



**REPUBLIC OF ALBANIA  
ASSEMBLY**

**LAW**

**NO. 9121, date 28.07. 2003**

**“ON COMPETITION PROTECTION”**

In pursuance of article 11 point 1, 78 and 83, point 1 of the Constitution, by the proposal of Council of Ministers,

THE ASSEMBLY  
OF REPUBLIC OF ALBANIA  
DECIDED

**PART I  
GENERAL PROVISIONS**

Article 1

**Subject of the Law**

This law aims the protection of fair and effective market competition, defining the rules of conduct by undertakings, as well as the institutions responsible for protection of competition and their competencies.

Article 2

**Applicability**

1. This Law shall apply to:

a) all undertakings and associations of undertakings, which directly or indirectly have or may have an influence in the market;

b) all undertakings, as in paragraph 1 of this article, that exert activities in the territory of the Republic of Albania, as well as to the undertakings that exert activities abroad, when the consequences of this activity are demonstrated in the domestic market.

2. This Law shall not apply to relations between employers and employees, and to relations which are object of a collective contract between employers and trade union.

### Article 3

#### **Definitions**

Under this Law, the below-mentioned terms have these meanings:

1. “Undertaking” means any legal or natural person, private or public, which performs economic activity. Public and local administration bodies, as well as public authorities and entities, are considered as undertaking if they engage in economic activity.

2. “Associations of undertakings” means any kind of associations, having regard to the considerations of fact or law involved, legal or natural person, private or public, profitable or not profitable, which protects the interests of member undertakings.

3. “Economic Activity” means the type of manufacturing, commercial, financial or professional activity, associated with purchase or sale of goods, as well as with offering of service.

4. “Agreements” means agreements of any kind between undertakings, with or without compelling force, decisions, or recommendations of associations of undertakings, or concerted practices among them operating at the same level(s), so horizontal agreements, or different level (s), so vertical agreements in the market.

5. “Dominant position” means the position of one or more undertakings if they are capable, as regards supply or demand, to behave in a substantially independent manner with regard to the other participants in the market, such as competitors, clients or consumers.

6. “Product” means any goods sold or purchased, or services offered in the market by an undertaking.

7. “Relevant Market” means the market of products, which are mutually interchangeable from the point of view of the consumer related to its characteristics, price and their intended use in the area, and which are supplied and demanded by the undertakings concerned in a geographic area where the competition conditions are sufficiently homogenous and which can be clearly distinguished from neighboring areas.

8. “Authority of Competition”, hereinafter the Authority, is the body charged with the control of the application of this law.

9. “Commission of Competition”, hereinafter the Commission, is the decision-taking body of the Competition Authority.

**PART II**  
**RESTRAINTS OF COMPETITION**

CHAPTER I  
AGREEMENTS

Article 4

**Prohibition of agreements**

1. All agreements which have as their object or effect the prevention, restriction or distortion of competition, and in particular those which:

- a) directly or indirectly fix purchase or selling prices, or any other trading conditions;
- b) limit or control production, markets, technical development, or investment;
- c) share markets or sources of supply;
- ç) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- d) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

shall be prohibited.

2. The prohibited agreements, under paragraph 1 of this article and those exempted under articles 5, 6 and 7 are not valid.

Article 5

**Exemption for Horizontal Agreements**

1. May be exempted from prohibition under article 4 the horizontal agreements which in particular, have as their object or effect the specialization or rationalization of economic activities, the research and development of products and processes, the joint purchasing or selling of products, from and to a single source, provided that they are justified on grounds of economic efficiency.

2. Agreements are deemed to be justified on grounds of economic efficiency, when they:

a) reduce production and distribution costs, increase productivity, improve products or production processes, promote research into or dissemination of technical or professional know-how, or exploit resources more rationally, promote development of small and medium enterprises, results, which cannot be achieved otherwise;

b) allow consumers a fair share of resulting benefit;

c) do not substantially restrict competition.

## Article 6

### **Exemption for Vertical Agreements**

1. May be exempted from prohibition under article 4 of this law, the vertical agreements, which are justified on grounds of economic efficiency, and have, in particular, as their object or effect:

a) The restriction of active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another buyer, where such a restriction does not limit sales by the customers of the buyer;

b) The restriction of sales to end users by a buyer operating at the wholesale level of trade;

c) The restriction of sales to unauthorized distributors by the members of a selective distribution system, where the supplying undertaking, directly or indirectly, sells the contracted products to selected distributors on the basis of specific criteria;

ç) The restriction of the buyers ability to sell components, supplied for the purposes of incorporation to customers who use them to manufacture the same type of products as those produced by the supplier.

2. Article 5, paragraph 2 of this law shall apply *mutatis mutandis* for paragraph 1 of this article.

## Article 7

### **Exemption for License Agreements**

1. License agreements and selling agreements of industrial property rights, may be exempted from the prohibition under article 4 of this law, if:

a) the commercial freedom of the acquirer or licensee or other undertakings is not unfairly restricted, and

b) competition on the market is not substantially impaired.

2. The prohibition under article 4, in particular, shall not apply to commitments restricting the acquirer or licensee if:

a) they are justified by the seller's or licensor's interest in a technically satisfactory exploitation of the subject matter of the protected right,

b) impose an obligation to exchange experience or to grant non-exclusive licenses in respect of inventions relating to improvements or new applications, provided such obligations correspond to similar obligations on the part of the seller or licensor,

c) don't challenge the licensed protected right,

ç) make minimum use of the licensed protected right or to pay a minimum fee,

d) label the licensed products in a manner which does not exclude the reference to the manufacturer,

insofar as such restrictions do not exceed the term of the acquired or licensed protected right or of the right which constitutes the object of the license.

## CHAPTER II

### THE ABUSE WITH MARKET DOMINANCE

#### Article 8

##### **Appraisal of dominant position**

The dominant position of one or more undertakings shall be determined particularly by establishing the following:

a) the relevant market share of the investigated undertaking/s and that of the other competitors;

b) the barriers to entry to the relevant market;

c) the potential competition;

ç) the economic and financial power of the undertakings;

d) the economic dependence of the suppliers and purchasers;

dh) the countervailing power of buyers/customers;

e) the development of the undertaking's distribution network, and access to the sources of supply of products;

ë) the undertaking's connections with other undertakings;

f) other characteristics of the relevant market such as the homogeneity of the products, the transparency of the market, the undertaking cost and size symmetries, the stability of the demand or the free production capacities.

## Article 9

### **Abuse of dominant position**

1. Any abuse by one or more undertakings of a dominant position in the market shall be prohibited.
2. Such abuse may, in particular, consist in:
  - a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
  - b) limiting production, markets or technical development;
  - c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - ç) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations;
  - d) the under-cutting of prices or other conditions which have as their object or effect the prevention of entry or the expulsion from the market for specific competitor(s) or one of their products;
  - dh) refusal to deal or refusal to license;
  - e) refusal to allow another undertaking access to its own networks or other infrastructure facilities of undertakings with a dominant position, against adequate remuneration, provided that without such concurrent use the other undertaking is unable to operate as a competitor of the undertaking with a dominant position.
3. Practices of one or more undertakings with a dominant position in the market shall not be considered abusive if these undertakings prove that these practices are committed for objective reasons, such as technical reasons or legal commercial reasons.

## CHAPTER III

### CONTROL OF CONCENTRATIONS

## Article 10

### **Definition of concentration**

1. Concentration of undertakings means:

- a) the merger of two or more undertakings or parts of undertakings hitherto independent of each other;
- b) any transaction when one or more undertakings acquire, directly or indirectly, a controlling interest in all or parts of one or more other undertakings;
- c) joint ventures exercising all the functions of an autonomous economic entity.

2. Control, under paragraph 1, point b) of this article, shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:

- a) ownership or the right to use all or part of the assets of an undertaking;
- b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

## Article 11

### **Acquiring shares for reselling**

If financial, credit or insurance institutions acquire shares in another undertaking for the purpose of resale, this shall not be deemed to constitute a concentration as long as they do not exercise the voting rights attaching to the shares and provided that the resale occurs within one year.

## Article 12

### **Scope of application**

1. The concentrations of undertakings are notified for authorization nearby the Authority if, in the last business year preceding the concentration:

- a) the combined worldwide turnover of all participating undertakings is more than 70 milliard Lek, or the domestic combined turnover of all participating undertakings is more than 800 million lek, and
- b) the domestic turnover of at least one participating undertaking is more than 500 million lek.

2. The concentrations, under paragraph 1 of this article, shall be notified within one week after the conclusion of the agreement, or the acquisition of a controlling interest, or the announcement of the public bid.

3. Participating undertakings, under this article, means:

- a) the undertakings merged, in case of a merger;
- b) the undertakings which acquire control and those subject of the control acquisition, in case of control acquisition;
- c) part of the undertaking, if the transaction has influence on it.

Article 13

**Appraisal of concentrations**

1. Commission prohibits a concentration which is expected to create or strengthen a dominant position by one or more undertakings.
2. Commission may not prohibit concentrations where one of the undertakings risks seriously a failure, there is no less anti-competitive alternative to the concentration, when:
  - a) this undertaking is in such a situation that without the concentration it would exit the market in the near future;
  - b) there is no serious prospects of re-organizing the activity of this undertaking.

Article 14

**Suspension of concentration**

1. A concentration, under article 10, shall not be put into effect either:
  - a) before its notification nearby the Authority or
  - b) until it has been authorized by the Authority, or
  - c) until conditions attached to the authorization are fulfilled.
2. Legal and contractual transactions violating the prohibition of paragraph 1 of this article shall be of no effect, unless derogation has been granted as in article 60.

Article 15

**Calculation of turnover**

1. Aggregate turnover shall comprise the amounts derived by the undertakings concerned in the preceding business year from the sale of products falling within the undertakings ordinary activities after deduction of taxes directly related to turnover.
2. Where the concentration consists in the acquisition of parts, whether or not constituted as legal entities, of one or more undertakings, only the turnover relating to the parts which are the subject of the transaction shall be taken into account with regard to the seller or sellers.



3. Two or more transactions, within the meaning of paragraph 2 of this article, which take place within a two-year period between the same undertakings, shall be treated as one and the same concentration arising on the date of the last transaction.

## Article 16

### **The turnover of participating undertakings part of a group**

1. If an undertaking concerned is part of a group, its aggregate turnover, under the meaning of article 15, shall be calculated by adding together the respective turnovers of the following:

- a) the undertaking concerned;
- b) those subsidiary undertakings in which the undertaking concerned, directly or indirectly owns more than half the capital or business assets, or has the power to exercise more than half the voting rights, or has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings, or has the right to manage the undertakings' affairs;
- c) those parent undertakings which have in an undertaking concerned the rights or powers listed in point b);
- ç) those subsidiary of parent undertakings in which an undertaking as referred to in point c) of this paragraph has the rights or powers listed in point b);
- d) those undertakings in which two or more undertakings as referred to in a), b), c) and ç) of this paragraph jointly have the rights or powers listed in point b).

2. The aggregate turnover of the undertakings concerned does not include the sale of products amongst undertakings as listed in paragraph 1 of this article.

3. Where undertakings concerned by the concentration jointly have the rights or powers listed in paragraph 1, point b) of this article, in calculating the aggregate turnover of the undertakings concerned:

- a) no account shall be taken of the turnover resulting from the sale of products between the joint undertaking and each of the undertakings concerned or any other undertaking connected with any one of them, as set out in paragraph 1, points b) to d) of this article;
- b) account shall be taken of the turnover resulting from the sale of products between the joint undertaking and any third undertakings. This turnover shall be apportioned equally amongst the undertakings concerned.

## Article 17

### **The turnover of credit institutions, other financial institutions**

### **and insurance undertakings**

1. For credit institutions and other financial institutions, in place of turnover as regards Article 15, paragraph 1, shall be used the sum of the following income items on the annual accounts and consolidated accounts of banks and other financial institutions, after deduction of taxes directly related to those items:

- a) interest income and similar income;
- b) income from shares and other variable yield securities, income from participating interests, income from shares in affiliated undertakings;
- c) commissions receivable;
- ç) net profit on financial operations;
- d) other operating incomes.

2. For insurance undertakings, in place of turnover as regards Article 15, paragraph 1, shall be used the value of gross premiums written which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after deduction of taxes charged by reference to the amounts above-mentioned.

3. Article 15, paragraphs 2, 3, and article 16 shall apply *mutatis mutandis* for paragraphs 1 and 2 of this article.

## **PART III**

### **COMPETITION AUTHORITY AND ADMINISTRATIVE PROCEDURES**

#### **CHAPTER I**

#### **ORGANIZATION AND FUNCTIONING OF COMPETITION AUTHORITY**

##### **Article 18**

#### **Competition Authority**

1. The Authority is a public entity, independent in performing the tasks. The Authority is a legal entity, with its office in Tirana.

2. The Authority is compound of Commission and the Secretariat.

##### **Article 19**

## **Competition Commission**

Commission is the decision-taking body of the Authority and is compound of five members. It acts as a permanent collegial body.

Article 20

### **Criteria to be elected as a Commission member**

A Commission member can be elected if s/he complies with requirements as follow:

- a) to be an Albanian citizen;
- b) to have a working professional experience not less than 15 years;
- c) to be known for the contribution in economic and juridical field or for its leading competence and distinguished professionalism in different sectors of economy;
- d) not to be dismissed from work or civil service by disciplinary action.

Article 21

### **Commission members' election**

1. Commission members are appointed by the majority of the votes, in the presence of more than half of all the members of the Assembly of Albania, for a period of five years. The Assembly appoints the Chairman of the Commission. The Vice- Chairman is elected by the majority of the votes of all the members in the first meeting of the Commission.

2. Commission members may be reappointed not more than twice consecutively. Only for the first time of appointment, when this law will enter into force, the Chairman shall serve a five year term, the Vice Chairman four year term and three other members three year term.

3. Commission members are appointed by the Assembly, with alternative candidates, on the basis of the proposals as following:

- a) One member is proposed by the President of the Republic of Albania;
- b) Two members are proposed by the Council of Ministers;
- c) Two members are proposed by the Assembly.

4. The compensation of the Commission members is determined by the Assembly.

Article 22

### **Irreconcilability and release of Commission members**

1. Persons being part of high leading structures of political parties, members of leading structures of commercial associations or persons who exercise economic activity shall not be Commission members.

2. Commission members shall be replaced:

- a) by the end of its serving term;
- b) when he is released according to paragraph 3 of this article;
- c) when s/he dies;
- ç) when s/he resigns;
- d) is condemned by a Court final decision for committing a penal offence;
- dh) is prohibited or suspended by the Court to exercise a duty as a civil servant or other function in public service or leading functions nearby juridical persons.

3. Commission member shall be released by a decision of the majority, in the presence of more than half of all the members of the Assembly, when:

- a) Has strongly infringed work ethics carrying out his/her duties;
- b) Is affected by mental or physical incapacity to carry out his/her duties;
- c) Is absent for more than three months unjustifiably;
- ç) Lose his/her Albanian nationality.

#### Article 23

#### **Conflicts of interests**

No members of the Commission, including Commission Chairman and Vice Chairman, may take part in a case in which s/he has an interest, or if s/he represents or has represented one of the concerned parties. Where the challenge is contested, the Commission shall take a decision in the absence of Chairman, Vice Chairman or the member concerned.

#### Article 24

#### **Duties and Competences of the Commission**

Commission shall have these competencies:

- a) To compile the national competition policy;
- b) To approve the Secretary organigramme and its personnel;
- c) To approve the internal functioning regulation of the Authority;

- ç) To supervise the Secretariat work for the application of the provisions of this Law;
- d) To take decisions on the basis of this Law;
- dh) To issue by-laws and guidelines in compliance with this Law;
- e) To submit an annual report of the Authority to the Assembly within the first three months of the consequent year;
- ë) To give evaluations to the Commissions of the Assembly, upon their requests, on issues related with competition and legislation in this field;
- f) To give evaluations and recommendations to central and local administration and other public institutions, trade associations, labor unions, consumer associations, commercial and industrial chambers on issues related with competition;
- g) To represent the Authority, within and abroad the country, in relationships with other and homologue institutions.

#### Article 25

##### **Duties of Commission Chairman**

1. Commission Chairman shall have these duties:
  - a) To prepare, call and lead Commission meetings;
  - b) To co-ordinate work amongst Commission members;
  - c) To sign Commission's acts, with the exception of the decisions to be signed by all the present members in the meeting;
  - ç) to represent Authority in relation with third parties.
2. The Vice-Chairman carries out these duties in the absence of the Chairman.

#### Article 26

##### **Decision taking**

1. Commission meetings for decision taking are valid when at least four members are present, from which one will be either the Chairman or the Vice- Chairman, with the exception of the stipulated case in article 23 of this Law.
2. The simple majority of present members take decisions. The vote of meeting leader breaks the ties. The abstention is not allowed.

#### Article 27

##### **Competition Secretariat**

1. The Secretariat shall be managed by the General Secretary, who is elected by the Commission.

2. The Secretariat employee shall enjoy the status of civil servant.

3. The Secretariat investigators shall conduct the administrative investigations in compliance with the Code of Administrative Procedures, this Law and other legislation in force.

## Article 28

### **Competencies of the Secretariat**

For the supervision of the application of the provisions of this Law, the Secretariat shall:

- a) monitor and analyze the conditions on the market to the extent necessary for the development of free and effective competition;
- b) conduct investigation in compliance with the procedures of Code of Administrative Procedures, this Law and other legislation in force;
- c) compile and submit investigation reports to the Commission for decision-taking;
- ç) ensure publishing the decisions taken, by-laws issued according to this Law, and also the annual report of the Authority;
- d) follow and supervise the implementation of the decisions taken by the Commission.

## Article 29

### **Competencies of the General Secretary**

1. The General Secretary is in charge of the day-to-day work of the Secretariat. S/he, in absence or in incapacity to act, may delegate, by the approval of the Commission, his/her competences to one of the directors of Secretariat.

2. General Secretary is responsible for:

- a) applying the procedures of this Law to deal with the cases;
- b) compiling and submitting the concluding report of the investigation nearby the Commission for decision taking;
- c) coordinating the departments work of the Secretariat;
- ç) preparing the annual report of the Authority;
- d) co-operating with other institutions, within and abroad the country for resolving the cases;
- dh) signing Secretariat written correspondence.

## Article 30

### **Keeping confidentiality and commercial secrets**

1. The members of the Commission and all Secretariat employees, or the other persons authorized by the Commission to apply this Law shall be subject to professional secrecy and shall not divulge to any person or authority whatsoever confidential information acquired owing to their duties, save in the event that they are to testify before a court. This is even after the termination of the duty.
2. Secretariat publications shall not contain information constituting commercial secret.

## Article 31

### **Financing of the Authority**

1. The Assembly approves the annual budget for financing the Authority activity, which constitutes a separate article in State Budget.
2. The revenues collected according to this Law, including revenues from sanctions, are disbursed to the State Budget and are used according the legal acts in force.
3. The authority keeps accounts on factual expenditures and revenues, in compliance with Albanian accounting legislation.

## CHAPTER II

### GENERAL INVESTIGATIVE PROCEDURES

## Article 32

### **General principle**

In carrying out its duties, the Authority applies the Code of Administrative Procedures, in so far this Law doesn't provide otherwise.

## Article 33

### **Obligation to inform**

1. Undertakings being under investigation, undertakings requiring for an exemption, undertakings participating in a concentration, as well as other undertakings or persons whom might provide valuable information for the case, are obliged to provide any information by a request of Secretariat and at any time of the procedure.

2. Where the undertakings or persons do not supply the information requested within the period set in the request of the Secretariat or supplies incomplete information, or when the Commission considers as necessary, the Commission may demand the information concerned by a decision.

3. The Secretariat request and the Commission decision shall set the legal basis, the purpose and the time limit within which such information must be provided, as well as the stipulated sanctions in this Law in case of incompliance with the request or decision.

4. The undertakings and the persons, determined in paragraph 1 of this article, shall not refuse giving the information having commercial secrets.

## Article 34

### **Duties of public administration structures**

Central and local administration bodies, as well as other public institutions, co-operate with the Authority to ensure the provision of necessary information and evidences.

## Article 35

### **Investigative Competencies**

1. The Secretariat conducts all the necessary investigations nearby the undertakings and associations of undertakings, according to the procedures stipulated in this Law.

2. Upon the Secretariat request, Commission gives a written authorization to the Secretariat investigators to conduct necessary investigation, according to the procedures stipulated in this Law. To conduct the investigation, the Secretariat investigators must present the authorization, which contains the object and the purpose of the investigation and also the foreseen sanctions in article 73, 74, 76 and 78 of this Law.



3. When the necessary investigations are impeded, the Authority requests the Tax Police assistance.

#### Article 36

##### **Investigation in undertakings**

The Secretariat investigators and other authorized persons by the Commission, to investigate, may carry out searches by:

- a) entering into the premises, the means of transport, and on the land of undertakings during working hours;
- b) examining the books and other business records, irrespective of the medium on which they are stored, such as in a written or electronic form;
- c) taking or providing, copies, or extracts from the books or records;
- ç) sealing any premises or books or business records, for not more than 72 hours, if such is necessary for the investigation;
- d) asking any representative or member staff of the undertaking for explanation relating to the subject-matter for facts and documents regarding the object and the purpose of the inspection.

#### Article 37

##### **Inspections in other environments**

1. The Secretariat investigators authorized by the decision of District Court where the inspection takes place, are empowered to enter:

- a) at the domicile of the administrators, managers, directors and other staff members, as well as at the domicile and on the business premises of natural and legal persons, whether external or internal, in charge of commercial, accounting, administrative, tax and financial management, between 7.00 and 18.00;
- b) on other premises, equivalent to the domicile, if there is reason based on facts and concrete circumstances to believe that on such premises, books or other professional documents are found, which might be deemed necessary to prove a serious infringement of articles 4 and 9 of this Law.

2. The Secretariat investigators, authorized by a Commission decision to investigate, possess the powers stipulated in article 36, points a, b, c, d and in article 38 of this Law.

#### Article 38

##### **Seizure**

1. If it is necessary for the investigation, the investigators of the Authority may seize objects which may be of importance as evidence in the investigation for not more than 72 hours. The person affected by the seizure shall be informed thereof without undue delay.

2. The District Court where the seizure takes place, by a request of the Authority may extend the time limit of keeping the seizure as referred in paragraph 1 of this article, for not more than 6 months.

3. The investigators must take minutes, a copy of which shall be presented to the person affected by the seizure. The person affected shall be informed of the right to request judicial review of the seizure.

#### Article 39

##### **Hearings of the parties**

Before the Commission takes a final decision, the undertakings and the associations of undertakings have the right of being heard on the subject of the proceedings. The Commission shall base its decisions only on objections on which parties concerned have been able to comment.

#### Article 40

##### **Complaining against decisions**

1. A complaint can be made against the Authority decisions nearby Court of Tirana District, within 30 days from the decision notification.

2. The complaint does not suspend the application of the decisions which authorize concentrations and interim measures pursuant article 44 of this Law.

3. The Court of Tirana District may decide for a suspension, entirely or partly of these measures.

### CHAPTER III

#### PROCEDURES ON AGREEMENTS AND ABUSE OF DOMINANT POSITION

##### SECTION I

## PROCEDURES ON INVESTIGATIONS

### Article 41

#### **Inquiries into sectors of the economy**

If, in any sector of the economy, the rigidity of prices or other circumstances suggest that competition is being restricted or distorted in the market, the Authority, by its initiative or at the request of the Assembly or of regulatory institutions of specific sectors, may conduct a general inquiry into that sector.

### Article 42

#### **Procedures of preliminary investigations**

1. The Secretariat, by its own initiative, by the request of the undertakings concerned, or by a complaint of a third party, may initiate preliminary investigations. It initiates such a procedure in all cases when the Commission requires it. The procedures of preliminary investigations are followed on the basis of regulation on authority functioning.
2. The preliminary investigation procedure does not imply the right to consult files.

### Article 43

#### **In-depth investigations**

1. If signs of a restraint of competition exist, the Secretariat, by the approval of Commission, shall open an in-depth investigation. It initiates such a procedure in all cases when the Commission requires it.
2. The Commission shall determine the order in which investigations shall be conducted, on the basis of regulation on Authority functioning.

### Article 44

#### **Interim measures**

1. The Commission, by its initiative or by a request from the undertakings concerned and at any time of the procedure, may adopt interim measures, as stipulated in article 61, c), ç), d) and dh) of this law, in cases of an emergency justified from a risk of serious and

irreparable harm to competition and where there might be an infringement of articles 4 and 9.

2. The decision, as referred to paragraph 1 of this article, is taken for a specific time and may be renewed when it is necessary.

#### Article 45

### **Commission decisions**

1. Where the Commission finds that there is an infringement of articles 4 and 9, it by decision requires the undertakings concerned and associations of undertakings to bring such infringement to an end. To ensure the prohibition of the infringement, the Commission may impose on undertakings and association of undertakings any obligations necessary, including remedies of a structural nature. On the basis of the principle of the proportionality, structural remedies can be envisaged when the measures to act in a specified way or not to act, are not efficient.

2. Where the undertakings concerned offer commitments such as to meet the Commission's objections expressed in a preliminary estimation communicated to the undertakings, the Commission may, by decision, make those commitments binding on the undertakings as conditions and obligations.

#### Article 46

### **Revocation of the decisions**

Commission may revoke or modify its decisions by imposing conditions, or supplemented obligations, insofar as:

- a) One or some of the facts which has served as a basis of taking the decision has changed;
- b) The parties contravene an obligation attached to the decision;
- c) The decision is based on incorrect information or was obtained by means of deceit.

#### Article 47

### **Publication of opening the investigation and of decisions**

1. The Authority shall give notice of the opening of an in-depth investigation in the Authority Official Bulletin. Such notice shall state the purpose of the investigation and the parties concerned. It shall further invite concerned third parties to come forward if they wish to take part in the investigation. Non-publication shall not prevent the

investigation from being conducted. In case of non-publication, the notification shall be published in the first succeeding number of Official Bulletin.

2. The Commission decisions taken for the infringement of articles 4 and 9 shall be published in the Authority Official Bulletin. The publication shall state the names of the undertakings, their office, economic activity of the undertakings concerned, the main content of the decision, including also any penalties imposed.

## SECTION II

### PROCEDURES FOR EXEMPTION OF THE AGREEMENTS FROM PROHIBITION

#### Article 48

##### **Competencies to grant exemptions**

Commission is the only competent body to decide upon granting exemptions as referred in articles 5, 6 and 7 of this Law.

#### Article 49

##### **Notification of the agreements**

1. In order to be exempted from the prohibition, as referred to articles 5, 6 and 7, the horizontal, vertical and license agreements and changes and amendments thereto, must be notified to the Authority.

2. Notifications shall include the following particulars:

- a) name or other designation and place of business or registered seat of the participating undertakings;
- b) kind of economic activity;
- c) form, content and object of the agreements;
- ç) market shares of the undertakings indicating the basis of their calculation and estimation;
- d) the authorized person to represent the undertaking during the procedures.

3. The notification, given to the Authority under paragraph 1 and 2 of this article, shall not contain incorrect information in order to obtain an exemption for the notifying party or for a third party, as referred in articles 5 and 6 of this Law, or to cause the Authority not to object in the cases stipulated in article 7. The Authority issues the guidelines for the notification form.

## Article 50

### **Decision on granting the exemption**

1. Agreements described in Articles 5 and 6 of this Law, may be exempted from the prohibition under Article 4 only by a decision of the Commission. The exemptions for agreements as referred in article 7 shall take effect, unless the Commission objects, by a decision, within a period of three months from receipt of the notification.

2. Exemptions may be granted with effect from the date of notification. The exemptions as referred in articles 5, 6, and 7 of this Law are limited in time and may be granted to the undertakings subject to conditions and obligations.

3. Exemptions may, upon application, be extended in time, if the conditions of article 5, 6 and 7 of this Law continue to be satisfied. An extension shall be granted at least for those participating undertakings which have declared their consent thereto in writing to the Authority. The declaration shall be made independently by each undertaking and may be made only three months prior to the expiry of the exemption.

## Article 51

### **Revocation of the exemption**

1. Commission may revoke or modify its decisions, by imposing conditions or supplemented obligations, insofar as:

- a) one or some of the facts which has served as a basis of taking the decision has changed;
- b) the parties contravene an obligation attached to the decision;
- c) the exemption is based on incorrect information or was obtained by means of deceit;
- ç) the parties abuse the granted exemption.

2. In the cases of points b), c) and ç) of paragraph 1 of this article, the exemption decision shall be revoked with retroactive effect.

## Article 52

### **Publication of the notifications and decisions for exemptions**

1. The requests for exemption are published in the Authority Official Bulletin. The publication shall state the names, office, economic activity of the undertakings concerned, the main content of the agreement, and time limit within which third parties communicate their opinions.

2. Commission decisions taken in compliance with articles 5, 6 and 7 of this Law are published in the Authority Official Bulletin. The Publication shall state the name of the undertaking, its office, and economic activity of the undertakings concerned and the main content of the decision.

## CHAPTER IV

### PROCEDURES ON CONCENTRATIONS

#### Article 53

##### **Obligation to notify**

1. The obligation to notify shall be:
  - a) upon undertakings participating in the concentration;
  - b) upon the undertaking acquiring control of the whole or parts of one or more undertakings.
2. The notification shall indicate the form of the concentration and the following particulars with respect to every participating undertaking:
  - a) name and place of business or registered seat;
  - b) type of business;
  - c) the turnover in domestic market and worldwide;
  - ç) the market shares of undertaking, including the bases for their calculation or estimate;
  - d) in the case of an acquisition of shares in another undertaking, the size of the interest acquired by any undertaking and of the total interest held in this undertaking;
  - dh) person authorized to represent the undertaking during the procedures.
3. The Authority issues the guidelines for the notification form and for the opportunity of a simplified notification.

#### Article 54

### **Confirmation upon receipt of the notification**

The Authority shall acknowledge in writing to the notifying undertakings the receipt of notification and shall communicate them that the notification is complete. Where the notification is incomplete, the Authority shall ask the undertakings to complete the notification within a time limit.

### Article 55

#### **Additional Information and Documents**

1. Undertakings concerned, undertakings being a part of a group as referred in article 16 of this Law, and undertakings which sell a participation or part of an undertaking, shall provide to the Authority, within a time limit specified by it, additional information and documents, as so far as they are of interest for assessing the concentration, even though the confirmation for receiving the complete information has been sent to them.

2. Authority may provide from other undertakings additional information and documents, as so far as they are of interest for assessing the concentration. Authority may inform them for the concentrations concerned, keeping the business secrecy of the participating undertakings, of the undertakings being a part of a group as referred in article 16 of this Law, and also of undertakings which sell a participation or part of an undertaking.

### Article 56

#### **Preliminary procedures**

1. When it is found that the concentration reveals signs that it creates or strengthens a dominant position, within two months after received notification, the Commission shall decide to initiate an in-depth procedure or to authorize a concentration by conditions and obligations. Otherwise the Commission shall decide to authorize the concentration.

2. In case of an authorization with conditions and obligations, the time limit of paragraph 1 of this article, shall be extended with two weeks, if the undertaking concerned are committed to take measures to eliminate signs of creating or strengthening the dominant position. The proposed commitments from the undertaking are presented to the Authority not later than one month upon the date of notification receipt.

3. When it has not communicated within the deadlines set, concentration shall be deemed valid and may be put into effect without prejudice.

### Article 57



### **In-depth procedures**

1. The Commission, within three months starting from the initiation of in-depth proceeding, shall decide to declare if the concentration is prohibited or not.

2. In case of an authorization with conditions and obligations, the time limit set in paragraph 1 of this article is extended up to one month, if the undertakings concerned are committed to take measures to eliminate the creation or strengthening of the dominant position. The commitments proposed by undertakings are presented to the Authority not later than two months from the date of initiating the in-depth procedures.

3. When it has not communicated within the deadlines set, it shall be considered as a decision which authorizes a concentration and it may be put into effect without prejudice with the exception when:

- a) the time limit has been extended by the Commission with the consent of notifying undertakings;
- b) the time limit is extended by the request of the notifying undertakings;
- c) the time limit has been suspended by the Commission when it finds, by a decision, that participating undertakings have impeded the in-depth procedure.

### **Article 58**

#### **Time limit**

1. The period of two months to initiate the preliminary procedure, on the basis of article 56 of this Law shall start at the following working day of complete concentration notification. The period of three months to initiate the in-depth procedure, on the basis of article 57, paragraph 1 of this Law shall start at the beginning of the working day following the date of the decision taken to initiate the in-depth procedure.

2. The periods foreseen in this Law shall end with expiry of the day of the last week having the same name with that day with which has started the period, when the period is defined in weeks and with expiry of the day of the last month having the same number with that day with which has started the period, when the period is defined in months. When such a day does not occur in the last month, the period shall end with the expiry of the last day of this month. Where the last day of the period is not a working day, the period shall end with the expiry of the following working day.

### **Article 59**

#### **Procedures in the absence of notification**

If the concentration of the undertaking has taken place without notification, Commission, after finding out the infringement on the obligation to notify, shall start, by

its initiative, procedures stipulated in this chapter. The time limit, set forth in article 56 of this Law, begin to run when the Commission is in possession of complete information that should be provided in a notification of concentration.

#### Article 60

##### **Derogation from prohibition**

1. The Commission may, on request from the undertaking concerned and at any time of the proceedings, grant derogation for a concentration, which shall exempt the undertakings from the obligations set in article 14 of this Law. The derogation may be granted if there are important reasons, in particular, to prevent serious and not repairable damages to participating undertaking or to a third party and taking into account the threat to competition posed by the concentration.

2. The derogation may be subject to conditions and obligations in order to ensure an effective competition.

#### Article 61

##### **Conditions and Obligations**

1. In case of an authorization with conditions and obligations, proportionally to the anti-competitive effects of the concentration, conditions and obligations may include, in particular:

- a) Sale of parts of undertakings;
- b) Sale of any kind of participation in an undertaking activity;
- c) Breaking or concluding contractual relationship;
- ç) Giving licenses;
- d) Obligation to act or not to act in a certain way;
- dh) Any other remedy enabling the elimination of anti-competitive effects;
- e) Any other remedy enabling the correct application of conditions and obligations.

2. The Authority shall give the opportunity to the undertakings to participate in the process of determining the conditions and obligations.

#### Article 62

##### **Re-establishment of competition**

1. If a prohibited concentration has been carried out or if a concentration is prohibited after completion and if a concentration has been carried out without achieving and completing entirely the conditions attached to the authorization decision given on the basis of article 56 and 57 of this Law, the Commission imposes the participant undertakings to take the necessary steps to restore the former situation, in particular to conduct the separation of the merged undertakings or to rescind from the participations or acquired assets.

2. The Commission may require the participant undertakings to make proposals with a view to re-establish effective competition and setting them a deadline to this end. If the Commission accepts the proposed measures, it may decide how and by when the undertakings taking part shall implement them.

3. If the undertakings do not take the necessary measures or the Commission receives the proposals and it rejects them, it may order, by a decision, any necessary measure to restore the previous situation. It may take interim measures in order not to restrict the effective competition.

#### Article 63

#### **Revocation**

The Commission may revoke the decision if:

- a) it is being taken based on the basis of inaccurate information supplied by the undertakings taking part;
- b) it has being taken by means of deceit;
- c) the undertakings concerned are in breach of an obligation attached to the authorization.

#### Article 64

#### **Publication of the notification and initiation of in-depth procedures**

1. Notification of a concentration and the decision to initiate an in-depth procedure are published in the Authority Official Bulletin. Non-publication shall not prevent the beginning of time limits and of in-depth procedures.

2. The publication shall state the names, office, economic activity of the undertakings concerned, the main content of the concentration, and time limit within which third parties communicate their opinions. The opinions of third parties communicate must be in written.

3. Commission decisions are published in the Authority Official Bulletin. The publication shall state the names, office, economic activity of the undertakings concerned, the main content of the concentration, including also any penalties imposed.

## **PART IV**

### **CIVIL PROCEDURES**

#### Article 65

##### **Actions arising from an obstacle to competition**

1. A person impeded in its activity, by a prohibited agreement as referred in article 4 of this Law, or by an abusive practice as referred in article 9 of this Law, may take an action in court and request:

- a) removal or prevention of the restricting practices of competition which risks to be carried out or are carried out in contradiction of these articles;
- b) reparations or compensations from damages caused, in accordance with relevant provisions of the Civil Code.

2. The actions may be taken despite an initiated procedure nearby the Authority.

3. The requests for exemption from prohibition of an agreement and the procedures of concentrations control shall not be within the jurisdiction of courts.

#### Article 66

##### **Exercise of actions**

1. In order to ensure removal or prevention of the obstacle, the District Court of Tirana may rule, at the plaintiff's request, in particular, that:

- a) contracts are null in whole or in part, with a retroactive effect;
- b) the undertaking, at the origin of the obstacle, must conclude contracts on market terms with the undertaking impeded, under the conditions usually pertaining in the business concerned.

2. Within one month from the day of giving the decision, the District Court of Tirana sends to Authority copies of any decision, judged applying this Law.

## Article 67

### **Provisional remedies**

In cases of infringements of articles 4 and 9 of this Law and of justified emergencies from the risk of causing serious and irreparable damages for the plaintiffs, the District Court of Tirana may take a decision on provisional remedies at plaintiff's request.

## Article 68

### **Jurisdiction**

1. The actions taken from the application of this Law are arisen to the District Court of Tirana.
2. When the respondent party asks Authority for the exemption from prohibition of an agreement, the District Court of Tirana suspends the procedure and waits for the Commission decision.

## **PART V**

### **COOPERATION WITH OTHER INSTITUTIONS**

## Article 69

### **Duties of central and local administration structures**

1. Central and local administration bodies require the Authority estimation for any draft normative act which, in particular, deals with:
  - a) quantitative restrictions concerning trading and market access;
  - b) establishment of exclusive rights or special rights in certain zones, for certain undertakings or products;
  - c) imposing uniform practices in prices and selling conditions.
2. The Authority estimates the level of restriction or prevention of competition from draft normative acts, defined in paragraph 1 of this article.

## Article 70

### **Role of the Authority with regard to regulation and regulatory reform**

1. When carrying out the assigned tasks related to the regulation of the economic activity within the Republic of Albania, central and local administration bodies, regulatory entities shall ensure fair and effective competition.

2. In particular, regulatory barriers to competition incorporated in the economic and administrative regulation, for general-interest reasons, should be assessed by the Authority. In this case, the Authority makes relevant recommendations.

3. The Authority, in applying this law in regulated sectors, co-operates with regulatory entities and other regulatory institutions.

#### Article 71

##### **Exchange of information with homologue authorities**

1. The Authority may, upon a bilateral or multilateral agreement, within his purview, communicate information or the documents it holds or receives, on request, to relevant structure of the Commission of European Communities or to authorities of other States exercising similar functions, subject to reciprocity and on the conditions that the competent foreign authority is subject to trade secrecy rules with the same guaranties as in Albania.

2. Also, it may conduct investigation at the request of foreign authorities exercising similar functions and under condition of reciprocity.

3. The assistance requested by a foreign authority exercising similar functions in the conduct of investigations or transmission of information held or received by the Authority can be refused if the acceptance of the request can undermine Albania's sovereignty, security, essential economic interests or public order.

#### Article 72

##### **Suspension or termination of proceedings**

Where Authority and competition authorities of other States, which have reached a bilateral or multilateral agreement between them, have received a complaint or are acting on their own initiative under this law against the same infringement, the fact that one authority is dealing with the case may be sufficient grounds for the others to suspend the proceedings before them or to reject the complaint.

#### **PART VI**

##### **ADMINISTRATIVE VIOLATIONS AND SANCTIONS**

## Article 73

### **Fines for not serious infringement**

1. The Commission, by decision, impose on undertakings or associations of undertakings fines not exceeding 1% of the total turnover in the preceding business year where:

a) they supply incorrect, incomplete or misleading information in response to a request made or decision taken pursuant article 33, paragraph 1 and 2 of this Law, or do not supply information within the time-limit fixed by a decision adopted pursuant to article 33, paragraph 2 and article 41 of this Law;

b) they supply incorrect, incomplete or misleading information in notifications pursuant articles 12 and 49 of this Law, or additional incorrect and incomplete information and documents pursuant article 55 of this Law;

c) they produce the required books or other business records in incomplete form during inspections under article 36, b) and c) of this Law, or refuse to submit to inspections ordered by a decision adopted pursuant to article 35, paragraph 1 and article 36, a) of this Law;

ç) they refuse to answer a question, as referred to evidences, under article 36, d) or give an incorrect, incomplete or misleading answer, or impede the foreseen inspection in article 36;

d) they break the seal authorized by officials of the Authority in accordance with Article 36, ç) of this Law.

2. For calculating the aggregate turnover, articles 15, 16 and 17 shall apply *mutatis mutandis* for paragraph 1 of this article.

## Article 74

### **Fines for serious infringements**

1. The Commission may, by decision, impose on undertakings fines from 2% to 10% of the total turnover of the preceding business year of each of the undertakings participating in the infringement where:

a) they infringe article 4 or article 9 of this Law;

b) they contravene a decision ordering interim measures under article 44 of this Law;

c) they fail to comply with a conditions and obligations by a decision pursuant to article 45, article 50, paragraph 2, articles 56, 57, and 60 paragraph 2 of this Law;

ç) they do not notify a concentration under the meaning of articles 10 and 12 of this Law;

d) they put into effect a concentration in contradiction with the obligation of article 14, except where the concentration is authorized expressly as referred in article 60 of this Law;

dh) they put into effect a concentration prohibited by the Commission or do not take the necessary measures to restore the competition as referred in article 62 of this Law.

2. For calculating the aggregate turnover, articles 15, 16 and 17 shall apply *mutatis mutandis* for paragraph 1 of this article.

## Article 75

### **Determining the fine**

1. In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement. When it is possible to calculate or estimate objectively the illegal profits of undertakings acquired infringing this Law, such a profit constitutes the minimal amount of fine.

2. Where a fine is imposed on an association of undertakings, under this Law the fine shall not exceed 1%, in case of article 73 of this Law, of the aggregate turnover of the preceding business year, or 10%, in case of article 74 of this Law, of aggregate turnover of preceding business year of each of the active member undertakings in the market concerned in the infringement of the association of undertaking.

3. If the association is not solvent, the Authority may require payment of the fine by any of the undertakings which were members of the association at the time the infringement was committed. The amount required to be paid by each individual member cannot exceed respectively 1%, in case of article 73 of this Law, of its aggregate turnover in the preceding business year, or 10%, in case of article 74 of this Law, of aggregate turnover in the preceding business year.

## Article 76

### **Periodic penalty payments**

1. The Authority may, by decision, impose on undertakings periodic penalty payments not exceeding 5% of the average daily turnover in the preceding business year which is calculated from the date the decision has been taken, in order to compel them:

a) to put an end to an infringement of Article 4 and 9, in accordance with a decision taken pursuant to Article 45 of this Law;

b) to comply with a decision ordering interim measures taken pursuant to Article 44 of this Law;



- c) to comply with a commitment made binding by a decision pursuant to Article 45, article 50, paragraph 2, articles 56, 57, and 60 paragraph 2 of this Law;
- ç) to supply complete and correct information which the Commission has requested by decision taken pursuant to Article 33, paragraph 2 of this Law;
- d) to submit to an inspection which it has ordered by decision taken pursuant to Article 36 of this Law;
- dh) to fulfill the commitments to take the necessary measures for restoring the competition as referred in article 62 of this Law.

2. For calculating the aggregate turnover, articles 15, 16 and 17 shall apply *mutatis mutandis* for paragraph 1 of this article.

3. Where the undertakings have satisfied the obligation which the periodic penalty payment was intended to enforce, the Authority may fix the definitive amount of the periodic penalty payment at a figure lower than that which would arise under the original decision. Article 75, paragraph 2 shall apply *mutatis mutandis* for this paragraph of this article.

## Article 77

### **Leniency**

1. Total or partial relief from the financial penalties may be granted to an undertaking which, together with others, engaged in a practice prohibited by the provisions of article 4, if it helped establishing the reality of the prohibited practice and identifying the perpetrators by providing items of information not previously available to the Authority.

2. The Commission issues an advice of leniency to the undertakings indicating the conditions for its application, specified in “Regulation for fines and leniency”. This advice is transmitted to the undertakings and remains confidential.

3. In the event of a decision the Commission may, if the conditions specified in the advice of leniency were observed, grant relief from financial penalties in proportion to the contribution made to identify and prohibit the violation.

## Article 78

### **Individual fines**

1. The Commission imposes fines on individuals up to amount 5 million lek on individuals, if they, intentionally or negligently, carry out or co-ordinate in actions stipulated in article 74, paragraph 1 and article 75, paragraph 1 of this Law.

2. Imposing fines as referred in paragraph 1 of this article shall be subject of prescribed time limits of 3 years in case of article 74, paragraph 1 and of 5 years in case of article 75, paragraph 2 of this Law.

#### Article 79

##### **Complaining**

Against Commission decisions imposing fines a complaint can be made to the District Court of Tirana within 30 days from the decision taken.

#### Article 80

##### **The body in charged of fine execution**

The body in charge of fine execution from this Law is Tax Police.

### **PART VII**

#### **TRANSITIONARY PROVISIONS**

#### Article 81

##### **The Assembly obligation for Commission election**

The Assembly is in charge of electing five members of the Commission and to appoint its Chairman within 30<sup>th</sup> of November 2003.

#### Article 82

##### **Estimation of normative acts in force**

1. The Authority estimates, on the date of entrance into force of this Law, the level of restriction or prevention of competition from normative acts into power, in particular from acts stipulated in article 69, paragraph 1.

2. After two years and after being consulted with the relevant state bodies, the Authority prepares a particular report, accompanied with the recommendations for due

changes for the Council of Ministers and for the Assembly, with the problems raised in these acts concerning with competition restrictions.

## Article 83

### **Transitional provisions**

1. The existing agreements, on the date of entrance into power of this Law, must be notified within nine months in order to be exempted from the prohibition referred to article 4. The exemption, on this case, shall be granted from the time of entrance into power of this Law.

2. This Law shall not be applied for concentrations of undertakings if they are put into effect within one month from the entrance into power of this Law and when the agreement for merger or control acquisition and also the announcement of public bid for buying or exchange have been made before entrance into power of this Law. For such concentrations the Law no. 8044, dated 7.12.1995 “On Competition” shall be applied.

3. If the agreement which restrict competition or abusive practices of dominant position are notified and the effects on competition are eliminated within 6 months from the entrance into force of this Law, the foreseen sanctions of this Law shall not be applied.

## Article 84

### **Issuance of normative acts**

The Authority is in charge of issuing the normative acts as follows:

1. The regulation on the Authority functioning;
2. The regulation on defining the expenses to follow the procedures nearby the Authority;
3. The regulation for applying concentrations procedures of undertakings;
4. The regulation on fines and leniency.

## Article 85

### **Abrogation**

Law no.8044, date 7.12.1995, “On Competition” shall be abrogated.

Article 86

**Entrance into force**

This Law enters into force on 1<sup>st</sup> of December 2003.

**CHAIRMAN**  
**Servet PELLUMBI**