



One of Europe's poorest countries, Albania, is located in South-eastern Europe, bordered by the Adriatic Sea and Ionian Sea, between Greece and Serbia and Montenegro. The country has a rich blend of religions, cultures and landscapes.

Albania ended 46 years of Communist rule during 1990-92 and established a multiparty democracy. The transition has proven difficult, as successive governments have tried to deal with high unemployment; widespread corruption; dilapidated infrastructure; powerful, politically well-connected organised crime networks; and disruptive political opponents.

The international community observed the Parliamentary elections in 2001, and local elections in 2003, as acceptable and a step towards democratic development, but identified serious deficiencies. Many of these deficiencies have been addressed through bi-partisan changes to the electoral code in 2003 and 2005, but the effective implementation of these changes will not be evident until Parliamentary elections in July 2005.

Economy

The agriculture sector has been the engine of growth and continues to account for about half of the GDP. The country has made significant progress, since its transition from rigid communism to a market economy. It has pursued far-reaching structural and economic reforms, and has made advances in establishing democratic institutions. The potential for growth and income generation appears to be good in sectors, such as the agro-business industry; transit trade; exports of light manufacturing; and tourism.

The Government has taken measures to curb violent crime and to spur economic activity and trade. The economy is bolstered by annual remittances from migrant workers abroad of US\$600-US\$800mn, mostly from Greece and Italy. This helps offset the towering trade deficit.

PROFILE	
Population:	3.2 million***
GDP (Current US\$):	6.1billion***
Per Capita Income: (Current US\$)	1,740 (Atlas method)*** 4,830 (at PPP)**
Surface Area:	28,750 sq. km
Life Expectancy:	73.6 years**
Literacy (%):	98.7 (of ages 15 and above)**
HDI Rank:	65***
Sources:	
- World Development Indicators Database, World Bank, 2005	
- Human Development Report Statistics, UNDP, 2004	
(**) For the year 2002	
(***) For the year 2003	

Agriculture is often, unfortunately, held back because of frequent droughts; the need to modernise equipment; to clarify property rights; and to consolidate small plots of land. Energy shortages, as well as antiquated and inadequate infrastructure, make it difficult to attract and sustain foreign investment. The planned construction of a new thermal power plant near Vlore, and improved transmission and distribution facilities, will help relieve the energy shortages.

In addition, the Government is moving slowly to improve the poor national road and rail network, a long-standing barrier to sustained economic growth. On the positive side, growth was strong in 2003 and 2004, the nation has important oil and gas reserves, and inflation is not a problem.

Competition Evolution and Environment

Competition law is a new concept for the Albanian statute, considering the centrally planned economy of the country during the past 50 years. Thus, the absence of competition

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¹ Comments received from Edlira Baraj, Director, Department of Competition, Ministry of Economy, Tirana, Albania

culture in Albania has constituted the root cause of impediments to competition. Already, in the first years of free market economy, the need for effective regulation of competition issues had become increasingly evident.

The Albanian Parliament adopted *Law No. 8044, of 7 December 1995 'On Competition'*. This constituted the first attempt towards building a competition culture. But, this move remained isolated, due to the absence of effective implementation measures at the administrative and institutional level, as well as the limited use and enforcement of this Law by public and private bodies.

Although the Law was not sufficient in covering all issues related to competition practices in Albania, such as monopolies and abuse of dominant position, it was still a step in the right direction. The Law prohibited monopoly and dominant position, by defining a dominant position as any situation in which an undertaking, or a group of undertakings, holds more than 40 percent of the market share.

These provisions have not conformed to European criteria in this field. The application of the Law has been encountered with many problems in resolving cases of privatisation and liberalisation of strategic sectors. The Law has exempted the public sector, including utilities, banks and some other institutions, from its application. There was no specific provision made in the Law, detailing when Competition Department could open a case under its own initiative.

Furthermore, the Competition Department was neither empowered to enter into business premises during investigative procedures; to seize the documents to be accepted as evidence for the case; to compel witnesses to testify; to require the production of documents, or written responses, to investigative questions. It could also not impose sanctions, either for the timely or complete provision of documents. Finally, there were very insignificant fines for infringement.

The main problem with the 1995 Law was that it was difficult to apply in day-to-day practice, especially due to its unclear language, contradictory requirements, and wide scope of application. Specifically, the weaknesses, which affected the competition regime, were:

- lack of an appropriate legal framework;
- lack of an independent institution;
- lack of sufficient and qualified staff; and
- lack of financial resources in conducting surveys for market data collection.

For a small country in transition, one of the main challenges for its competition authority is also related to the small size of the population. There are few major businesses and,

thus, explicit collusion is easier to hide and tacit collusion happens easily.

The application of this law, as mentioned before, had encountered lots of problems in resolving the cases of the existing transformed economic situation. In particular, the privatisation and liberalisation of strategic sectors has necessitated approximating the competition law with European competition legislation.

Box 61.1: Price Collusion on TV Advertisements Stopped

The Albanian Competition Department, through news transmitted by some TV channels, learned about a Memorandum of Understanding negotiated between the four main TV operators in the Albanian media market, determining, *inter alia*, terms relating to the minimum price of TV advertisements. The memorandum was to be enforced six months later.

Apart from the Competition Department, the news provoked an immediate reaction from big companies and business associations. They claimed that only the market should determine the advertisement rates.

The Department opened an investigation case and sought information from the questioned TV operators. The TV operators justified the agreement as a measure to countervail piracy, in the broadcasting of TV programmes which are not in compliance with *copyrights*. Further, they emphasised that the memorandum was still a draft, which if signed, would be changed by correcting the term '*fixing the minimum price*' with '*under-cutting price*'. This case showed a lack of competition culture in the country, which unfortunately also filtered into the media environment.

As a result of the Departmental investigations and the reaction of the business community, the TV operators did not put the memorandum into effect.

Source: This case was presented by the Competition Department in the OECD 'Seminar on Topics in Competition Policy' held in Vienna, from February 23 to March 05, 2004

Competition Policy and Institutions

The new era, which Albania entered into, with the opening of negotiations for the Stabilisation and Association Agreement with the EU, emphasised the need for a new, complete and effective legislative regime for competition issues. Competition is one of the primary areas where Albania has to approximate its domestic laws with EC Law. In doing so, the Albanian Parliament adopted a new law, the *Law No. 9121, 'On Protection of Competition'*, on July 28, 2003, which was enacted on December 01, 2003. The 1995 Law has since been abrogated.

Although the new law is in line with other European countries' competition legislation, and is harmonised with the EU competition rules, the provisions of the EU/EC Treaties do not legally bind Albania. The Law and the implementing regulations (adopted for the Albanian Competition Commission) constitute the legal framework for competition issues in Albania.

They focus on competition issues, leaving out unfair competition practices, which are regulated by provisions of the Albanian Civil Code. Thus, as in all European competition legislation the main pillars of the new law are agreements, abuse of dominant position and concentrations.

As in the article 81/1 of EC Treaty, restrictive agreements are prohibited, whilst for the others, the conditions for exemption are stipulated in the law. Instead of block exemptions, the new law provides for individual notifications. The prohibited agreements, and those not exempted by the decision of Competition Commission are not valid.

The principal national authority competent to apply and enforce the Albanian competition rules is the Competition Authority, which in accordance with Article 4, Section 8 of the Law is 'the structure charged with the control of the application of this law'. The Competition Authority comprises of two bodies, and the duties of each are clearly defined by the new law:

1. *The Commission*: Decision making structure of the Authority, and
2. *The Secretariat*: Administrative and investigative body.

Besides the Competition Authority, the Tirana District Court is also empowered to apply competition rules. The court can take action even if the competition authority initiates action. But, requests for exemption from prohibition of an agreement and the procedures for the control of concentrations are not within the jurisdiction of the court.

Improvement is evident when compared with the previous Authority – the Directorate of Competition – that was under the control of the Ministry of Economy.

Anticompetitive Business Practices

The initial Law for competition explicitly prohibited monopolistic practices, as well as various unfair commercial practices. The Parliament adopted a law that establishes an open system of public tender for government procurement contracts. According to a 1998 survey of enterprises by the Albanian Centre for Economic Research, more than half of the firms claimed that they did not participate in specific government procurement because the competition was unfair.

Distinctly, the new Albanian Law challenges abuse of dominant position rather than the dominant position itself, and is dealt with under the chapter entitled 'Abuse with the dominant position'. In principle, existence or creation of a dominant position is permissible by the law, while abuse of such dominance is punishable.

The measures the competition authority can take against companies abusing their dominant position include: fines; imposing obligations on enterprises to act or not act in a particular manner; the interruption of contractual relationships; as well as to order a divestiture of companies units. Furthermore, the law introduces a pre-merger notification procedure.

Sectoral Regulation

The necessity to integrate the country's economy in the world markets has pushed the Albanian authorities to undertake a multitude of reforms in a number of sectors, including the market and its regulatory framework.

Postal Services

In February 2004, a Draft Law 'on some amendments to the Law no. 8530, dated 23.09.99, on the Postal Service in the Republic of Albania' was submitted to the Council of Ministers for approval, aiming at improving the legal framework in the postal service.

Power Sector

During January-February 2004, work was carried out in order to fulfill the objectives of the Power Sector Policy Statement, the National Energy Strategy and Action Plan for 2004.

Box 61.2: Towards Reforming Energy Sector

Officials from the Indiana Utility Regulatory Commission (IURC) and the Electricity Regulatory Authority of Albania (ERE) signed a Memorandum of Understanding, on January 17, 2003, to aid Albania in the restructuring and reform of its energy sector. The project is being funded by the US Agency for International Development (USAID).

"This cooperation is essential in enabling Albania to develop and implement a national energy policy and strategic plan", said Robert Ichord of USAID's Bureau for Europe and Eurasia. The project 'is not only a priority for Albania's economic and social development, but also a key link in the new electricity market initiatives being implemented in South-eastern Europe'.

Source: <http://www.useu.be/Categories/US&EUEnlargement/Jan1703IndianaAlbaniaElectricity.html>

In conformity with the Law ‘on the electricity’ and in accordance with the Athens Memorandum requests, the Commissioners of the Electricity Regulatory Entity (ERE) were elected. The Electricity Regulatory Authority is responsible for approval of tariffs, licensing of companies in electrical energy sector and monitoring of their activity

Such measures taken by the Albanian Government are very important for the restructuring and development of the Energy Sector, in conformity with the demand of Albanian consumers and to cope with EU standards.

Telecommunications Sector

During September-December 1999, a new draft law for telecommunications was designed. The ‘Telecommunication Regulatory Entity (TRE)’ monitors the regulatory framework set out by this law and also by the sector policy approved by the Council of Ministers.

This law will create possibilities for a good legal and regulatory environment, for possible future investors in the telecommunications market. The new draft law is in accordance with the Telecommunications Development Policy. The draft law also helps to provide a harmonised and a competitive environment for a free liberalised market.

Financial Sector: Banking & Insurance

In February 2004, a new regulation ‘on money laundering prevention’ was approved by the supervising council of the Bank of Albania (BoA). This regulation replaced the

previous guidelines, and defines obligatory measures to be implemented by banks and other entities licensed by the BoA. In collaboration with the World Bank, USAID is supporting the BoA to develop a legal and regulatory framework.

The Albanian Parliament approved the law on Insurance and reinsurance activities, ‘On licensing and supervision of insurance, reinsurance and intermediary undertakings’ on March 07, 1996, to regulate the licensing and supervision of the insurance undertakings by the State, in protection of the insured. Based on this law, in 1998, the Insurance Supervisory Commission was established as the sole authority to licence and supervise the insurance and reinsurance activities in Albania. The enactment of this law would certainly facilitate the effective operation of the insurance market.

Consumer Protection

The new Albanian law ‘On Consumer Protection’, passed by the Parliament, in September 2003, was drafted with the support of the German Government, implemented by the Deutsche Gesellschaft fur Technische Zusammenarbeit (GTZ) GmbH, in close cooperation with the Ministry of the Economy.

The law is intended to emulate European legislation, through aligning the European Directives of recent years, with consumer protection principles. The law entitles consumers the right to legal protection from relevant agencies and judicial organs, in case their defined rights are violated. This, when compared with the 1997 Consumer Protection law, anticipates sanctions in case of any violations.

In a move to initially introduce the Law to Albanian consumers, on January 24, 2004, in the seminar ‘Consumers and Standardisation’, the Consumer Protection Department presented the law. The presentation covered topics such as the objective of the Law; the areas of implementation; consumers’ rights; the relationship between consumers and service providers; and the relevant entities’ roles in monitoring the market and protecting the consumers.

Jointly with the Albanian Consumers Association (ACA) and the Development Project System (DPS), the Consumer Policy Committee was established. This Committee consists of representatives from the Consumer Protection Directorate in the Ministry of the Economy, the ACA, the DPS (which holds the Secretariat), Ministry of Health, the Union of Chambers of Commerce, and the Tirana Chamber of Commerce and Industry, etc.

Concluding Observations and Future Scenario

In order for competition policy to create a significant position in the functioning of the market, it is necessary that effective actions taken by the competition authority

Box 61.3: Not-for-Profit Hospitals
<p>Many hospitals around the country are ‘not-for-profit’, and have been granted a tax-exempt status from the Internal Revenue Service. In exchange for their tax-exempt status, these hospitals are expected to treat patients, even if they do not have insurance and even if they are unable to pay the hospital bill. The patients without money, or the elderly patients, will have Medicare or Medicaid. The patients who are employed will generally have medical insurance through their employers.</p> <p>However, the patients who have little money, but no health insurance, are not so fortunate. As Medicare, Health Maintenance Organisations (HMOs), and private medical insurance companies have a lot of bargaining power with the hospitals, they negotiate hospital fees.</p> <p>Whereas the patient without any medical insurance at all is often charged two, even three times as much as the person with health insurance. Also, these so-called, charitable ‘not-for-profit’ hospitals employ some coercive methods to collect their bills.</p>
<p><i>Source: www.lawyers and settlements.com/case</i></p>

should be combined with effective implementation of the Law by Courts, and a progressive awareness of the competition legal framework. The joint efforts are indispensable in enforcing the Law against cartel agreements and concerted practices, the abuses of dominant position and monopolistic practices; or to have an influence in minimising actions of different structures in supporting, by public funds and on a non-transparent basis, undertakings or particular sectors of economy.

Albania is undertaking the right steps towards European standards in both fields. The new legislation provides for the framework of a future Stabilisation and Association Agreement (SAA) with the EU, Albania has taken into account the Community requirements, in terms of competition and state aid, and to refrain from any measures, which could adversely affect fair competition.

The Albanian Parliament has also approved the Law No. 9374 'On State Aid' recently. In particular, the Albanian Competition legislation prohibits: all agreements between undertakings and concerted practices which prevent, restrict or distort competition; abuse by one or more undertakings of a dominant position in Albania; any public

aid which distorts or threatens to distort competition by favouring certain undertakings or certain products.

Albania should commit itself to ensure transparency in the area of state aid, *inter alia*, by reporting annually to the EC on the total amount and the distribution of the aid given; and by providing, upon request, information on possible aid schemes.

Taking into account the lack of tradition, adequate institutions, know-how, and human and technical resources to implement the above requirements, technical assistance is being given under the Community Assistance or Reconstruction Development and Stabilisation (CARDS) programme, for both competition and state aid matters, to support the Albanian efforts to comply with the requirements of SAA.

The organisation of roundtables, workshops, media interaction on competition related information and/or conceptual problems, as well as discussions of concrete cases, would be effective instruments to achieve a more efficient, fair and competitive market.

Suggested Readings

1. Paper on "*Albanian Competition Policy*" by Ledi Bianku, University of Tirana
2. "*Albania: A new law on competition*" jointly written by Eris Hoxha & Shpati Hoxha, Attorney of Law, Boga & Associates.
3. Albanian Regulatory Developments
4. *Progressive Report 2003-2004*, Albania
5. Website of Energy Regulators Association
6. *GTZ Newsletter, Vol. 6, March 2004 edition*