, contracts or other means that, either separately or in combination, on a legal or factual basis, confer the possibility of exerting decisive influence on the activities of an undertaking, in particular by means of:

- ownership or the right to use all or part of the assets of an undertaking; or
- rights or contracts that allow the holder to decisively influence the composition, voting or decision-making of the corporate governance bodies of an undertaking.

Control may also be exercised by a minority shareholder if the shareholding to be acquired confers the possibility of exercising decisive influence on an undertaking in the ways described above; however, Albanian merger control provisions are only applicable in cases of acquisition of joint or sole control. Acquisition of non-controlling minority participation in an undertaking and other interests less than control do not fall within the scope of the Albanian merger control regime.

Law stated - 8 April 2024

Thresholds, triggers and approvals

What are the jurisdictional thresholds for notification and are there circumstances in which transactions falling below these thresholds may be investigated?

A merger will be subject to Albanian merger control law and must be notified to the Authority if the undertakings concerned generated the following turnover in the business year preceding the concentration:

- combined worldwide turnover of more than 7 billion leke and domestic turnover of at least one of the undertakings concerned of at least 200 million leke; or
- combined domestic turnover of more than 400 million leke and domestic turnover of at least one of the undertakings concerned of at least 200 million leke.

The turnover to take into account is income generated by an undertaking's ordinary activities, after deduction of taxes or fees directly related to income. There are rules specific to credit or financial institutions. If an undertaking is part of a group, the group's overall external turnover must be taken into account.

Law stated - 8 April 2024

Thresholds, triggers and approvals

Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

The notification of a merger to the Authority is mandatory if the turnover threshold criteria are met.

The Competition Act provides for an exception to the application of the Albanian merger control regime where financial, credit or insurance institutions acquire shares in undertakings for the purpose of resale, provided that the acquirer does not exercise the voting rights related to the acquired shares and the resale occurs within one year of the acquisition.

Law stated - 8 April 2024

Thresholds, triggers and approvals

Do foreign-to-foreign mergers have to be notified and is there a local effects or nexus test?

Foreign-to-foreign mergers must be notified and clearance by the Authority is required, even in cases where the undertakings involved in the merger are domiciled abroad, provided that the notification thresholds are met.

The Competition Act expressly states that it applies to all undertakings, regardless of whether domestic or foreign, of which the activities have a direct or indirect effect on the Albanian market. The Competition Act does not define the concept of 'effect'.

In practice, the Authority generally considers that a merger has an effect on the Albanian market even in cases where the undertakings concerned do not have a direct presence in Albania (through subsidiaries or branch offices) or when the undertakings concerned are indirectly active in Albania (through imports or sales to independent local distributors) and meet the turnover threshold test.

Law stated - 8 April 2024

Thresholds, triggers and approvals

Are there also rules on foreign investment, special sectors or other relevant approvals?

There are no specific rules on foreign investments.

Approval or at least a notification of acquisitions of interests above or below certain thresholds is required for the energy, banking and insurance sectors, and with regard to public companies.

Law stated - 8 April 2024

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities

What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

Notifiable concentrations must be notified within 30 days of the date the merger agreement or the agreement pursuant to which a controlling interest is acquired is entered into, or of the date of publication of the public offer to purchase or exchange shares, according to Article 10 of the Competition Act (the Act). The Act does currently not foresee any possibility of bypassing the requirement for an agreement to be concluded before filing.

The sanctions for not filing are laid out in Article 73 of the Act, where subsection (dh) addresses failure to notify a transaction as per Articles 10 and 12. If the undertakings that are required to notify the merger fail to duly file within the set deadline (late filing), Article 73 foresees a fine of up to 1 per cent of the undertakings' annual turnover generated in the most recently completed business year. For the purposes of calculating the amount of the fine, if the undertakings belong to a corporate group, the turnover of the group will be taken into account.

The Competition Authority (the Authority) has previously imposed a fine on a foreign company for failure to file in time with respect to a merger that involved the acquisition of an Albanian company. The Authority has also previously accepted a (short) notification letter to meet the filing deadline, provided that a regular notification of the concentration was then submitted within a certain period allowed by the Authority.

More recently, the Authority fined three undertakings for failing to notify their joint acquisition of control over another undertaking. One month later, another fine was administered to an undertaking for failing to notify a merger agreement. The fines imposed by the Authority in these two cases were not made public in the decisions published on the Authority's website.

Law stated - 8 April 2024

Filing formalities

Which parties are responsible for filing and are filing fees required?

The parties responsible for filing a notification with the Authority are set out in the Authority Guideline 'On the Form of the Concentration Notification'. According to this regulation, responsibility rests with the merging parties or the undertaking acquiring a controlling interest in (the whole or part of) one or more other undertakings. In cases of a joint venture, the participating undertakings are jointly responsible for filing.

Upon receipt of the notification, the Authority confirms the completeness of the filing with a written certificate. If the Authority considers the notification to be incomplete, it will require the submission of any additional information that it deems necessary to review the notification within a certain period.

The fees accompanying a notification are set out in the Regulation 'On the approval of expenses relating to
Competition Authority procedures,' which was updated in 2021. According to this Regulation, the following fees are due:

- simplified-form merger filing fee: 15,000 leke;
- long-form merger filing fee: 50,000 leke;
- authorisation of a temporary implementation of a merger: 300,000 leke;
- approval of a Phase I merger: 500,000 leke;
- approval of a Phase II merger:
    - 0.03 per cent of the annual turnover in the preceding financial year of all the participating undertakings, when the conditions laid out in Article 12, subsection 1(a)of the Act are met, but nonetheless the fee must not exceed 2,000,000 leke; or
    - 0.03 per cent of the annual turnover in the preceding financial year of all the participating undertakings when the conditions laid out in Article 12, subsection 1(b)of the Act are met, but nonetheless the fee must not exceed 2,000,000 leke;
- in cases where the Authority determines that the notification does not require approval: 150,000 leke.

These fees are non-refundable, even in cases where the Authority determines that no approval is necessary.

Law stated - 8 April 2024

Filing formalities

What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

Mergers that meet the notification threshold criteria and thus require notification to the Authority must not be implemented prior to clearance by the Authority. Article 14 of the Act mandates that the transaction is suspended prior to clearance.

The Authority assesses notified concentrations either in preliminary proceedings (Phase I) or in in-depth investigations (Phase II).

Phase I proceedings apply to mergers that do not present any indications of a substantial lessening of competition in the relevant market or a part of it. In preliminary proceedings, the Authority decides on the merger within two months of the working day following the confirmation of receipt of a complete notification. If the filing is considered incomplete due to the parties supplying wrong or missing information, the procedure start date will be delayed until the notification is complete.

In June 2016, the Authority introduced fast-track proceedings for certain types of concentrations that do not raise competition concerns. These fast-track proceedings enable the Authority to clear straightforward concentrations within 25 days of the working day following the confirmation of receipt of a complete notification.

If, in the course of the proceedings, the Authority believes that the notified transaction raises competition law concerns, it may decide to initiate Phase II investigations or to authorise the merger only under certain conditions. To that end, the parties may suggest (within one month of the notification) certain measures to the Authority to mitigate the possible negative effects of the merger on the market. If the parties offer commitments to the Authority, the time limit is extended by two weeks. If a decision is not issued by the Authority within two months (plus the extended term of two weeks, as the case may be), the lack of communication shall be constituted as clearance, and the transaction may be completed.

In Phase II, the Authority investigates the case and issues a decision within three months of the start of an in-depth investigation. The deadline can be extended by up to one month if the parties – within two months of the start of the in-depth proceedings – offer to take certain steps to mitigate the possible effects of the merger on the market.

The Authority may suspend the time frame of the proceedings if the proceedings are impeded by the undertakings concerned, in particular if the parties:

- do not provide the information requested by the Authority within the set time limit;
- refuse to submit to investigations carried out by the Authority; or
- did not inform the Authority about changes of facts contained in the merger filing.

Upon request, the Authority may also temporarily approve the merger if the request is justified, as otherwise irreparable damage would be caused to the undertakings concerned or to third parties and under consideration of the overall goal of protecting competition.

Law stated - 8 April 2024

Pre-clearance closing

What are the possible sanctions involved in closing or integrating the activities of the merging businesses before clearance and are they applied in practice?

The Authority may impose fines on undertakings if they close the transaction and fail to notify. Under Article 73 of Law No. 9,121 on the protection of competition dated 28 July 2003, amended on 16 September 2010 (the Competition Act), late filing of a transaction and the submission of incorrect, incomplete or misleading information are considered non-serious infringements, and this section foresees a penalty in the form of a fine of up to 1 per cent of the undertakings' aggregate turnover for the preceding financial year.

Article 74 of the Law addresses closing a transaction before obtaining clearance, failure to notify and integrating the activities of the merging businesses when the merger has been blocked by the Authority. In the absence of a filing, the implementation of concentrations that result in a restriction of competition in the market is considered a serious infringement and may be subject to fines of up to 10 per cent of the aggregate turnover in the previous financial year.

Albanian law does not specify any further requirement other than that the implementation of the concentration must result in a restriction of competition to qualify as a serious infringement. It remains to be seen how the Authority will interpret this requirement in practice.

In determining the amount of the fine, the Authority will take into account the financial gain resulting from violating the Competition Act; this amount shall be taken as the minimum amount of the fine. If a fine is imposed on a group of undertakings, the amount of the fine shall not exceed 10 per cent of the aggregate turnover generated in the market concerned by the infringement in the preceding business year.

Furthermore, a merger is deemed to be void if it is implemented without clearance or if conditions to which the merger authorisation is subject have not been fulfilled.

In 2009, the Authority imposed a fine of 2.6 million leke on a company that had violated the merger filing obligation. Other possible remedies, such as structural sanctions, were not imposed.

In 2014, the Authority imposed a fine of 100,000 leke on a company for failure to notify. This is in line with two cases in 2012 in which the Authority imposed fines of 100,000 leke each on two companies for failure to notify.

In 2023, the Authority imposed a fine of 0.05 per cent of the annual turnover of the preceding year on three undertakings for failure to notify.

Law stated - 8 April 2024

Pre-clearance closing

Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

The sanctions for closing before clearance also apply to foreign-to-foreign mergers, if they meet the notification thresholds; however, in practice, we are not aware of these sanctions having been applied to any such mergers to date.

Law stated - 8 April 2024

Pre-clearance closing

What solutions might be acceptable to permit closing before clearance in a foreign-to-foreign merger?

The Competition Act does not provide any specific solutions for foreign-to-foreign mergers. However, Article 60 of the Act provides the solution of obtaining a temporary authorisation before clearance. A temporary clearance may be granted if the undertakings involved in the merger would otherwise suffer irreparable damage, and it may be issued subject to conditions that the Authority considers necessary to ensure effective competition.

To our knowledge, there is no approved practice of carve-out solutions.

Law stated - 8 April 2024

Public takeovers

Are there any special merger control rules applicable to public takeover bids?

Law No. 10,236 on the takeover of public companies dated 18 February 2010 sets forth special merger control rules for the takeover of Albanian or foreign public companies that are also seated in Albania and that are listed at the Albanian stock exchange. As there is no operational stock exchange in Albania, the Law is inapplicable at present.

Law stated - 8 April 2024

Documentation

What is the level of detail required in the preparation of a filing, and are there sanctions for supplying wrong or missing information?

The Authority requires that the notification of a merger be prepared on the basis of a standard filing form. Reference can be made to the guideline issued by the Authority on the relevant filing formalities, which was most recently updated on 23 June 2008.

On the basis of this guideline, the Authority has the discretion to require a short-form or a full notification.

The notification must, among other things, provide the following:

- information on:
    - the identity of the undertakings concerned and their authorised representatives (eg, names and addresses);

- the form of the concentration (merger, acquisition of control, etc);
- the value of the transaction;
- the controlling interests in the undertakings concerned; and
- the relevant product and geographical market and, where applicable, the market affected by the concentration;

- turnover of the undertakings concerned in the domestic market and worldwide; and
- an outline or list of the corporate group the undertaking belongs to, and the entities or persons that control the parties to the transaction; and
- market shares of the undertakings concerned, including information on the methods for their calculation or estimation.

The applicant must submit certain documents with the notification, such as:

- the legal basis of the acquisition or merger;
- certificates of incorporation;
- financial statements and balance sheets for the preceding financial year; and
- analyses, reports, studies, statistics and further supporting materials on which the information provided in the notification is based.

The documents must be originals or copies certified by a notary. Documents that are not in English or Albanian must be translated into Albanian and certified by a notary. Notarial certifications not performed in Albania require an apostille or certification (legalisation) by the Albanian embassy in the applicable country.

Furthermore, the notification must be accompanied by a certificate of payment of the merger filing fee. Following the filing, the Authority may request additional documents and information. When these requests are met, the Authority will issue a confirmation that the filing is complete and will start its review process.

Supplying wrong or incomplete information is considered a non-serious infringement under Article 74 of the Act and is subject to a penalty in the form of a fine of up to 1 per cent of the responsible undertaking's annual turnover of the preceding year. Additionally, this can prolong the timeframe for a decision from the Authority. In 2023, one fine was issued for supplying insufficient and incorrect information during a filing. The amount of the fine was not made public.

Law stated - 8 April 2024

Investigation phases and timetable

What are the typical steps and different phases of the investigation?

Once an application is filed, the Authority examines the notification form and the supporting evidence.

If the Authority requires more information or additional documents, it will send a request to the notifying party detailing the requests and setting a deadline for the reply.

Once its information and documentary requests have been fulfilled, the Authority will complete its examination of the notification and will set out its findings in a report in which it makes the necessary recommendations. If it does not identify any indications of a significant restriction of competition in the market, it will approve the transaction during the preliminary procedure stage (Phase I). If the transaction presents such restrictions, the Authority can decide to either authorise the transaction at the preliminary stage based on conditions and obligations, or to initiate an in-depth investigation (Phase II). Following an in-depth investigation, the Commission can then decide to clear the transaction with conditions and obligations, or to prohibit it.

Section 6 of the Regulation 'For the implementation of the concentration procedures-' provides undertakings with the option to undertake pre-filing consultations on a voluntary basis. The consultations allow the undertakings to discuss with the Authority their intention to complete a transaction that could lead to a concentration, and to address any questions or queries they might have regarding filings. The consultation process, therefore, is done on a voluntary basis for undertakings that may wish to address any queries to the Authority before they conclude an agreement.

Law stated - 8 April 2024

Investigation phases and timetable

What is the statutory timetable for clearance? Can it be speeded up?

In Phase I proceedings, the Authority decides on the merger within two months of the working day following the confirmation of receipt of a complete notification. That period can be extended by another two weeks if the parties offer certain measures to the Authority to mitigate the possible negative effects of the merger on the market.

In practice, the Authority strives to decide on a transaction within one month of receipt of a complete notification.

In June 2016, the Authority introduced a fast-track merger control procedure for the following types of concentrations that usually do not give rise to competition concerns:

- two or more undertakings that acquire joint control of a joint venture, provided that the joint venture has no actual or anticipated activities in Albania – such cases occur when:
    - the turnover of the joint venture or of the activities contributing to the joint venture is less than 300 million leke in the territory of Albania at the time of notification; and
    - the total value of the assets transferred to the joint venture is less than 300 million leke in the territory of Albania at the time of notification;
- two or more undertakings merge, or one or more undertakings acquire sole or joint control over another undertaking, provided that none of the parties to the concentration engage in business activities in the same product and geographic

market, or in a product market that is an upstream or downstream market in relation to the product markets in which any other party to the concentration is engaged; or

- two or more undertakings merge, or one or more acquire sole control of an enterprise or joint company, when the following two conditions are met:
    - the combined market share of all the parties to the concentration, dealing with business activities in the same product and geographical market (horizontal relationships), is less than 15 per cent; and
    - the individual or combined market share of all parties to the concentration that are engaged in business activities in a product market that is upstream or downstream from the product market in which any other party to the concentration is engaged (vertical relationships) is less than 25 per cent.

At its discretion, the Authority may also decide to apply the fast-track procedure where two or more undertakings merge, or one or more undertakings take sole control or joint control of another undertaking, when both of the following conditions are met:

- the combined market share of all the parties to the concentration that are in a horizontal relationship is less than 50 per cent; and
- the increase (delta) of the Herfindahl-Hirschman Index resulting from the concentration is below 150.

Under the fast-track procedure, the Authority clears concentrations by way of a short-form decision within 25 days of the working day following the confirmation of receipt of a complete notification.

In in-depth proceedings (Phase II), the Authority issues a decision within three months of the start of the in-depth proceedings. This period may be extended by up to one month if the parties – within two months of the start of proceedings – offer to take steps to mitigate the possible effects of the merger on the market.

The Competition Act provides that temporary clearance can be granted under certain circumstances.

Law stated - 8 April 2024

SUBSTANTIVE ASSESSMENT

Substantive test

What is the substantive test for clearance?

Law No. 9,121 on the protection of competition dated 28 July 2003 (the Competition Act) provides that a merger shall be prohibited if it leads to a significant impediment to effective competition in the market or a part of it, especially if this results from the creation or strengthening of a dominant market position. To be declared compatible with Albanian competition law, a transaction must not significantly restrict competition in the market, or in a part of it, in particular by the creation or strengthening of a dominant position. The potential effects of the merger are assessed on the basis of diverse information and data relating to

the Albanian market, including the market shares of the undertakings concerned and of their competitors, barriers to market entry, potential competition and demand substitutability.

Article 13 of the Act provides a failing firm defence, stating that the Competition Authority (the Authority) may sometimes authorise certain transactions when one of the parties to the transaction is at serious risk of failing and there is no other less anti-competitive alternative. To benefit from the failing firm defence in Article 13, the undertaking must be on the verge of exiting the market, if not for the transaction, and unable to reorganise its activity to save it from failing.

We are not aware of any decision in which the Authority has applied the failing firm defence in practice.

Law stated - 8 April 2024

Substantive test

Is there a special substantive test for joint ventures?

The Competition Act does not establish a substantive test that is specific to joint ventures.

Law stated - 8 April 2024

Theories of harm

What are the 'theories of harm' that the authorities will investigate?

In general, the Authority will assess whether a merger leads to a substantial lessening of competition in the relevant market or part of it. The Authority's assessment is based on a series of factors, including:

- the market share of the companies participating in the merger and of their competitors;
- barriers to market entry;
- potential competition;
- the economic and financial power of the undertakings concerned;
- the economic dependency of suppliers and customers;
- the development of the distribution networks;
- economic relationships with other undertakings; and
- demand substitutability.

Neither the Competition Act nor the guideline issued by the Authority on the relevant filing formalities (or other guidelines in Albania) specify theories of harm that the Authority investigates specifically (besides the substantial lessening of competition); however, in practice, the Authority's assessment often refers to precedents established by the European Commission. The Competition Act and the enforcement activity of the Authority mainly seem to focus on market dominance and unilateral effects as the main theories of harm in merger

control. The Competition Act continuously reiterates the importance of the parties having a dominant position in the market for the purposes of assessing the transaction. Unilateral effects have also been at the forefront of the Authority's concerns, with exploitative abuses, such as excessive pricing, and exclusionary practices, such as price discrimination or unfair trading conditions, being the most common theories of harm brought by the Authority.

As the Albanian competition framework and the activity of the Authority tend to be in line with the EU competition framework and the activity of the European Commission, it is therefore not unlikely that the Authority would look at theories of harm, such as coordinated effects, foreclosure and harm to innovation, as Albanian competition law enforcement continues to develop and the market continues to expand.

Law stated - 8 April 2024

Non-competition issues

To what extent are non-competition issues relevant in the review process?

The Competition Act does not expressly mention non-competition issues such as industrial policy or public interests as being relevant in the assessment process.

If they are taken into account in practice, it is difficult to ascertain to what extent, as many decisions and investigations are not made public.

The enforcement of Albanian competition law is still relatively new, and therefore non-competition issues have yet to be woven into the system.

Law stated - 8 April 2024

Economic efficiencies

To what extent does the authority take into account economic efficiencies in the review process?

Article 13 of the Competition Act allows the Authority to take into account economic efficiencies resulting from the merger when reviewing a transaction. Such economic efficiencies may be the rationalisation of production, economies of scale, purchasing economies and technological progress.

To be considered in the review process, the economic efficiencies brought by the merger must:

- contribute to the improvement of consumers' wellbeing, or at least offset any potential negatives it may produce;
- be derived from the transaction, and no other less anti-competitive alternative must be available to achieve the same efficiencies;
- be verifiable and quantifiable.

Law stated - 8 April 2024

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

What powers do the authorities have to prohibit or otherwise interfere with a transaction?

The Competition Authority (the Authority) is empowered by Law No. 9,121 on the protection of competition dated 28 July 2003 (the Competition Act) to prohibit or interfere with a transaction. If the transaction is deemed to significantly reduce effective competition on the market, especially as a result of the creation or strengthening of a dominant position, the Authority may decide to either approve the transaction with conditions and obligations to eliminate anti-competitive effects and re-establish competition, or to block the transaction. The implementation of a notifiable concentration without prior clearance from the Authority renders the transaction null and void.

Article 61 of the Competition Act sets out the possible conditions and obligations which the Authority can impose on undertakings. Sections (dh) and (e) of this Article provide the Authority with vast power to interfere with a transaction, allowing it to impose any other remedies enabling 'the elimination of anti-competitive effects' and 'the correct application of conditions and obligations'. The vague wording of these two sections provides great power to the Authority to interfere in transactions, and allows it to impose any remedies it might see fit, provided that they are proportional to the anti-competitive effects of the concentration.

Where a transaction has been implemented without the Authority's prior clearance, or where the transaction presents competitive concerns, the Authority, besides the possibility of imposing fines, undertakes a review of the transaction on its own initiative. It may require the undertakings to take the steps necessary to re-establish the situation to that which existed prior to the transaction and, where relevant, may impose the separation of the merged undertakings or the sell-back of acquisitions and assets that have been transferred.

Law stated - 8 April 2024

Remedies and conditions

Is it possible to remedy competition issues, for example by giving divestment undertakings or behavioural remedies?

Article 61 of the Competition Act allows the undertakings to remedy competition issues and avoid the prohibition of the transaction. The proposed remedies by Article 61 include: the sale of parts of the undertakings, the sale of any kind of participation in an undertaking activity (for example, divestment), concluding contractual relationships, giving licences, and the imposition of behavioural remedies by obliging the stoppage of a certain activity.

Article 62 also provides the opportunity for the undertakings to propose their own remedies to re-establish normal competition, within a set deadline appointed by the Authority. This can only be done at the request of the Authority. The Authority does not impose any conditions or remedies unilaterally. If the Authority agrees to the proposed remedies, it may further decide on any deadlines and on how implementation should be carried out. It is the duty of the undertakings to provide detailed information regarding the proposed remedies, how they might be carried out and how they would restore competition. The remedies must be wholly

achievable by the parties within a tight timeframe and must be able to eliminate all concerns the transaction presents.

If, however, the Authority rejects the undertakings' proposals, it will then produce its own measures to restore competition. If the parties do not present any measures to re-establish competition on the market, the Authority will be obligated to prohibit the transaction.

Law stated - 8 April 2024

Remedies and conditions

What are the basic conditions and timing issues applicable to a divestment or other remedy?

The Competition Act does not currently address any timeframes for divestment or other remedies. The timeframes are appointed by the Authority, depending on the circumstances of the case and the nature of the proposed remedies. The guideline 'On conditions and obligations in cases of concentrations' states that the proposed remedies must be able to be carried out quickly and within a short timeframe, as the conditions of competition on the market will not remain static until the remedies are fulfilled.

The basic conditions for remedies are laid out by the same guideline. The two biggest conditions states that they must be realistically achievable within a short period of time and the Authority must be able to effectively monitor their application.

Law stated - 8 April 2024

Remedies and conditions

What is the track record of the authority in requiring remedies in foreign-to-foreign mergers?

The Authority, to our knowledge, has not yet imposed any remedies in foreign-to-foreign mergers.

Law stated - 8 April 2024

Ancillary restrictions

In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

Ancillary agreements are addressed by the guideline 'For the related and necessary restrictions in concentrations'. According to this guideline, restraints must be closely related to the concentration to be considered as 'directly related to the implementation of a concentration', and therefore be deemed as a single restriction and not an ancillary one. 'Closely related to the concentration' is defined as having economic links to the main transaction and enabling a smooth transition to the new undertaking structure following the merger. Additionally, to avoid being considered ancillary restrictions, agreements must be necessary to the implementation of a merger, meaning that in their absence, the transaction

cannot go ahead, or can only be completed at high cost, in a longer time frame, or with greater difficulties. In assessing whether an agreement amounts to an ancillary restriction, the Authority will take into account the nature of the agreement and its object, and the effects that it has on its timeframes, costs, the security of the transaction and more.

If the agreements are found to be ancillary, the Authority will issue another decision on their effects and they will not be included in the transaction decision.

Law stated - 8 April 2024

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights

Are customers and competitors involved in the review process and what rights do complainants have?

Law No. 9,121 on the protection of competition dated 28 July 2003 (the Competition Act) requires the Competition Authority (the Authority) to publish the fact that it has received a notification.

On that basis, third parties may submit their comments, claims or objections to the Authority. In general, third parties can bring facts that they consider to be infringements of the Competition Act to the Authority's attention. Article 29/1 of the Competition Act addresses complaints, stating that third parties that have an interest in the transaction or are affected by it, may submit a complaint to the Authority, which will maintain confidentiality if requested by the party. Complaints will be forwarded to the Secretariat, which will handle the situation according to the regulation 'On the functioning of the Albanian Competition Authority'.

Law stated - 8 April 2024

Publicity and confidentiality

What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

The notifying undertakings may request that the Authority treat the information provided with the notification or obtained in the course of the review process in a confidential manner. All members and employees of the Authority are subject to professional secrecy and shall not disclose confidential information acquired during their duty under any circumstances, except for when they might be required to testify before a court.

Additionally, when submitting a merger filing, the Authority requests that the parties identify any confidential information and business secrets and specify this in the filing. Any publications produced by the Authority, including decisions, shall not contain any confidential information or business secrets.

Law stated - 8 April 2024

Cross-border regulatory cooperation

Do the authorities cooperate with antitrust authorities in other jurisdictions?

Article 71 of the Competition Act permits the Authority to cooperate with antitrust authorities in other jurisdictions on the basis of bilateral agreements or simply in response to their requests.

The Authority may refuse requests if the cooperation is not reciprocal, or compliance with the obligation to keep commercially sensitive information or business secrets confidential would not be guaranteed.

Law stated - 8 April 2024

JUDICIAL REVIEW

Available avenues

What are the opportunities for appeal or judicial review?

Article 40 of Law No. 9,121 on the protection of competition dated 28 July 2003 (the Competition Act) provides undertakings with the possibility of appealing the decisions of the Competition Authority (the Authority). Decisions by the Authority may be challenged before the District Court of Tirana. Fines imposed by the Authority have to be challenged within 30 days.

The Authority may revoke its decision if:

- it is based on incorrect or improperly obtained data; or
- the undertakings concerned breach the obligations set forth in the authorisation of the merger.

Lodging an appeal does not suspend the application of decisions which authorise the concentration, or decisions to impose interim measures on the transaction.

We are not aware of any recent cases in which merger control decisions of the Authority have been subject to judicial review by the District Court of Tirana.

However, a recent case from 2023 involved the challenging of a fine imposed by the Authority on three undertakings for failing to file an acquisition within the required framework. The undertakings appealed the Authority's decision to impose a fine, arguing that the Authority had failed to notify the undertakings about the proceedings, that the Authority had breached the principle of proportionality when imposing a fine, and that the data analysed by the Authority was incorrect. The Authority rebutted all the arguments in turn and remarked that the fine initially imposed on the undertakings was significantly higher than those imposed for similar offences, but that it seemed that the level of fines imposed was not enough to prevent further offences. For this reason, the Authority decided to adjust the fines imposed on the undertakings to ensure that the sanctions will deter any further breaches of the law. All three undertakings were fined 0.05 per cent of their annual turnover.

Law stated - 8 April 2024

Time frame
What is the usual time frame for appeal or judicial review?

The time frame for appeal or judicial review depends on the complexity of the disputed matter. In practice, taking into account the usual duration of court proceedings in general, judicial review may take as long as one or two years.

Law stated - 8 April 2024

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record
What is the recent enforcement record and what are the current enforcement concerns of the authorities?

The Competition Authority (the Authority) has previously shown its general willingness to impose fines on undertakings that violate the filing obligation or the prohibition on completing concentrations prior to receipt of Albanian merger clearance; in 2023, two fines were issued for failure to file a transaction, and one fine was issued for supplying insufficient and wrong information and for failure to notify within the 30-day deadline.

Besides the area of merger control, the Authority has shown specific interest in, and has launched investigations into, alleged infringements of competition law in sectors and products including telecommunications, airport taxi transport, internet service in residential buildings, and chemical waste.

To enhance the Authority's access to information on concentrations that infringe the filing obligation, several measures have been announced in recent years, such as the conclusion of a cooperation agreement with the trade registry under which the Authority would receive more information about acquisitions or changes of control in Albanian companies. According to a statement by the Authority, this cooperation has been implemented. The Authority receives periodical updates of ownership changes on shares and verifies whether the changes qualify as a notifiable concentration.

Law stated - 8 April 2024

Reform proposals
Are there current proposals to change the legislation?

There is currently a proposal to amend Law No. 9,121 on the protection of competition dated 28 July 2003 (the Competition Act), which is still at the draft stage. There is no scheduled timeframe as to when this change might be expected to come into force.

The proposed legislation is expected to introduce changes to prohibited agreements, such as concerted practices and agreements in public procurement, but it is yet unknown whether any amendments will be made to the merger control regime.

Law stated - 8 April 2024

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

In 2023, the Competition Authority (the Authority) reviewed and cleared 60 concentrations, the majority of which were not related to the domestic market; this marks a significant increase from 31 concentrations in 2022. The Commission also imposed three fines on undertakings in 2023 for concentration-related infringements.

Further, in 2023, the Authority has shown specific interest in, and has launched investigations into, alleged infringements of competition law in sectors and products including telecommunications, airport taxi transport, internet service in residential buildings, and chemical waste.

inflation is being felt in Albania; however, we are not aware of this having had any effect on the Authority's practice in merger control cases or having led to any connected policy statements.

Law stated - 8 April 2024