

Albania: A new law on Competition.

The necessity to integrate country's economy in the world market has pushed the Albanian authorities to undertake a multitude of reforms in a number of sectors, including the market and its regulatory framework. Competition rules are an important part of this framework.

Recently Albanian Government has adopted a new law on Competition. This law is to replace the existing law, approved in 1995. The main problem with the 1995 law, was that it found little application in the day to day practice, mainly due to its unclear language, contradictory requirements and wide scope of application.

The new law is more in line with other European countries competition legislation, and it is based mainly on the EU competition rules. This law concentrates strictly on anti trust issues. It leaves out dishonest practices and behaviors that may damage individual competitors, but have no effect in the market, which are regulated by provisions of the Albanian Civil Code.

Objects and Subjects of the new law.

As a clear improvement of the 1995 law, the new law on competition provides for a comprehensible definition of the subjects to which it applies. The new law applies to any entity, public or private, engaged in commercial activity, as well as to any concentrations (associations) thereof. Together with entities established in Albania, the law is applicable to foreign entities whose activity has an effect on the Albanian market as well.

Furthermore, objects of the new law on competition are agreements and concentrations between entities engaged in commercial activity.

Agreements

Similar to EU legislation on competition, the new Albanian law on competition is applicable to any type of agreement; formal and informal, tacit or explicit, horizontal or vertical that may damage or hinder competition in the market.

This new law, contrary to the 1995 law, provides for a black list and a gray list. Agreements falling under the black list are prohibited and are void.

Where agreements falling under the gray list are invalid so long the competition authorities issues an exception. To receive such exception, entities must notify their agreements to the competition authority.

The gray list includes also agreements regarding intellectual and industrial property rights, for which the exception is granted automatically if the competition authority does not reply within three months of notification.

This type of exception is not applicable to other agreements falling under the gray list, which should be explicitly exempted by the competition authority.

The new law on competition does not provide for a white list. Practice will show how the competition authority will deal with agreements that do not fall under the black or gray list.

Concentrations

In a very distinct manner from the 1995 Law, the new Albanian law on competition challenges abuse of dominant position rather than the dominant position itself. In principle, existence or creation of a dominant position is permissible by the law, while abuse of such dominance is punishable. Despite this approach towards the dominant position (or creation thereof) taken by the legislator, the law at the same time gives to the competition authority the power to stop concentration that it evaluates as damaging to the competition.

Furthermore, the law introduces a pre-merger notification procedure. The competition authority must decide on a concentration within a two months period from the notification. At the end of such period the competition authority is obliged to come out with a decision on the proposed merger. The authority can decide to continue its investigation for another three months, or to issue the authorization. In case the authority does not take any action within two months of the notification, the proposed concentration / merger becomes effective and operational.

Merger notification threshold has been established at approximately 500 million Euro annual worldwide turnover for all companies involved in the concentration, or at approximately 6 million Euro annual turnover in Albania for one of the companies involved in the transaction.

The measures the competition authority can take against companies abusing their dominant position, include fines, obligations to act or not in a particular manner, interruption of contractual relationships, as well as to order sale of companies activities, or even its separation.

Competition Authority

The new law on competition establishes an independent competition authority, which is directly appointed and controlled by the Albanian Parliament. This is a clear change of the existing structure, where the Directorate of Economic Competition was part of the Ministry of Economy.

The proposed Competition Authority is comprised of two bodies, the Commission and the Secretariat. The Commission is the decision making body of the Authority, where the Secretariat is the administrative and investigative body. The duties of each body are clearly regulated by the new law.

The Secretariat has the power to monitor the market, as well as to investigate possible violations of the law. The Commission takes the necessary measures, based on the investigative results of the Secretariat. Decision of the Commission can be appealed at the administrative chamber of the first instance court.

The new law on competition introduces an important element of judicial remedy. Apart from the administrative decisions that the competition authority can take, the law allows for the possibility that entities damaged because of anti competitive behaviors can seek compensation against the perpetrators from the civil chamber of the first instance court. Such procedure can run independently of the administrative procedure(s) undertaken by the competition authority.

In conclusion, the new Albanian law on competition is a definite improvement of the 1995 law. The expectation is that this new law will find wider practical application than the old one. Key areas that need closer observance are the independence of the competition authority, and the way such authority will use its powers.

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