

# Albania

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### 1 Relevant Authorities and Legislation

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

The relevant merger authority is the Albanian Competition Authority (the “ACA”) ([www.caa.gov.al](http://www.caa.gov.al)) which is an independent public authority composed of the Commission and the Secretariat. The Commission is the decision making organ of the ACA and is made up of 5 members elected by the Albanian Parliament, while the Secretariat is vested with technical and investigation authority. The ACA is the competent body for enforcing competition legislation in Albania. Since the time of its establishment the ACA has unconditionally authorised 40 merger transactions and dismissed 3 notifications on grounds of them not amounting to an event requiring notification.

#### 1.2 What is the merger legislation?

The key piece of legislation governing merger control is the Law no. 9121 dated 28th July 2003 “On the Protection of Competition” as amended (the “Competition Law”). The most recent amendments of this law entered into force on 22nd October 2010, the purpose of them being to approximate at full the Competition Law with EC merger rules and competition legislation in general.

In addition to the key Competition Law regulating merger control, the ACA has pursuant to the authority granted under Article 24 of the Competition Law, enacted regulations and notices which are secondary to and supplement the Competition Law.

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

The Competition Law does also catch foreign to foreign mergers if the jurisdictional thresholds are met. Please refer to question 2.6.

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

The Competition Law is applicable to all mergers irrespective of the industry or sector concerned. However, in addition to the Competition Law requirements there are certain industries the legislation for which does require additional (often regulatory) approvals for cases of a change of control or transfer of a particular share percentage, such as the following:

- Insurance.
- Banking.

- Media.
- Telecommunications.
- Energy.

### 2 Transactions Caught by Merger Control Legislation

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

The Competition Law applies to all transactions that result in a “concentration of undertakings” independently of whether such transaction is by way of a merger, an acquisition or a public takeover. Any joint venture that performs the function of an independent economic unit is also subject to the Competition Law. More specifically, a concentration under the Competition Law shall be deemed to arise where a change of control on a lasting basis results from:

- (a) the merger of two or more previously independent undertakings or parts of undertakings; or
- (b) the acquisition, by one or more persons already controlling at least one undertaking or by one or more undertakings, whether by the purchase of securities 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.

The creation of a joint venture shall not be deemed to be a joint venture if the object of the joint venture is the coordination of competing activities between two or more independent undertakings.

Control under Article 10 of the Competition Law is 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/or
- (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”?

There are no specific provisions in the Competition Law with respect to the acquisition of a minority shareholding, however given the meaning of control, such acquisition can amount to a merger if

it results in the change of the lasting sole owner or joint control in the target, *de facto* or *de jure*. The Regulation of the ACA on the Enforcement of Procedures of Concentrations allows the interested undertakings to engage in consulting pre-notification procedures with the ACA and in case it is not clear whether an acquisition of a minority shareholding shall amount to an event requiring official notification, the concerned parties are advised to approach the ACA and seek an opinion in this respect.

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

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Yes, joint ventures are subject to merger control. However, the creation of a joint venture shall not amount to a concentration if its object is the coordination of competing activities between two or more independent undertakings. In this case the joint venture falls within the scope of the provision on prohibited agreements.

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

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With the most recent changes to the Competition Law, the turnover thresholds have been lowered and, accordingly, a concentration must now be notified to the ACA if either of the following thresholds is met:

- a. The combined worldwide turnover of all participating undertakings in the most recent fiscal year is more than ALL 7 billion (approx. €51 million) **and** the turnover of at least one participating undertaking in Albania in the most recent fiscal year is more than ALL 200 million (approx. €1.4 million); **OR**
- b. The combined turnover in Albania of all participating undertakings in the most recent fiscal year is more than ALL 400 million (approx. €2.9 million) and the turnover of at least one undertaking in Albania is more than ALL 200 million (approx. €1.4 million).

The turnover is comprised of the revenues of the undertakings concerned through the sale of products in the performance of their usual activity, during the previous financial year, following the deduction of taxes and other costs directly related to the companies' turnover.

The financial year in Albania is the same as the calendar year.

The Competition Law provides that a series of acquisitions of parts of undertakings performed between the same parties within a two-year period are assessed as a single transaction. In order to define the two-year period, reference is made to the last transaction date.

Where the concentration consists in the acquisition of parts, of one or more undertakings (whether or not constituted as legal entities), only the turnover relating to the parts which are the subject of the transaction shall be taken into account with respect to the seller or sellers.

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. The same EC merger rules are applied for the purpose of "group" determination.

It should be underlined that in case 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.

With respect to credit and financial institutions, the turnover is calculated by taking into account the amounts derived from the deduction of taxes directly related to income from: a) interest and other similar income; b) shares, securities with a variable interest rate and from participations in capital; c) receivable commissions; d) net

profit from financial operations; and e) income from other operations. For insurance companies, the calculated turnover shall comprise the value of written gross premiums also including outgoing reinsurance premiums, and after deduction of taxes.

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

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

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### 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?

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The Competition Law expressly states that it applies to all undertakings, whether domestic or foreign, whose activities have a direct or indirect effect on the Albanian market. Foreign-to-foreign mergers will be caught where the thresholds are met provided that the results of activity of foreign undertakings are also present in Albania.

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

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Please see question 3.2.

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### 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?

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Article 15 of the Competition Law provides that a series of acquisition of parts of undertakings performed between the same parties within a two-year period are assessed as a single transaction. In order to define the two-year period, reference is made to the last transaction date. There is no other provision or ruling in this respect. Generally though, under the spirit of the Competition Law, one would conclude that in the case of a transaction taking place in stages, the obligation to notify is triggered at the moment when a change in the lasting control in the target occurs.

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## 3 Notification and its Impact on the Transaction Timetable

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

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If the jurisdictional thresholds are met the notification of a concentration is compulsory. Pursuant to the recent changes to the Competition Law, the deadline for notification is now 30 calendar days (increased from the previous 7-day deadline) from the date of the conclusion of an agreement for a merger, acquisition of control, creation of a joint venture or submission of a public bid for the acquisition or exchange.

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

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Notification and consequently clearance is not required in the case of:

- a. the purchase of shares of an undertaking by financial

institutions or credit and insurance institutions, for the purpose of resale within one year of the purchase and to the extent that no voting rights are exerted, shall not be considered as a concentration under the meaning of the Competition Law; and

- b. the creation of a joint venture shall not amount to a concentration if its object is the coordination of competing activities between two or more independent undertakings.

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

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Article 14 of the Competition Law provides that a concentration cannot be implemented prior to, as the case may be: a) filing of notification with the ACA; b) clearance from ACA; or c) satisfaction of conditions in a conditional clearance.

If the foregoing provision is infringed, the underlying agreements and actions shall be deemed to be null and void. Further, the ACA may impose penalties of up to 1% of the total turnover of the previous fiscal year on the undertakings concerned if: (a) they fail to notify a transaction which meets the jurisdictional thresholds; and further, if (b) they give inaccurate, partial or false details in their answer to the request or decision taken, or do not give details within the time-limit specified in the decision; (c) they give inaccurate, partial or false details with respect to the turnover amount, or inaccurate and partial supplementary details and documents; (d) they show incomplete books or other registers of their business activity, when required during inspections; (e) they refuse to answer questions and facts and give inaccurate, partial or false answers or obstruct the inspection; or (f) they erase the seal of the Competition Authority in the official authorisation.

The fine is up to 10% if the undertakings implement the transaction, the effect of which results in the restriction of competition in the market, in breach of Article 14 above or if they implement a prohibited transaction or do not undertake the requested remedies to restore competition in the market.

To assess the amount of a fine, the ACA shall take into account the severity and duration of the infringement, the economic capability of the undertakings concerned and the profit achieved as a result of the infringement which in turn may serve to be the minimum amount of the fine provided it can be accurately assessed and calculated.

The rules on the calculation of turnover are the ones used for the calculation of turnover for the purpose of the jurisdictional thresholds.

In addition pursuant to Article 59 of the Competition Law, the ACA when informed of an infringement, shall commence *ex officio* the review procedures with review timeframes deemed to be triggered once the ACA collects the necessary information required under the notification procedure.

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

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There is no provision in the Competition Law permitting local carve out mechanisms and, theoretically speaking, subject to Article 14 of the Competition Law, any implementation of the transaction before clearance constitutes an infringement. Carve out mechanisms have not been tested before the ACA yet.

It is, however, pursuant to Article 60 of the Competition Law, possible to obtain a temporary clearance from the ACA based on a request of the undertakings concerned and at any time during the

notification procedure, on the basis of an important reasonable cause such as to avoid serious and irremediable damage to the undertakings concerned or third parties but whilst also at the same time balancing this consideration against the need to pay due attention to impairment of competition.

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

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The notification can be filed immediately after the conclusion of the merger agreement, an agreement for acquisition or the creation of a joint venture or submission of a public bid, but in any case not later than 30 days from the occurrence of any of the afore-mentioned events.

The ACA Regulation on the Enforcement of Procedures of Concentrations permits the undertakings concerned to approach the ACA before the conclusion of any agreement or submission of a public bid for consultation sessions regarding their intended transaction. As the pre-notification meetings may familiarise the ACA with the file of the notifying party, the review procedure may be accelerated as a result; however the formal review timeframes are only triggered on the date of the submission of the complete notification file as acknowledged by the ACA.

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### 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?

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The ACA must decide whether to clear the transaction or commence an in-depth investigation within two months of the receipt of notification. The period of two months shall begin on the first working day following the confirmation of the ACA on the acknowledgement of receipt of a proper notification or, if the information to be supplied with the notification is incomplete, on the day following the receipt of the complete information. The ACA may, however, extend this deadline by a further two weeks if the participating parties commit, not later than one month after acknowledgment, to undertake to remedy any adverse effects of the merger in order to obtain clearance.

Where the ACA commences an in-depth investigation, it has three additional months from the date of the decision to commence the further investigation in order to decide whether to unconditionally clear the concentration or clear it subject to conditions or prohibit the concentration. Where the parties submit undertakings with a view to remedying any adverse effects on competition - within 2 months from the date of commencement of the in-depth procedure - the three-month period is extended by up to a further two months.

If a public holiday falls within the decision period, the decision timeframe and deadline is postponed by the equivalent number of days.

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 timeframes above can be suspended in general when information required by the ACA has not been provided or is incomplete, one of the notifying undertakings or involved parties has refused to comply with the inspections of ACA or to cooperate on carrying out an investigation or when the notifying undertakings have failed to inform the ACA on the change of facts relevant to the notification.

### 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 completion of the transaction must be suspended until the ACA issues the clearance decision or the review period expires without ACA taking a decision to authorise or prohibit the transaction or to extend the review period (i.e. the time for tacit approval). The risks of completing before clearance are described in question 3.3 above.

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

The notification must be completed pursuant to the Simplified Notification Form issued by the ACA. However, the secretariat of the ACA may contend in writing that parties are required to follow up with the Extended Notification Form should the criteria for the use of the simplified notification form not be met.

The notification form must be completed in the Albanian language, in two copies. Each and every document to be submitted to the Authority must be original or certified copies of the originals, accompanied by an Albanian certified translation.

The ACA, upon its sole discretion may request information further than that required in the notification form and accompanying documentation, in which case the review timeframe is triggered upon the ACA having acknowledged receipt of all additional requested information following the submission of the complete notification form.

The documents that are considered confidential should be marked "Confidential". It is advisable that a non-confidential summary or version of the confidential documents be prepared and attached to the file. The notification should be signed by the authorised representative of the notifying party.

### 3.9 Is there a short form or accelerated procedure for any types of mergers?

Apart from the Simplified Notification Form noted above, there is no additional short form or accelerated procedure for any type of mergers.

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

In the case of a merger and creation of a joint venture, the merging parties or the venturers are responsible for the filing. In the case of an acquisition, the acquiring party/parties is/are responsible for the filing.

The filing fee is ALL 15,000 (approx. EUR 120). In addition the parties have to pay a clearance fee of ALL 300,000 (approx. EUR 2,200) in the case of a temporary clearance and ALL 500,000 (approx. EUR 3,700) in the case of a final clearance.

## 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? Are non-competition issues taken into account?

The Competition Law authorises the ACA to prohibit any

concentration of undertakings which considerably restricts or is expected to restrict the competition in particular by creating or strengthening the dominant position of one or more undertakings.

For the purpose of such assessment, the ACA may also take into consideration the economic efficiencies resulting from the concentration provided that all the following conditions are met:

- the efficiencies in question contribute to the increase of the welfare of the consumers or at least neutralise the possible negative effects of the concentration;
- the efficiencies in question are a result of the concentration in question and there are no less competitive alternatives routes to produce such efficiencies; and
- the efficiencies must be verifiable.

In exceptional cases, the ACA may clear the transaction if an undertaking seriously risks bankruptcy and there is not a less anti-competitive alternative than the merger itself, provided that: (a) this undertaking is in such a situation that without the merger it would exit the market in the near future; and (b) there are no serious prospects of re-organising the activity of the same undertaking.

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

The Secretariat of the ACA must publish the commencement of the review procedures in the official website of the ACA ([www.caa.gov.al](http://www.caa.gov.al)). The publication must contain information on the undertakings concerned, their registered seat, the type of concentration, the sectors of economy involved and the invitation to third parties for expressing their comments/complaints/opinions in writing in relation to the concentration.

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

The ACA enjoys broad information and investigative powers. At any time during the review process it can request from the undertakings concerned or any other third party to procure the information it deems reasonable for the purpose of the review including commercial secrets. If the parties fail to procure such information, the Commission issues a decision for the purpose of collecting the same. The request must contain the legal grounds, deadline for provision of requested information and fines in case of non-compliance. Further the Commission of the ACA may authorise its inspectors to undertake physical investigations in the business premises of an undertaking to sequester materials for no longer than 72 hours etc. Failure to procure information and attempts to obstruct the investigations of the ACA are subject to a fine of up to 1% of the turnover.

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

Documents and information that are considered to be confidential or commercially sensitive should be marked as "Confidential" by the persons/undertakings providing them. The members of the ACA's Commission and any other person competent for the enforcement of the Competition Law are under the obligation to protect and not to disclose such confidential information unless requested by a court. The same rule is valid even after termination of the mandate or employment agreement with the ACA. Publications of the ACA must not contain information which consists of commercially sensitive information.

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

### 5.1 How does the regulatory process end?

The process ends by either:

- the ACA clearing unconditionally the transactions, or clearing subject to conditions, or the expiry of the waiting period upon acknowledgment of complete notification;
- the ACA prohibiting the merger; or
- the ACA dismissing the notification on grounds of it not requiring notification.

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

The Competition Law does not specifically provide for remedies *per se* but the clearance of an "issue" merger may be subject to conditions and obligations that the ACA may require fulfilment of which pursuant to Article 61 of the Competition Law are the following:

- a) sale of parts of an undertaking;
- b) sale of participation related to a specific activity of an undertakings;
- c) conclusion or termination of contractual relationships;
- d) obligation to act or refrain from acting in a certain way; and
- e) any other measure which is capable of removing anti competitive effects.

Parties to the transaction have the right to negotiate the conditions and obligations with the ACA.

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

The parties can propose their remedies within one month from the date of acknowledgment of a proper notification by the ACA during the first review phase. Should the ACA decide to commence the in-depth review procedure the parties can propose their remedies within two months from the date of such decision.

### 5.4 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 case when the ACA has cleared transactions subject to a divestment.

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

Non-compliance with the remedies, which means with the conditions of a conditional merger, is the same as the completion of a merger without authorisation and it may result in the nullity of actions and documents and potentially in fines.

### 5.6 How are any negotiated remedies enforced?

In case a transaction is implemented in breach of the conditions provided in the clearance decision, the ACA is entitled to force the undertakings concerned to take appropriate measures in order to restore the previous competition circumstances such as the divestiture of merged undertakings or sale of acquired shares or assets. The ACA in this case may request the undertakings concerned to make proposals for this purpose and shall set a final deadline for the implementation of the proposals. Should the parties fail to take appropriate measures or if the ACA do not accept their proposals, it can order any other appropriate measures to effect the re-establishment of competition.

Failure to implement remedies may be subject to a fine in the amount of up to 10% of the turnover of the undertakings concerned.

### 5.7 Will a clearance decision cover ancillary restrictions?

There is no explicit provision in the Competition Law in this respect.

### 5.8 Can a decision on merger clearance be appealed?

The decisions related to merger clearance can be appealed before the Tirana's District Court.

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

The Competition Law provides a limitation period only for fines imposed to individuals who by willful misconduct or negligence conduct actions which are subject to fines. The limitation period is 3 years for less serious infringements and 5 years for serious infringement.

## 6 Miscellaneous

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

The ACA is a member of the International Competition Network and has concluded bilateral cooperation memorandums with the competition authorities of Bulgaria, FYR Macedonia and Greece.

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

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Ms. Anisa Rrumbullaku is an experienced lawyer having worked with Kalo & Associates for over 5 years and is a member of the Tirana Bar Association. She holds an LLM (*cum laude*) in Business and Trade Law and serves as the Head of the Corporate and Business Licensing Department of the law firm. She has vast range of legal experience, focusing on local corporate issues in relation to business restructurings and large scale projects in a range of sectors and industries (including water, energy, and mining). Her key focus areas are corporate and corporate restructuring, M&As, competition, commercial contracts etc. She has represented many international clients in merger notifications procedures and other processes related to competition with the Albanian Competition Authority.



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Enkelejd Seitllari is a lawyer graduated in the Tirana Law Faculty on 2006 and as from 2008 has been with the firm as an Associate at the Corporate and Business Licensing Department. He has consolidated his expertise in the field of all aspects of mergers & acquisitions corporate issues including but not limited to company establishment, business restructuring, competition and consumers protection and also has worked extensively in the preparation of due diligences, provision of legal advice with regard to acquisitions and privatisation procedures, and regulatory licensing procedures in Albania.



Established in 1994, Kalo & Associates is recognised as a leading law firm in Albania and Kosovo. As a full service law firm, it specialises in a broad spectrum of areas of commercial law and as a first class legal counsel acts for the most prominent foreign and multinational companies, providing high-quality, efficient and cost-effective legal services.

Consistently ranked as a top tier law firm in the country by reputable legal rating agencies, the likes of IFLR1000 describes the firm as having “a practice that is consistent with what you would expect from a top Washington law firm”. Chambers & Partners quotes the confidence expressed by clients in the “unshakeable integrity” of this “thoroughly reputable group that always leaves you completely satisfied”.

The Competition Team advises on all aspects of Albanian Competition Law and has represented many domestic and international clients before the Albanian Competition Authority and generally in M&A work.