



# ICLG

The International Comparative Legal Guide to:

## Merger Control 2013

**9th Edition**

A practical cross-border insight into merger control

Published by Global Legal Group, with contributions from:

Accura Advokatpartnerselskab

Allende & Brea

Anastasios Antoniou LLC

Ashurst LLP

AYR – Amar Reiter Jeanne Shochatovitch & Co.

Beiten Burkhardt

Boga & Associates

Chapman Tripp

Crowell & Moring LLP

Drew & Napier LLC

ELIG, Attorneys-at-Law

Estudio Bergstein

Gianni, Origoni, Grippo, Cappelli & Partners

Gide Loyrette Nouel

Hunton & Williams LLP

Kallel & Associates

Kastell Advokatbyrå AB

Katten Muchin Rosenman LLP

King & Wood Mallesons

Koep & Partners

Lee and Li, Attorneys-at-Law

Linklaters LLP

Manyonge Wanyama & Associates Advocates

Matheson

Morais Leitão, Galvão Teles, Soares da Silva & Associados

Nagashima Ohno & Tsunematsu

Olivares & Cía., S.C.

Oliveira Felix Advogados

PRA Law Offices, Advocates

PUNUKA Attorneys & Solicitors

Rizkiyana & Iswanto Antitrust and Corporate Lawyers

Schellenberg Wittmer

Schoenherr

SCPA DOGUE-ABBE YAO & Associés

SJ Berwin LLP

Skadden, Arps, Slate, Meagher & Flom LLP

TRINITI

Van Doorne

Vasil Kisil & Partners

Webber Wentzel

Wiersholm AS

# GLG

Global Legal Group

## Contributing Editors

Nigel Parr and Ruth Sander, Ashurst LLP

## Account Managers

Brigitte Descacq, Dror Levy, Maria Lopez, Florjan Osmani, Samuel Romp, Oliver Smith, Rory Smith, Toni Wyatt

## Sub Editors

Beatriz Arroyo  
Fiona Canning

## Editor

Suzie Kidd

## Senior Editor

Penny Smale

## Group Consulting Editor

Alan Falach

## Group Publisher

Richard Firth

## Published by

Global Legal Group Ltd.  
59 Tanner Street  
London SE1 3PL, UK  
Tel: +44 20 7367 0720  
Fax: +44 20 7407 5255  
Email: info@glgroup.co.uk  
URL: www.glgroup.co.uk

## GLG Cover Design

F&F Studio Design

## GLG Cover Image Source

istockphoto

## Printed by

Ashford Colour Press Ltd.  
November 2012

Copyright © 2012  
Global Legal Group Ltd.  
All rights reserved  
No photocopying

ISBN 978-1-908070-41-8

ISSN 1745-347X

## Strategic Partners



## General Chapters:

1	<b>A Tale of Three Mergers: The Use of Quantitative Techniques in UK and EU Merger Control</b> – Mat Hughes & David Wirth, Ashurst LLP	1
2	<b>Antitrust Management of the Difficult Deal</b> – James J. Calder, Katten Muchin Rosenman LLP	10
3	<b>Identifying Filing Obligations and Beyond: Merger Control in Cross-Border Transactions</b> – Volker Weiss and Michael Mayer, Schoenherr	15
4	<b>EU Merger Control: 2012 and Beyond</b> – Frederic Depoortere & Giorgio Motta, Skadden, Arps, Slate, Meagher & Flom LLP	20

## Country Question and Answer Chapters:

5	<b>Albania</b>	Boga & Associates: Sokol Elmazaj & Jonida Skendaj	25
6	<b>Argentina</b>	Allende & Brea: Julián Peña	32
7	<b>Australia</b>	King & Wood Mallesons: Sharon Henrick & Wayne Leach	37
8	<b>Austria</b>	Schoenherr: Stefanie Stegbauer & Franz Urlesberger	45
9	<b>Belgium</b>	Linklaters LLP: Thomas Franchoo & Niels Baeten	52
10	<b>Bosnia &amp; Herzegovina</b>	Moravčević Vojnović Zdravković in cooperation with Schoenherr: Srđana Petronijević & Danijel Stevanović	59
11	<b>Brazil</b>	Oliveira Felix Advogados: Natália Oliveira Felix	67
12	<b>Bulgaria</b>	Advokatsko druzhestvo Andreev, Stoyanov & Tsekova in cooperation with Schoenherr: Ilko Stoyanov & Mariya Papazova	73
13	<b>China</b>	King & Wood Mallesons: Susan Ning & Huang Jing	80
14	<b>Croatia</b>	Schoenherr: Christoph Haid	86
15	<b>Cyprus</b>	Anastasios Antoniou LLC: Anastasios A. Antoniou & Rafaella Michaelidou	92
16	<b>Czech Republic</b>	Schoenherr: Martin Nedelka & Radovan Kubáč	98
17	<b>Denmark</b>	Accura Advokatpartnerselskab: Jesper Fabricius & Christina Heiberg-Grevy	105
18	<b>Estonia</b>	TRINITI: Ergo Blumfeldt & Tõnis Tamme	113
19	<b>European Union</b>	Crowell & Moring LLP: Dr. Werner Berg & Sean-Paul Brankin	121
20	<b>France</b>	Ashurst: Christophe Lemaire & Simon Naudin	131
21	<b>Germany</b>	Beiten Burkhardt: Philipp Cotta	140
22	<b>Greece</b>	Ashurst LLP: Efthymios Bourtzalas	150
23	<b>Hungary</b>	Schoenherr: Anna Turi & Christoph Haid	158
24	<b>India</b>	PRA Law Offices, Advocates: Premnath Rai & P. Srinivasan	165
25	<b>Indonesia</b>	Rizkiyana & Iswanto Antitrust and Corporate Lawyers: HMBC Rikrik Rizkiyana & Albert Boy Situmorang	175
26	<b>Ireland</b>	Matheson: Helen Kelly	183
27	<b>Israel</b>	AYR – Amar Reiter Jeanne Shochatovitch & Co.: Eyal Roy Sage & Ofry Yarom	195
28	<b>Italy</b>	Gianni, Origoni, Grippo, Cappelli & Partners: Eva Cruellas Sada	201
29	<b>Ivory Coast</b>	SCPA DOGUE-ABBE YAO & Associés: Abbé Yao & Pascal Djedje	211
30	<b>Japan</b>	Nagashima Ohno & Tsunematsu: Eriko Watanabe	216
31	<b>Kenya</b>	Manyonge Wanyama & Associates Advocates: Peter Wanyama & Mohammed Nyaoga	223
32	<b>Kosovo</b>	Moravčević Vojnović Zdravković in cooperation with Schoenherr: Srđana Petronijević & Olga Šipka	228
33	<b>Macedonia</b>	Moravčević Vojnović Zdravković in cooperation with Schoenherr: Srđana Petronijević & Olga Šipka	235
34	<b>Mexico</b>	Olivares & Cia., S.C.: Gustavo A. Alcocer & Carlos Woodworth M.	243
35	<b>Montenegro</b>	Moravčević Vojnović Zdravković in cooperation with Schoenherr: Srđana Petronijević & Danijel Stevanović	249
36	<b>Namibia</b>	Koep & Partners: Peter Frank Koep & Hugo Meyer van den Berg	256
37	<b>Netherlands</b>	Van Doorne: Sarah Beeston & Jitske Weber	263
38	<b>New Zealand</b>	Chapman Tripp: Grant David & Neil Anderson	270

Continued Overleaf →

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

## Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

## Country Question and Answer Chapters:

39	<b>Nigeria</b>	PUNUKA Attorneys & Solicitors: Anthony Idigbe & Chinwe Chiwete	277
40	<b>Norway</b>	Wiersholm AS: Anders Ryssdal & Anette Halvorsen Aarset	285
41	<b>Poland</b>	Gide Loyrette Nouel: Dariusz Tokarczuk & Szymon Chwaliński	294
42	<b>Portugal</b>	Morais Leitão, Galvão Teles, Soares da Silva & Associados: Carlos Botelho Moniz & Pedro de Gouveia e Melo	300
43	<b>Romania</b>	Schoenherr si Asociatii SCA: Mihai Radulescu & Cristina Pană	312
44	<b>Serbia</b>	Moravčević Vojnović Zdravković in cooperation with Schoenherr: Srđana Petronijević & Matija Vojnović	319
45	<b>Singapore</b>	Drew & Napier LLC: Lim Chong Kin & Ng Ee-Kia	328
46	<b>Slovakia</b>	Schoenherr: Martin Nedelka & Radovan Kubáč	338
47	<b>Slovenia</b>	Odvetniška pisarna Soršak d.o.o in cooperation with Schoenherr: Jani Soršak & Eva Škufca	344
48	<b>South Africa</b>	Webber Wentzel: Nkondo Hlatshwayo & Robert Wilson	354
49	<b>Spain</b>	SJ Berwin LLP: Ramón García-Gallardo & Manuel Bermúdez Caballero	367
50	<b>Sweden</b>	Kastell Advokatbyrå AB: Kent Karlsson & Pamela Hansson	377
51	<b>Switzerland</b>	Schellenberg Wittmer: David Mamane & Dr. Jürg Borer	385
52	<b>Taiwan</b>	Lee and Li, Attorneys-at-Law: Stephen Wu & Yvonne Hsieh	392
53	<b>Tunisia</b>	Kallel & Associates: Sami Kallel	398
54	<b>Turkey</b>	ELIG, Attorneys-at-Law: Gönenc Gürkaynak	404
55	<b>Ukraine</b>	Vasil Kisil & Partners: Denis Y. Lysenko & Mariya V. Nizhnik	411
56	<b>United Kingdom</b>	Ashurst LLP: Nigel Parr & Duncan Liddell	418
57	<b>USA</b>	Hunton & Williams LLP: Bruce Hoffman	432
58	<b>Uruguay</b>	Estudio Bergstein: Leonardo Melos & Jonás Bergstein	443

## EDITORIAL

Welcome to the ninth edition of *The International Comparative Legal Guide to: Merger Control*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of merger control.

It is divided into two main sections:

Four general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting merger control, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in merger control in 54 jurisdictions.

All chapters are written by leading merger control lawyers and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Nigel Parr and Ruth Sander of Ashurst LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

*The International Comparative Legal Guide* series is also available online at [www.iclg.co.uk](http://www.iclg.co.uk).

# Albania

Sokol Elmazaj



Jonida Skendaj



## Boga & Associates

### 1 Relevant Authorities and Legislation

#### 1.1 Who is/are the relevant merger authority(ies)?

The Albanian Competition Authority (“ACA”) is responsible for applying the merger control legislation in Albania. ACA is an independent administrative entity composed of: (i) the Competition Secretariat (the investigation body); and (ii) the Competition Commission (decision-making body).

#### 1.2 What is the merger legislation?

Mergers in the Republic of Albania are mainly governed by:

- (i) law no. 9901, dated 14.04.2008, “On Entrepreneurs and Commercial Companies”, as amended;
- (ii) law no. 9121, dated 28.07.2003, “On Protection of Competition” (“Competition Law”), as amended; and
- (iii) instructions and regulations issued by the ACA.

#### 1.3 Is there any other relevant legislation for foreign mergers?

The legislation mentioned in question 1.2 above is also applicable to foreign mergers.

#### 1.4 Is there any other relevant legislation for mergers in particular sectors?

Beside the Competition Law, other legislation applies to mergers in particular sectors such as:

- (i) the audiovisual broadcasting sector: where an entity or person may not hold more than 40% of the share capital in a national audiovisual company. An entity or person holding shares in a national audiovisual company is prohibited to acquire directly, or indirectly, shares of another national audiovisual company;
- (ii) the banking sector: where the Central Bank of Albania has the power to approve or decline any transfer of at least 10% of the bank share capital or such a percentage that enables a shareholder to influence considerably in the management or policies of the bank;
- (iii) the insurance sector: where the Authority of Financial Supervision is the regulatory body having the power to approve or decline any transfer of at least 10% of the share capital in a company engaged in insurance and/or reinsurance activity; and
- (iv) the telecommunication sector: where changes related to the

licensee may be subject to notification to or approval by the Authority of Electronic and Postal Communication.

### 2 Transactions Caught by Merger Control Legislation

#### 2.1 Which types of transaction are caught – in particular, how is the concept of “control” defined?

A concentration shall be deemed to arise where a change of control on a lasting basis results from:

- (a) the merger of two or more independent undertakings or parts of undertakings;
- (b) the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of shares or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings; or
- (c) direct or indirect control over one or more undertakings or part of the latter.

Control 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; and
- (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

#### 2.2 Can the acquisition of a minority shareholding amount to a “merger”?

The above said definition of “control” is wide and no minimum percentages/amounts of control are provided by the law. It can also include acquisitions of a minority shareholding if they confer the possibility of exercising decisive influence on the undertaking.

#### 2.3 Are joint ventures subject to merger control?

According to the Competition Legislation, the establishment of joint ventures shall constitute concentration (merger – and subject to merger control) if it does not have as object or effect, the coordination of competitive activities between two or more independent undertakings.

Pursuant to the Instruction of ACA on merger control, the creation

of a joint venture as the entity exercising all the functions of an autonomous economic entity shall constitute a concentration.

## 2.4 What are the jurisdictional thresholds for application of merger control?

The merger control applies to mergers when all of the following turnover thresholds are met:

- (a) the combined worldwide turnover of all participating undertakings is more than Leke 7 billion (approximately EUR 51 million) and the domestic turnover of at least one participating undertaking is more than Leke 200 million (approximately EUR 1.45 million); or
- (b) the combined domestic turnover of all participating undertakings is more than Leke 400 million (approximately EUR 2.9 million) and the domestic turnover of at least one participating undertaking is more than Leke 200 million (approximately EUR 1.45 million).

In general, the aggregate turnover includes the income of the participating undertakings realised in the preceding financial year from the sale of products falling within the undertaking's ordinary activities, after deduction of taxes or fees directly related to the undertaking's turnover. However, in cases of mergers of credit or financial institutions, the turnover is the income resulting in annual or consolidated accounts deriving from interests, shares, bonds, equity interests, commissions, net profit from financial operations and other income, after deduction of taxes. For insurance undertakings, the turnover is the gross income of subscribed premiums which include all received and collected amounts as per insurance contracts, as well as reinsurance premiums, after the deduction of taxes.

When the merger consists of the acquisition of parts of one or more undertakings, for calculation of the seller/s turnover, only the turnover corresponding to the parts which are the subject of the transaction shall be taken into account.

Specifically, when the participating undertaking is part of a group, its aggregate turnover is calculated by adding together the respective turnover of the members of the group (i.e. (i) the participating undertaking, (ii) its subsidiaries where the participating undertaking holds directly or indirectly more than half of the share capital or voting rights, or has the power to appoint more than half of the members of the supervisory board, the administrative board or other legal bodies representing the subsidiary, or has the right to manage the subsidiaries' affairs, (iii) its parent undertakings having the above said rights or powers, and (iv) the subsidiaries of its parent undertakings - those undertakings in which two or more undertakings as referred to under (i) to (iv) herein have jointly the rights or powers listed in (ii) herein). In cases where the participating undertaking is part of a group, the Competition Law excludes from the calculation of the turnover, the sale of products performed between undertakings that are part of the group.

## 2.5 Does merger control apply in the absence of a substantive overlap?

The merger control applies also in the absence of a substantive overlap.

## 2.6 In what circumstances is it likely that transactions between parties outside Albania ("foreign-to-foreign" transactions) would be caught by your merger control legislation?

The Albanian Competition Law applies to "foreign to foreign"

transactions carried out from undertakings whose activity has an impact/influence in the Albanian market. However, the concept of "impact/influence" has not been further defined from the Albanian competition regulatory framework. In practice, although the undertakings participating in the merger may not have any local physical presence (branch, subsidiary or assets), but are present in Albania indirectly (imports/sales through distributorship agreements), the ACA considers the merger subject to its control provided that the notification thresholds are met.

## 2.7 Please describe any mechanisms whereby the operation of the jurisdictional thresholds may be overridden by other provisions.

We do not identify any provision that may override the operation of the thresholds.

## 2.8 Where a merger takes place in stages, what principles are applied in order to identify whether the various stages constitute a single transaction or a series of transactions?

The Competition Law does not provide for any general principle specific to the identification of the constitution of transaction in case it takes place in various stages. However, when establishing the rules on calculation of turnover in case of mergers consisting of acquisition of parts of undertakings, the Competition Law provides that the series of these transactions performed between the same parties within a two-year period are assessed as a single transaction. In order to define the two-year period, reference is made to the last transaction date.

Pursuant to the Instruction of ACA on merger control, two or more transactions constitute a single concentration if they are unitary in nature. It should, therefore, be determined whether the result leads to conferring to one or more undertakings, or direct or indirect economic control over the activities of one or more other undertakings.

## 3 Notification and its Impact on the Transaction Timetable

### 3.1 Where the jurisdictional thresholds are met, is notification compulsory and is there a deadline for notification?

When the notification thresholds are met, the mergers must be notified to the ACA within 30 days after the conclusion of the merger agreement, or the acquisition of a controlling interest, or the announcement of the public offer.

### 3.2 Please describe any exceptions where, even though the jurisdictional thresholds are met, clearance is not required.

The Competition Law provides for an exception from the obtaining of the ACA clearance when the financial institutions, and credit or insurance companies, acquire shares in other undertakings for the purpose of reselling, provided that they do not exercise voting rights related to the acquired shares and that the resale occurs within one year from the acquisition.

### 3.3 Where a merger technically requires notification and clearance, what are the risks of not filing? Are there any formal sanctions?

Failure to notify the merger is considered an infringement of the

Competition Law and is subject to fines imposed by the ACA of up to 1% of the total turnover of the preceding financial year of each of the undertakings subject to the notification requirement.

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

There are two cases where the ACA has imposed fines to a foreign undertaking acquiring a shareholding in an Albanian undertaking for failure to notify the merger within the required deadline.

---

### 3.4 Is it possible to carve out local completion of a merger to avoid delaying global completion?

---

It is not possible to carve out local completion of a merger to avoid delaying global completion.

---

### 3.5 At what stage in the transaction timetable can the notification be filed?

---

The Competition Law provides that the merger should be notified within 30 days from the signature of the merger agreement or of the control acquisition or from the announcement of the public offer.

---

### 3.6 What is the timeframe for scrutiny of the merger by the merger authority? What are the main stages in the regulatory process? Can the timeframe be suspended by the authority?

---

The Competition Law defines the procedure for assessment of mergers from the ACA into: (i) preliminary proceedings; and (ii) in depth proceedings.

During the preliminary proceedings, the ACA shall examine the notification in order to find whether the transaction “reveals any sign that it would create or strengthen a dominant position”. When pursuing the in-depth proceedings, the ACA must assess whether the transaction creates or strengthens a dominant position of the undertakings in the market.

During the preliminary phase, the ACA shall decide whether: (i) to initiate an in-depth procedure; or (ii) to give clearance of the merger, within two months after the confirmation of notification receipt (i.e. the period of two months shall begin on the working day following the confirmation of the ACA on the notification receipt or, if the information to be supplied with the notification is incomplete, on the day following the receipt of the complete information).

This period is extended by two weeks (“Extension Period”) in case the said signs are revealed, but the ACA has granted a conditional clearance and if the concerned undertakings, not later than one month after notification, commit themselves to take measures to eliminate the restriction of competition.

In case an in-depth proceeding is initiated, the ACA shall have three months, starting from the commencement of the proceeding, to declare by means of a decision if the merger (transaction) is prohibited, fully cleared or cleared with conditions and obligations.

In the event of a “clearance with conditions and obligations”, the period of three months shall be extended up to two months, if the participating undertakings, no later than two months from the date of commencement of in-depth procedure, commit themselves to take measures to eliminate the restriction of competition.

If the ACA does not decide within the set deadlines (either for the

preliminary phase or the in-depth phase), the Competition Law provides for the “silent-is-consent” rule, unless the ACA extends or suspends the above-mentioned time limits.

The timeframe is suspended when:

- The in-depth procedure is hindered by the participating undertakings.
- Information required by the ACA from one of the notifying undertakings or other interested parties, has not been provided or is incomplete within the term assigned by the ACA.
- One of the notifying undertakings or involved parties has refused to give the information required by the ACA or to cooperate with the ACA to obtain the said information, whenever considered necessary by ACA.
- The notifying undertakings have failed to inform the ACA on the change of facts contained in the Notification Form.

---

### 3.7 Is there any prohibition on completing the transaction before clearance is received or any compulsory waiting period has ended? What are the risks in completing before clearance is received?

---

The Competition Law provides for a prohibition on giving effect to the merger before filing the notification or obtaining clearance from the ACA, or before satisfaction of the conditions under which the clearance is granted.

However, the ACA may decide derogation from the said prohibition when important reasons exist, in particular, to prevent serious and non-repairable damages to a participating undertaking or to a third party and taking into account the threat to competition implied by the merger.

Legal and contractual transactions undertaken before the clearance is obtained shall be of no effect. Completion of the merger before clearance of the ACA constitutes an infringement of the law and is therefore subject to a fine of up to 10% of the total turnover of the preceding financial year, if the merger has, as its effect, the restriction of competition.

Further, if a merger is prohibited after completion, or if a merger has been carried out although prohibited, or without entirely fulfilling the conditions attached to the clearance decision, the ACA may impose the participating undertakings to take the necessary steps to restore the former situation, i.e. the conditions of effective competition, in particular by separating the undertakings merged or rescinding the participations or acquired assets. The ACA may require the participating undertakings to propose measures within a set deadline, aiming to re-establish effective competition.

---

### 3.8 Where notification is required, is there a prescribed format?

---

The notification is filed through filling in a standard form called “Form of Notification of Mergers”. The form should be filled-in in the Albanian language, or if in the original language, a notarised translation into the Albanian language should be submitted also. The form is to be filed with the ACA in two original or notarised copies along with the necessary documentation.

The notification shall indicate the form of the merger and the following information regarding any participating undertaking:

- name and place of business or registered seat of the undertakings;
- type of business of the undertakings;
- turnover in the domestic market and worldwide of the undertakings;

- (iv) market shares of the undertaking, including the methods for their calculation or estimation;
- (v) in case of an acquisition of share capital, size of the interest acquired by any undertaking and of the total interest held in this undertaking; and
- (vi) the name of the person authorised to represent the undertaking during the merger assessment procedures.

Filings have to be supported with documents related to the merger and identification of the undertakings such as copy of the merger agreement or public offer, approval of the merger from the managing bodies of the undertakings, financial statements and balance sheets of the last financial year of the undertakings and documents identifying the registration of the undertakings with the National Chamber of Commerce or Commercial Register. In case these documents are in a foreign language, they should be notarised and legalised (when applicable) and should be submitted accompanied with the Albanian translation (duly notarised). The notification should contain a descriptive list of documents attached, as well as the respective number of pages.

In order to avoid delays in the merger assessment proceedings, pre-notification meetings with the ACA officers may be organised and a written request for consultation may be submitted for consulting the relevant information to be filled-in in the notification form and supporting documents. If the merger will not be realised, the participating parties should inform the ACA accordingly.

### 3.9 Is there a short form or accelerated procedure for any types of mergers? Are there any informal ways in which the clearance timetable can be speeded up?

The Competition Law and Instruction of the ACA “On the Form of Notification of Mergers and Possibility of a Simplified Notification” provides for a short form of mergers notification when it appears sufficient to the ACA to assess whether the merger would give rise to competition issues (and upon decision of the Secretariat). The notification of the merger will be made through the same standard form, but it will not be necessary to fill-in some of the sections.

### 3.10 Who is responsible for making the notification and are there any filing fees?

The notification of the merger should be made by:

- (i) undertakings parties to the merger jointly, in the case of a merger, or those undertakings acquiring the control, in the case of an acquisition of the control;
- (ii) the undertaking offering to acquire the other undertaking in case of a public offer acquisition; or
- (iii) in case of establishment of a joint venture, undertakings that have the control of the joint venture.

The notifying party must pay a notification filing fee amounting to Leke 15 thousand (approximately EUR 122). The payment statement of this fee should be submitted to the ACA at the moment of filing the notification.

### 3.11 What impact, if any, do rules governing a public offer for a listed business have on the merger control clearance process in such cases?

There is no impact of rules governing a public offer for a listed business on the merger control clearance process.

### 3.12 Will the notification be published?

The notification will be published in the official website of the ACA in the form of short information on the transaction. The publication contains data of participating undertakings, place of origin, the form of concentration, involved sectors of economy and the invitation from the Competition Authority to interested parties to express comments and deadlines for expressing such comments.

## 4 Substantive Assessment of the Merger and Outcome of the Process

### 4.1 What is the substantive test against which a merger will be assessed?

The substantive test used by the ACA in its assessment of the merger is the significant restriction of the competition in the market or a part of it, especially as a result of the creation or strengthening of the single or collective dominant position.

Specifically, during the preliminary proceeding, the ACA shall examine the notification in order to find whether the transaction/merger “reveals signs that it would significantly restrict the competition in the market or a part of it, especially as a result of the creation or strengthening of the dominant position. Whilst in the in-depth proceedings, the ACA must assess whether the transaction/merger significantly restricts the said competition.

It should be mentioned that the mergers significantly restricting the competition over the market are prohibited, except when an undertaking seriously risks a failure and there is no less anti-competitive alternative than the merger, if (i) this undertaking is in such a situation that without the merger it would exit the market in the near future, and (ii) there are no serious prospects of re-organising the activity of the same undertaking.

### 4.2 To what extent are efficiency considerations taken into account?

The Commission, in assessing concentrations, may take into account economic efficiency that can be derived from the concentration, if the economic efficiency:

- contributes to the welfare of consumers or at least neutralise the possible negative effects that could cause the concentration;
- is or will be the result of this concentration and there are no alternative ways which are less anti-competitive for its creation, than the given concentration; and
- is verifiable.

### 4.3 Are non-competition issues taken into account in assessing the merger?

When an undertaking risks seriously a failure and there is no less anti-competitive alternative than the merger, the ACA may decide to approve the merger if (i) this undertaking is in such a situation that without the merger it would exit the market in the near future, and (ii) there are no serious prospects of re-organising the activity of the same undertaking.

### 4.4 What is the scope for the involvement of third parties (or complainants) in the regulatory scrutiny process?

The ACA is required to publish the commencement of the merger

control, notifications and decisions in the Official Bulletin of the ACA (and website of ACA). The Regulation of the ACA “On Implementation of Merger Procedures” provides that third interested parties (e.g. consumers, suppliers, or competitors of the participating undertakings) have the right to be heard on the merger and can present their views and comments.

#### **4.5 What information gathering powers does the regulator enjoy in relation to the scrutiny of a merger?**

The ACA may impose to the notifying undertakings fines not exceeding 1% of the total turnover of the preceding financial year, in case they refuse to provide information or the said information is incomplete or misleading.

#### **4.6 During the regulatory process, what provision is there for the protection of commercially sensitive information?**

According to the Regulation of the ACA “On Implementation of Merger Procedures”, the notifying parties or their representatives should clearly determine in a separate document the information they consider as containing business secrets. Under the current Instruction of the ACA “On the Form of Notification of Mergers and Possibility of a Simplified Notification”, the parties should also submit the reasons why this information must not be divulged or published. In the case of mergers or joint acquisitions, or in other cases where the notification is completed by more than one of the parties, business secrets may be submitted under separate cover, and referred to in the notification as an annex. All such annexes must be included in the submission in order for a notification to be considered as complete.

Further, the Competition Law provides that the members of the ACA Commission and all the ACA Secretariat employees, or the other persons authorised by the ACA Commission to apply this Law shall be subject to professional secrecy during and after the termination of their duty. Secretariat publications shall not contain information constituting commercial secrets.

Furthermore, the information contained in the publication of the notification is limited.

## **5 The End of the Process: Remedies, Appeals and Enforcement**

### **5.1 How does the regulatory process end?**

The regulatory process ends upon the decision of the ACA (which is an administrative act) either to: give clearance of the merger (by imposing or not conditions and obligations); or prohibit the merger. The decision of the ACA is published in the Official Bulletin of ACA (and website).

### **5.2 Where competition problems are identified, is it possible to negotiate “remedies” which are acceptable to the parties?**

Where competition issues are identified, it is possible to negotiate remedies with the ACA, since the Competition Law requires the ACA to give the opportunity to the undertakings to participate in the process of determining the remedies (conditions and obligations of the clearance).

The remedies proposed or decided may have a behavioural or structural nature, such as the sale of parts of undertakings, or of any kind of participation in the activity of the undertaking, termination

of contractual relationship, obligation to act or not to act in a certain way or any other remedy enabling the elimination of anti-competitive effects of the merger.

### **5.3 To what extent have remedies been imposed in foreign-to-foreign mergers?**

There are no cases of remedies imposed on foreign-to-foreign mergers.

### **5.4 At what stage in the process can the negotiation of remedies be commenced? Please describe any relevant procedural steps and deadlines.**

During the preliminary phase, undertakings/remedies should be presented to the ACA no later than one month after the receipt of the notification and no later than two months after the initiation of the in-depth phase. In case of submission of remedies during the preliminary phase, the timeframe for adopting a decision from the ACA is extended by two weeks; when proposed during the in-depth phase, the period of three months shall be extended up to two months. An original copy of the remedies should be filed with the ACA. Any confidential information or document should be clearly indicated and another non-confidential version should be submitted within the term defined by the ACA.

### **5.5 If a divestment remedy is required, does the merger authority have a standard approach to the terms and conditions to be applied to the divestment?**

There is no standard approach. However, the Competition Law provides for a non-exhaustive list of the eventual remedies (see question 5.2).

### **5.6 Can the parties complete the merger before the remedies have been complied with?**

The parties may not complete the merger before the remedies have been complied except when the ACA has granted derogation from this prohibition.

### **5.7 How are any negotiated remedies enforced?**

In case of failure to comply with the remedies negotiated, the ACA may apply the following sanctions: imposing fines; and revoking the decision authorising the merger.

Fines are considered an executive title and can be executed by the bailiff service in pursuance with the provisions of the Civil Procedure Code.

### **5.8 Will a clearance decision cover ancillary restrictions?**

The restrictions directly related and necessary to the implementation of the merger will be covered by the decision clearing the merger if they are mentioned in the notification.

### **5.9 Can a decision on merger clearance be appealed?**

The decisions taken from the ACA are considered administrative acts and subject to appeal lodged with the Tirana District Court. In case the challenged decision of the ACA consists of the clearance of a merger, the appeal does not suspend the effects of the clearance.



### 5.10 What is the time limit for any appeal?

The appeal must be filed within 30 days from the notification of the decision.

### 5.11 Is there a time limit for enforcement of merger control legislation?

The time limits as mentioned in question 3.6 apply when the merger is notified by the concerned undertaking.

On the other hand, although the Competition Law entitles the ACA to begin upon its own initiative, the procedures for assessment of the merger in case the merger is completed without notification, there are no specific provisions limiting the time for the ACA to undertake such procedure.

## 6 Miscellaneous

### 6.1 To what extent does the merger authority in Albania liaise with those in other jurisdictions?

The Competition Law provides for communication and exchange of information between the ACA and foreign competition authorities when bilateral or multilateral agreements have been entered into for

such purpose. Such exchange of information is based on the principle of reciprocity and compliance of the foreign authority with trade secrecy rules having the same guaranties as in Albania.

Furthermore, based on the principle of reciprocity, the ACA may conduct investigations upon the request of the foreign competition authority, except when such investigation and/or provision of information or documents requested from the foreign competition authority are in detriment to the Republic of Albania sovereignty, security, essential economic interests or public order.

### 6.2 Are there any proposals for reform of the merger control regime in Albania?

Recently (on 19.07.2012) the Competition Commission approved a new instruction on merger control. The Instruction transposes EC notice 2008/C 95/01 on the control of concentrations between undertakings.

Currently, there is no proposal for reforms of the merger control regime in Albania.

### 6.3 Please identify the date as at which your answers are up to date.

Our answers are up to date as of September 2012.

**Sokol Elmazaj**

Boga & Associates  
Ibrahim Rugova Str.  
P.O. Box 8264  
Tirana  
Albania

Tel: +355 4225 1050  
Fax: +355 4225 1055  
Email: [selmazi@bogalaw.com](mailto:selmazi@bogalaw.com)  
URL: [www.bogalaw.com](http://www.bogalaw.com)

Sokol is a Partner at Boga & Associates, which he joined in 1996. His fields of expertise include commercial law, competition law, concession law, privatisations, construction and real estate, energy and public utilities, corporate law, banking and finance, taxation laws, litigation, real estate, and environment protection law, etc.

The focus of Sokol's practice is providing legal advice to the financing of projects in any industry and with regard to all aspects, i.e. corporate, commercial, real estate, and regulatory, etc.

His experience includes legal assistance in privatisations, public-private partnerships, mergers and acquisition transactions in the banking and insurance market, as well as representation of lenders, developers and investors on a number of transactions.

Sokol graduated in Law at University of Tirana in 1996 and is admitted to practice in Albania and Kosovo. He is an authorised trademark and patents attorney in Albania and an arbitrator under the American Chamber of Commerce of Kosovo.

Sokol is fluent in English and Italian.

**Jonida Skendaj**

Boga & Associates  
Ibrahim Rugova Str.  
P.O. Box 8264  
Tirana  
Albania

Tel: +355 4225 1050  
Fax: +355 4225 1055  
Email: [jskendaj@bogalaw.com](mailto:jskendaj@bogalaw.com)  
URL: [www.bogalaw.com](http://www.bogalaw.com)

Jonida is a Senior Associate at Boga & Associates, which she joined in 2004.

She is a specialised business lawyer and assists clients on any business law aspects, including corporate, competition law implications, mergers and agreement notifications, as well as abuse of a dominant position with the Albanian Competition Authority, taxation of corporations, employment, and intellectual property.

Jonida is also involved in the assistance of foreign investors in the energy field from the perspective of compliance with energy regulatory framework and concessions.

Jonida graduated in Business Law ("*Maitrise en Droit des Affaires*") from the University of Paris X Nanterre, Paris, France, in 2002 and obtained a Master Degree in Business Law, focused on EU Competition Law ("*Diplome d'Etudes Approfondies en Droit des Affaires*"), in 2003 from the University of Paris X Nanterre, Paris, France.

Jonida is fluent in French, English and Italian.

## BOGA &amp; ASSOCIATES

LEGAL • TAX • ACCOUNTING

Boga & Associates, established in 1994, has emerged as one of the premier law firms in Albania, earning a reputation for providing the highest quality of legal, tax and accounting services to its clients. Boga & Associates also operates in Kosovo (Pristina) offering a full range of services. Until 1st of May 2007, the firm was a member firm of KPMG International and the Senior Partner/Managing Partner, Mr. Genc Boga, was also Senior Partner/Managing Partner of KPMG Albania.

The firm maintains its quality through the skills and determination of a team of attorneys and other experienced professionals. The team's extensive foreign language capabilities help to ensure that its international clientele have easy access to the expanding Albanian and Kosovo business environment. Over the years, the firm has advised on privatisation transactions, concessions, real estate transactions, setting up businesses, credit facilities and custom and tax issues, all with a keen sensitivity to developments in the Albanian business environment.

Boga & Associates is recognised as a top tier firm by the most prestigious ranking companies in Corporate/Commercial, Dispute Resolution, Intellectual Property, Real Estate by Chambers and Partner (2012), Financial and Corporate Law, as well as Mergers and Acquisition by IFLR (2012). The firm is praised by clients and peers as a "law firm with high-calibre expertise" and is distinguished "among the elite in Albania" and as "accessible, responsive and wise".

## Other titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Commodities and Trade Law
- Competition Litigation
- Corporate Governance
- Corporate Recovery & Insolvency
- Corporate Tax
- Dominance
- Employment & Labour Law
- Enforcement of Competition Law
- Environment & Climate Change Law
- Gas Regulation
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Mergers & Acquisitions
- Mining
- Patents
- PFI / PPP Projects
- Pharmaceutical Advertising
- Private Client
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Telecoms, Media & Internet
- Trade Marks



59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [sales@glgroup.co.uk](mailto:sales@glgroup.co.uk)

[www.iclg.co.uk](http://www.iclg.co.uk)