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The International Comparative Legal Guide to:

Merger Control 2017

13th Edition

A practical cross-border insight into merger control issues

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Country Question and Answer Chapters:

EDITORIAL

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

This guide provides the international practitioner and in-house counsel 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 chapters are designed to provide readers with an 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.

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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 (the 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 April 2008, "On Entrepreneurs and Commercial Companies", as amended;

(ii) Law no. 9121, dated 28 July 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 November 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?

Besides 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 telecommunications 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, what constitutes a "merger" and 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, particularly 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-mentioned 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. 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-mentioned 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 also applies in the absence of a substantive overlap.

2.6 In what circumstances is it likely that transactions between parties outside your jurisdiction ("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 has so far considered the merger as 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 cases where it takes place in various stages. However, when establishing the rules on calculation of turnover in the case of mergers consisting of the 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 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 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 some 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?

Our understanding of the ACA's view is that it would not be possible to carve out local completion of a merger in order 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 the 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 cases where the said signs are revealed, but the ACA grants a conditional clearance if the concerned undertakings, no later than one month after notification, commit themselves to take measures to eliminate the restriction of competition.

In cases where 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 is therefore 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 form 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 also be submitted. 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 the 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 cases where these documents are issued from foreign bodies, they should be notarised and/or 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?

On 8 June 2016, the ACA adopted the Instruction "On a Simplified Procedure for Treatment of Certain Concentrations".

The Instruction provides for a short form decision of the Competition Commission declaring a concentration compatible with the internal market pursuant to the simplified procedure, subject to the meeting of certain conditions. A simplified notification form is filled in.

The Competition Commission adopts a short-form clearance decision within 25 working days from the day of confirmation that the notification form and the accompanying documents are complete. However, in the period leading up to the 25-working-day deadline, the ACA reserves the right to revert to the normal first phase merger procedure and thus launch investigations and/or adopt a full decision, if considered as appropriate regarding the case in question.

This simplified procedure is applicable whenever the following concentrations occur:

(a) two or more undertakings acquire joint control of a joint venture, provided that the joint venture has no actual or foreseen activities within Albania; such cases occur where:

  (i) the turnover of the joint venture and/or the turnover of the contributed activities is less than Leke 300 million in Albania at the time of notification; and

  (ii) the total value of assets transferred to the joint venture is less than Leke 300 million in Albania at the time of notification;

(b) two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking, provided that none of the parties to the concentration are engaged in business activities in the same product and geographic market, or in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged;

(c) two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking and both of the following conditions are fulfilled:

  (i) the combined market share of all the parties to the concentration that are engaged in business activities in the same product and geographic market (horizontal relationships) is less than 15%; and

  (ii) the individual or combined market shares of all the parties to the concentration that are engaged in business activities in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged (vertical relationships) are less than 25%;

(d) a party is to acquire sole control of an undertaking over which it already has joint control.

(e) the ACA may also apply the simplified procedure where two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking, and both of the following conditions are fulfilled:

  (i) the combined market share of all the parties to the concentration that are in a horizontal relationship is less than 50%; and

  (ii) the increment (*delta*) of the Herfindahl-Hirschman Index ("HHI") resulting from the concentration is below 150.

3.10 Who is responsible for making the notification?

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 the case of a public offer acquisition; or

(iii) in the case of the 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 to Leke 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 Are there any fees in relation to merger control?

See the answer to question 3.10.

3.12 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.

3.13 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 reorganising 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 reorganising 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 merger authority 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 cases where 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. 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 divestiture 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.

Parties may submit remedies non-officially even before notification. During the preliminary phase, undertakings/remedies should be presented to the ACA within 20 calendar days after the receipt of the notification. In the case of the 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 remedies should be submitted within 65 calendar days from the day on which proceedings were initiated. Where the deadlines for the final decision have been extended pursuant to Merger Regulation, the deadline for remedies is also automatically extended for the same number of days. The ACA may accept remedies/commitments that are submitted for the first time after the expiry of this period only in exceptional cases. Where the parties submit their remedies/commitments fewer than 55 calendar days after the initiation of proceedings, the Commission takes its final decision within 90 calendar days of the date of initiation of proceedings. If the parties submit their remedies/commitments on the 55th calendar day or afterwards (even after the 65th calendar day, if those remedies/commitments should be acceptable due to exceptional circumstances), the period for the Commission to take a final decision is increased to 105 calendar days. Where the parties submit remedies/commitments fewer than 55 calendar days, but submit a modified version on the 55th calendar day or thereafter, the period to take a final decision will also be extended to 105 calendar days. If the parties believe that more time is needed for the investigation of the competition concerns and for the respective design of appropriate commitments, they may suggest to the Commission to extend the final deadline. Such a request should be made before the end of the 65-calendar-day period.

Remedies/commitments must be submitted in a non-confidential version for market testing with third parties purpose.

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?

The divestiture remedy is the most successful in eliminating competition concerns; therefore, the Instruction of ACA on Remedies provides a detailed description of the implementation method to follow. Many of the principles described therein for the implementation of divestiture remedies can equally be applied to other types of commitments if those commitments need to be implemented subsequent to the Commission decision. However, given the long duration of non-divestiture commitments and their frequent complexity, they often require a very high monitoring effort and specific monitoring tools in order to allow the Commission to conclude that they will effectively be implemented. Therefore, the Commission will often require the involvement of a trustee to oversee the implementation of such commitments and the establishment of a fast-track arbitration procedure in order to provide for a dispute resolution mechanism and to render the commitments enforceable by the market participants themselves.

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 the 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 cases where 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 cases where the merger is completed without notification has no specific provisions limiting the time for the ACA to undertake such a procedure.

6 Miscellaneous

6.1 To what extent does the merger authority in your jurisdiction 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 a 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 an investigation and/or provision of information or documents requested from the foreign competition authority are in detriment to the Republic of Albania's sovereignty, security, essential economic interests or public order.

6.2 Are there any proposals for reform of the merger control regime in your jurisdiction?

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 3 August 2016.

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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, telecommunications 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 practise 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.

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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, taxation of corporations, employment, intellectual property, competition law implications, mergers and agreements notifications, as well as matters related with abuse of a dominant position and represents the clients in proceedings with the Albanian Competition Authority.

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

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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 Kosovan 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 & Partners* as a "*top tier firm*" for Corporate/Commercial, Dispute Resolution, Projects, Intellectual Property and Real Estate, as well as by *IFLR1000* 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*".

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