The International Comparative Legal Guide to:

Merger Control 2016

12th Edition

A practical cross-border insight into merger control issues

Published by Global Legal Group, with contributions from:

Accura Advokatpartnerselskab
Advokatfirmaet Wiersholm AS
AlixPartners UK LLP
Anastasios Antoniou LLC
Ashurst LLP
Asters
Beiten Burkhardt
Bergstein Abogados
Blake, Cassels & Graydon LLP
Boga & Associates
Drew & Napier LLC
ELIG, Attorneys-at-Law
Erdinast, Ben Nathan & Co. Advocates
GO Associados
Ivanyan & Partners
Jesse & Kalaus Attorneys
JSC Center for Development and Protection of Competition Policy
Karimov and Partners Ltd.
Kastell Advokatbyrå AB
Khan Corporate Law
King & Wood Mallesons
Koep & Partners
Lee and Li, Attorneys-at-Law
Linklaters LLP
Matthews Law
Morais Leitão, Galvão Teles, Soares da Silva & Associados
Moravčević Vojnović i Partneri in cooperation with Schoenherr
Nagashima Ohno & Tsunematsu
OLIVARES
Peltonen LMR Attorneys Ltd.
PUNUKA Attorneys & Solicitors
Schellenberg Wittmer Ltd
Schoenherr
Schoenherr in cooperation with Advokatsko druzhestvo Stoyanov & Tsekova
Schoenherr și Asociații SCA
Sidley Austin LLP
Skadden, Arps, Slate, Meagher & Flom
UGGC Avocats
Vaish Associates, Advocates

GLG
Global Legal Group

GLG
Global Legal Group

Contributing Editors
Nigel Parr and Catherine Hammon, Ashurst LLP

Head of Business Development
Dror Levy

Sales Director
Florjan Osmani

Account Directors
Oliver Smith, Rory Smith

Senior Account Manager
Maria Lopez

Sales Support Manager
Toni Hayward

Sub Editor
Hannah Yip

Senior Editor
Suzie Levy

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 2015

ISBN 978-1-910083-70-3
ISSN 1745-347X

Strategic Partners

General Chapters:

1	**To Bid or Not to Bid, That is the Question – the Assessment of Bidding Markets in Merger Control** – David Wirth, Ashurst LLP	1
2	**Remedies Under the EUMR** – Frederic Depoortere & Giorgio Motta, Skadden, Arps, Slate, Meagher & Flom	10
3	**The Economics of Retailer Mergers** – Ashley Burdett & Mat Hughes, AlixPartners UK LLP	15

Country Question and Answer Chapters:

4	**Albania**	Boga & Associates: Sokol Elmazaj & Jonida Skendaj	23
5	**Australia**	King & Wood Mallesons: Sharon Henrick & Wayne Leach	30
6	**Austria**	Schoenherr: Stefanie Stegbauer & Franz Urlesberger	39
7	**Belgium**	Linklaters LLP: Thomas Franchoo & Niels Baeten	46
8	**Bosnia & Herzegovina**	Moravčević Vojnović i Partneri in cooperation with Schoenherr: Srđana Petronijević & Danijel Stevanović	53
9	**Botswana**	Khan Corporate Law: Shakila Khan & Precious N. Hadebe	61
10	**Brazil**	GO Associados: Gesner Oliveira & Ricardo Pastore	67
11	**Bulgaria**	Schoenherr in cooperation with Advokatsko druzhestvo Stoyanov & Tsekova: Ilko Stoyanov & Mariya Papazova	75
12	**Canada**	Blake, Cassels & Graydon LLP: Debbie Salzberger & Emma Costante	82
13	**China**	King & Wood Mallesons: Susan Ning & Ting Gong	91
14	**Cyprus**	Anastasios Antoniou LLC: Anastasios A. Antoniou & Aquilina Demetriadi	98
15	**Denmark**	Accura Advokatpartnerselskab: Jesper Fabricius & Christina Heiberg-Grevy	105
16	**Estonia**	Jesse & Kalaus Attorneys: Tanel Kalaus & Mari Matjus	114
17	**European Union**	Sidley Austin LLP: Steve Spinks	122
18	**Finland**	Peltonen LMR Attorneys Ltd.: Ilkka Leppihalme & Matti J. Huhtamäki	133
19	**France**	Ashurst LLP: Christophe Lemaire & Simon Naudin	144
20	**Germany**	Beiten Burkhardt: Philipp Cotta & Uwe Wellmann	154
21	**Hong Kong**	King & Wood Mallesons: Martyn Huckerby & Edmund Wan	164
22	**Hungary**	Schoenherr: Anna Turi & Christoph Haid	170
23	**India**	Vaish Associates, Advocates: Man Mohan Sharma	178
24	**Israel**	Erdinast, Ben Nathan & Co. Advocates: Michal Rothschild	186
25	**Italy**	King & Wood Mallesons: Riccardo Croce & Elisa Baretta	192
26	**Japan**	Nagashima Ohno & Tsunematsu: Eriko Watanabe & Yoshitoshi Imoto	201
27	**Kazakhstan**	JSC Center for Development and Protection of Competition Policy: Aldash Aitzhanov & Anara Batyrbayeva	208
28	**Kosovo**	Boga & Associates: Sokol Elmazaj & Delvina Nallbani	215
29	**Macedonia**	Moravčević Vojnović i Partneri in cooperation with Schoenherr: Srđana Petronijević & Danijel Stevanović	222
30	**Mexico**	OLIVARES: Gustavo A. Alcocer & Andrés de la Cruz Pérez	230
31	**Montenegro**	Moravčević Vojnović i Partneri in cooperation with Schoenherr: Srđana Petronijević & Danijel Stevanović	236
32	**Morocco**	UGGC Avocats: Corinne Khayat & Catherine Chappellet-Rempp	243
33	**Namibia**	Koep & Partners: Hugo Meyer van den Berg & Peter Frank Koep	253
34	**New Zealand**	Matthews Law: Nicko Waymouth & Gus Stewart	260
35	**Nigeria**	PUNUKA Attorneys & Solicitors: Anthony I. Idigbe & Eberechi Ifeonu	267
36	**Norway**	Advokatfirmaet Wiersholm AS: Anders Ryssdal & Håkon Cosma Størdal	277
37	**Portugal**	Morais Leitão, Galvão Teles, Soares da Silva & Associados: Carlos Botelho Moniz & Pedro de Gouveia e Melo	285
38	**Romania**	Schoenherr şi Asociaţii SCA: Cătălin Suliman & Silviu Vasile	296
39	**Russia**	Ivanyan & Partners: Maria Miroshnikova & Sergei Kushnarenko	304

Continued Overleaf →

GLG
Global Legal Group

Country Question and Answer Chapters:

40	**Serbia**	Moravčević Vojnović i Partneri in cooperation with Schoenherr: Srđana Petronijević & Danijel Stevanović	312
41	**Singapore**	Drew & Napier LLC: Lim Chong Kin & Dr. Corinne Chew	321
42	**Slovakia**	Schoenherr: Jitka Linhartová & Claudia Bock	331
43	**Slovenia**	Schoenherr: Eva Škufca & Christoph Haid	337
44	**Spain**	King & Wood Mallesons: Ramón García-Gallardo & Manuel Bermúdez Caballero	347
45	**Sweden**	Kastell Advokatbyrå AB: Pamela Hansson & Christina Mailund	358
46	**Switzerland**	Schellenberg Wittmer Ltd: David Mamane & Dr. Jürg Borer	366
47	**Taiwan**	Lee and Li, Attorneys-at-Law: Stephen Wu & Yvonne Hsieh	374
48	**Turkey**	ELIG, Attorneys-at-Law: Gönenç Gürkaynak & Ayşe Güner	381
49	**Ukraine**	Asters: Igor Svechkar & Tetiana Vovk	388
50	**United Kingdom**	Ashurst LLP: Nigel Parr & Duncan Liddell	395
51	**USA**	Sidley Austin LLP: William Blumenthal & Marc E. Raven	409
52	**Uruguay**	Bergstein Abogados: Leonardo Melos & Jonás Bergstein	417
53	**Uzbekistan**	Karimov and Partners Ltd.: Bobir Karimov	424

EDITORIAL

Welcome to the twelfth 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:

Three general chapters. These chapters 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 laws and regulations in 50 jurisdictions.

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

Special thanks are reserved for the contributing editors Nigel Parr and Catherine Hammon 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.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.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. The 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?

Besides the legislation mentioned in question 1.2 above, which is also applicable to foreign mergers, mergers between Albanian and European companies are also governed by law no. 110/2012, dated 15.11.2012 "On Cross-border Mergers". Said law provides for the conditions, procedures and legal effects of a cross-border merger as well as protective measures for employees and creditors of such companies.

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 may not hold more than 20% of the share capital in another national audiovisual company. An entity or person that holds shares in local or regional audiovisual companies may not hold more than 40% of the share capital in another local or regional audiovisual company. Any change in the ownership, or matters related to it, is subject to prior written approval by the Audiovisual Media Authority;

(ii) the banking sector: where the Central Bank of Albania has the power to approve or decline any transfer of at least 10% of a bank's share capital or such a percentage that enables a shareholder to influence considerably in the management or policies of a 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 10% or more of the shares with voting rights held in a company engaged in insurance and/or reinsurance activity as well as any transfer which affects less than 10% of the said shares but confers a control over the management of the insurance company. In addition, companies shall be subject to approval from the Authority of Financial Supervision for any further participation that reaches or exceeds 20, 30, 50 or 75% of the voting rights or the share capital of the insurance company; 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 the 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 50 million) and the domestic turnover of at least one participating undertaking is more than Leke 200 million (approximately EUR 1.42 million); or

(b) the combined domestic turnover of all participating undertakings is more than Leke 400 million (approximately EUR 2.8 million) and the domestic turnover of at least one participating undertaking is more than Leke 200 million (approximately EUR 1.42 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 undertakings' ordinary activities, after deduction of taxes or fees directly related to the undertakings' turnover. Whilst, 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 reinsurances 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 considered so far 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 the 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 a series of these transactions performed between the same parties within a two-year period is 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 the 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, 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 the 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 a 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 determining 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 on 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, 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 restrict the competition", especially through creating or strengthening of a dominant position. When pursuing the in-depth proceedings, the ACA must assess whether the transaction significantly restricts the said competition.

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, no 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 by up to two months, if the participating undertakings, no later than two months from the date of commencement of the 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:

a. The in-depth procedure is hindered by the participating undertakings.

b. 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.

c. One of the notifying undertakings or involved parties has refused to give the information required by the ACA or to cooperate with the ACA for obtaining the said information, whenever considered necessary by the ACA.

d. 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 on 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 infringement of the law and therefore is subject to a fine up to 10% of the total turnover of the preceding financial year, if the merger has, as effects, the restriction of the 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 require 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 format called "Form of Notification of Mergers". The form should be filled 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:

(i) the name and place of business or registered seat of the undertakings;

(ii) the type of business of the undertakings;

(iii) the turnover in the domestic market and worldwide of the undertakings;

(iv) the market shares of the undertaking, including the methods for their calculation or estimation;

(v) in case of an acquisition of share capital, the 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 a 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 merger notification when it appears sufficient to the ACA for assessing 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 being party 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.

Undertakings that acquire control and have an annual turnover range of Leke 200 million – 1 billion in the internal market must pay a notification filing fee amounting to Leke 7,500 (approximately EUR 53). Undertakings that acquire control and have an annual turnover of more than Leke 1 billion in the internal market must pay a notification filing fee amounting to Leke 15,000 (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 on the official website of the ACA in the form of a short piece of information on the transaction. The publication contains the data of participating undertakings, the place of origin, the form of concentration, the 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 in 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 mergers, may take into account economic efficiency that can be derived from the merger, if the economic efficiency:

- contributes to the welfare of consumers or at least neutralises the possible negative effects that could cause the merger;
- is or will be the result of this merger 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 seriously risks 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 on the website of the ACA). The Regulation of the ACA "On Implementation of Merger Procedures" provides that interested third 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 on 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.

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 the ACA (and the ACA 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 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 by 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 with 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 by the ACA are considered administrative acts and subject to appeal lodged with the Administrative Court of Tirana. 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?

Currently, there are no proposals 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 2015.

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
URL: www.bogalaw.com

Sokol joined Boga & Associates in 1996.

He is a partner of the firm and Country Manager for Kosovo.

He has extensive expertise in corporate, mergers and acquisitions, project financing, privatisation, real estate projects, energy, telecommunication and dispute resolution. He is continuously involved in providing legal advice to numerous project financing transactions, mainly on concessions and privatisations with a focus on energy and infrastructure, both in Albania and Kosovo.

Sokol has also conducted a broad range of legal due diligences for international clients considering investing in Albania or Kosovo in the fields of industry, telecommunications, banking, real estate, etc.

He is an authorised trademark attorney and has expertise in trademark filing strategies and trademark prosecution, including IP and litigation issues.

Sokol is continuously ranked as a Leading Lawyer in the well known guides Chambers Global, Chambers & Partners and IFLR1000.

Sokol graduated in Law at the University of Tirana in 1996 and is admitted to practice in Albania. He is also an arbiter listed in the roster of 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
URL www.bogalaw.com

Jonida is a Partner 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 with dominant position with the Albanian Competition Authority, taxation of corporations, employment, and intellectual property.

Jonida is also involved with 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*") at the University of Paris X Nanterre, Paris, France in 2002 and obtained a Masters Degree in Business Law, focused on EU Competition Law ("*Diplome d'Etudes Approfondies en Droit des Affaires*"), in 2003 at the University of Paris X Nanterre, Paris, France.

Jonida is fluent in French, English and Italian.

BOGA & 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 legal, tax and accounting services to its clients. The firm also operates in Kosovo (Pristina), offering a full range of services. Until 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's particularity is linked to the multidisciplinary services it provides to its clients. Apart from the widely consolidated legal practice, the firm also offers significant expertise in tax and accounting services, with a keen sensitivity to the rapid changes in the Albanian and Kosovar business environment.

With its diverse capabilities and experience, the firm services leading clients in most major industries, banks and financial institutions, and companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods. The firm also has an outstanding litigation practice, representing clients on all levels of Albanian courts. This same know-how and experience has been drawn upon by the Legislature in the drafting of new laws and regulations.

The firm is continuously ranked by Chambers and Partners as a "top tier firm" for Corporate/Commercial, Dispute Resolution, Projects, Intellectual Property and Real Estate, as well as by IFLR in Financial and Corporate Law. The firm is praised by clients and peers as a "*law firm with high-calibre expertise*" and "*accessible, responsive and wise*", and is distinguished "*among the elite in Albania*".

Current titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks

GLG
Global Legal Group

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

www.iclg.co.uk