LOOKING FORWARD TO JOINING EU

The news of last October that Albania got a passing mark to the EU was a good one for all of us. However, to get the scoring that will cause EU to extend the invitation as a candidate member it takes to get prepared how to achieve the required results in 5 key priority areas that condition the final judgment of the EU.

It is not the first time Albanian government had challenges ahead. But now it seems easier, as country has reached a minimum performance as to serve as a spring board to jump higher. EU Progress Report on Albania has again identified the progress made and shortcomings.

The shortcomings are those that can be defined as the “homework” for the Albanian Government (and also the opposition).

One of the key priorities is the update of its judicial reform strategy and promotion of independence, efficiency and accountability of judicial institutions.

More specifically the Report identifies as shortcomings (followed by recommendations):

a) The evaluation of judges as a crucial requirement for a merit-based and transparent process of appointments, transfers and promotions;
b) Random allocation of cases as the first step that ensures a transparent process;
c) Publication of court rulings as an important means for the transparency (but considering the protection of personal data);
d) Accountability of the judiciary by adopting new rules on inspections and also avoids the opening and closing of a disciplinary procedure by the Minister of Justice, as a practice that goes against EU standards;
e) Fight against corruption in the judiciary to be strengthened as it made limited progress;
f) Efficiency of the judiciary needs a better territorial re-organization of courts and a reallocation of the number of judges. Also lack of a proper address system significantly delays court cases. Reform of the Civil Code and the Code of Civil Procedure should help reduce the backlog of cases and expedite court proceedings, thereby improving efficiency;
g) Role of profession of lawyers in the delays of court processes remain an issue of concern that should have to be improved;
h) Non-execution of court decisions, in particular those involving state institutions, remains a serious problem which requires attention and measures in order to improve it.

IBA CONFERENCE (2013) IN BOSTON

Përparim KALO, Managing Partner of KALO & ASSOCIATES, attended the largest gathering of the world’s international lawyers, from all jurisdictions in the world, 2013 International Bar Association (IBA) held in Boston from 6-11 October.

Former US Secretary of State, Madeleine Albright, addressed the conference by emphasizing the importance of the fight against corruption and crime, especially human trafficking. The focus of the conference was on areas of law of Tax, Infrastructure, IP, communications, etc.

In September 2013, the Ministry of Finance notified in its website, that commencing from October 2, 2013 until October 20, 2013, commercial companies could file online their claims for the outstanding amounts owed by the Albanian government. Simultaneously, MoF provided instructions on filing and procedure of verification of declarations.

The website says specifically: “The non-execution of court decisions, in particular those involving state institutions, remains a serious problem which requires attention and measures in order to improve it.”

KALO & ASSOCIATES is ranked TOP TIER by IFLR 1000 (2014 GUIDE)

In IFLR 1000 (2014 edition) KALO & ASSOCIATES is ranked again as a leading firm in finance and corporate law.

IFLR 1000 conducts an in-depth research of legal markets and ranks law firms from around the world.

“Strong option for international firms in large cross-border transactions. The firm takes an international approach to matters and is known for its strength in cross-border transactions and M&A in the field of energy. It is also highly regarded in privatization matters, mining, oil and gas regulatory and financing”.

“The firm has an important banking and finance practice that covers a lot of regulatory and corporate finance work”.

“ON-NET DISCOUNTS” UNDER INVESTIGATION OF COMPETITION AUTHORITY

On March 25, 2013, the Albanian Competition Authority (the “CA”) adopted Decision No. 275 “On commencement of an in-depth investigation procedure for the undertaking Vodafone Albania s.h.a. in the retail market for mobile telephony”.

The Competition Authority claims that on-net calls tariff discounts allow the customers to pay less for the calls made within the home network which creates the “club effect” by locking in customers in one single network and this is typical for larger networks and this behaviour may allegedly distort the competition in the telecommunication market. Smaller operators claim that they are being used by large operators to restrict competition. Why the on-net discounts are of no harm to the consumers? As a matter of fact, from the customer perspective the regulators would be more concerned if on-net discounts did not exist. Cheaper on-net calls mean lower prices for customers who take advantage of them.

On-net/off-net price differentials without however setting out a theory of harm explaining why such pricing offers lead, in the CA’s view, to the alleged anti-competitive effects, may turn out to run against the interest of the consumers. In the absence of a clear theory of harm it very difficult to address in detail any concerns that the CA may have. Nonetheless, the market experts consider that the CA’s concerns are unfounded even in very extreme circumstances such as where because of specific market conditions smaller networks are not able to compete profitably with a larger operator due to margin squeeze pricing practices and the market tips in favour of one operator. This is clearly not the case here. The Albanian market has not tipped in favour of one operator, as demonstrated by the similar shares of Vodafone Albania and AMC, effective competition dynamics, the evidenced growth in smaller operators, and by the fact that (i) a great majority of consumers have multiple SIM cards from more than one operator, and (ii) all operators have gained and lost customers through number portability which shows that customers do switch easily. Importantly, it is also clear that Vodafone Albania is not engaging in any anti-competitive margin squeeze or predatory pricing practices.

On the other hand similar concerns appear to be growing as one important explanation for on-net discounts – the imposition by regulators of ‘asymmetric’ termination charges for calls to smaller networks – is being withdrawn in Europe. This has led some regulators and operators to argue that these higher termination rates should be retained in order to ‘protect’ smaller operators from on-net price discounts. In Albanian telecommunication market such ‘exception to the rule’ still exists and will continue to exist until 2015, therefore the alleged anti-competitive practice (abuse with dominant position) is not relevant in Vodafone Albania’s case. Which is the position of the AKEP vis-à-vis the telecommunication market developments? As the regulator of electronic and postal communications, AKEP is not only the cornerstone of the application of the electronic communications regulatory framework, but also the guardian and promoter of fair competition between

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the operators having regard to the special characteristics of this industry and with final focus the benefit to the consumers. Based on the provisions of the Electronic Communications Law (the “ECL”), AKEP, inter alia, ensures free and effective competition in the electronic communications sector, takes measures and defines protective measures for the operators of electronic communications networks and providers of electronic communications services, and, if and when necessary, is entitled to intervene and regulate markets in order to avoid non-competitive practices.

In addition, in line with the provisions of the ECL, the EU Regulatory Framework as amended and the Memorandum of Understanding between the CA and AKEP of 29 August 2007 for cooperation and collaboration between AKEP and the CA, as mentioned in the Market Analysis of 2012, AKEP requested the CA to express its opinion on the Market Analysis of 2012, and the conclusions of this analysis were subject of discussions between AKEP and the CA on 25 June 2012. It can therefore be assumed that the CA agrees with AKEP’s findings in the Market Analysis of 2012.

It can be easily acknowledged that the structure of the retail market for mobile telephony services in Albania is overall competitive, as acknowledged by AKEP. Indeed, in its Mobile Market Analysis conducted in March 2010, AKEP found that “[...] increase in market share of Eagle mobile was accompanied with reductions of the market share for AMC and Vodafone in terms of users, outgoing calls and revenues. According to the estimations of the operators, AMC and Vodafone’s revenues underwent decrease during 2009 with 15% and 6% respectively, while revenues of Eagle Mobile have increased with about 7 times, resulting in the decrease of about 3% of revenues of mobile operators. The entry in the market of Eagle Mobile influenced the increase in competition for gaining new users or for keeping existing ones. This was observed in the large number of promotional offers launched”. More recently, in the Market Analysis of 2012, AKEP reiterated that “[...] the retail market of mobile services has undergone positive developments in the two recent years (2010-2012) and competition between the operators has increased significantly”.

Att. Alban Caushi, LLM
Partner

**PROJECT UPDATES**

**NATIONAL FOOTBALL STADIUM**

The Albanian government has given the approval for the construction of a new national stadium, after the meeting of the Council of Ministers. The new stadium having 30,000 seats will be the country’s largest ever sport investment and the cost of it is expected to be 60 million Euros. The construction of the new stadium shall meet the requirements to be adequate for any international match and it shall be financed by the federation, FIFA, UEFA and the Albanian government.

**TIRANA TRAM LINE**

Tirana Municipality announced to build two tram lines to increase the efficiency of urban traffic in its area inhabited by over 800,000 people. The tram lines would have a total length of 16,7 km. The construction of the tram network will provide easier access to the city centre and solve the urban traffic problems.

**LEGAL TAX ALERT**

**Decision of Council of Ministers “On Defining the Minimum Salary applicable in national level”**

The Council of Ministers has already issued a Decision “On Defining the National Minimum Salary”. As from 01.07.2013 the minimum monthly salary to be paid to the employees is 22,000.00 Leke (~157 Euro) and the minimum hourly salary is 127.00 Leke (~0.90 Euro), such minimum salaries applicable in national level. This Decision of Council of Ministers has been published in the Official Gazette no.118, dated July 25th, 2013.

**Law on Foreigners New Secondary Legislation Enacted**

The Council of Ministers has recently approved a decision for the implementation of the new law “On Foreigners”. This decision provides new criteria, procedures and documentation for entry, stay and treatment of foreigners who wish to enter and reside in the Republic of Albania. Furthermore, it introduces for the first time in the Republic of Albania, the possibility to file on-line the application for the residence permit. In addition, important changes are made to the application form(s) and template(s) related to the in-the-process and final residence permit(s). This Decision Council of Ministers is published in the Official Gazette on July 12, 2013.

**KALO&ASSOCIATES Tax Team**
KOSOVO Office

DECISION ON CHANGING THE EXCISE TAX RATE ON TOBACCO

On 19.09.2013, the Government of Kosovo approved the request of the Ministry of Finance with a Decision No. 07/149 regarding the increase of excise tax rate on tobacco. According to the decision, the excise tax rate of products with the customs code 240220 (cigarettes containing tobacco) and 2403 (other manufactured tobacco and manufactured tobacco substitutes; “homogenized” or “reconstituted” tobacco; tobacco extracts and essences) is increased from 27 euro to 30 euro per unit, starting on October 1, 2013; whereas, the same rate will increase from 30 euro to 32 euro per unit, starting from January 1, 2014. Also, the decision recommends that the Ministry of Finance consults the Parliamentary Committee on Budget and Finance, and is obliged, together with Kosovo Customs, to implement this decision.

DOING BUSINESS 2014

The World Bank’s 2014 Edition of the Doing Business Report ranks Kosovo in the 86th place relating to the ease of doing business across 189 economies worldwide, moving up ten places compared to last year’s assessment. The ranking is evaluated by the World Bank and the International Finance Corporation, which assess how easy or difficult it is for an entrepreneur to comply with relevant regulations. Kosovo was one of the top 10 economies that improved the most across three or more areas measured by the Doing Business indicators.

CONFERENCE “ENERGY MARKET SOUTH EAST EUROPE 2013” in PRISHTINA, KOSOVO

KALO & ASSOCIATES lawyers attended the Conference “Energy Market South East Europe 2013”, held in Prishtina, Kosovo, held on 10 and 11 October 2013. With about 170 participants, professionals and executives from politics, energy supply companies, potential investors, energy agencies and public institutions, the Energy Market South East Europe 2013 provided a platform for information and communication exchange, for discussing challenges, investment opportunities and future trends in the sector.

The conference was of a particular importance for Albania and Kosovo as it aimed to present the energy-economic situation in South East Europe from different perspectives, with a view to discuss issues such as energy efficiency, legal framework, security of supply, energy savings, investments and project development. The discussion and evolvement of all these issues in the region would create incentives for investments in Kosovo and Albania by enabling the creation of a stable legal framework and market environment, a safe and continuous energy supply and the development of renewable energy in particular.

DRAFT LAW AMENDING COMPETITION PROTECTION LAW

A draft law on Amending and Supplementing Law No. 03/L-229 on Protection of Competition is currently being discussed. The approval of such amendments by the Assembly of Kosovo will bring few significant changes to the competition regime in Kosovo, such as: group exceptions of certain agreements; decrease of the thresholds for merger notification; changes in punitive measures; changes in the time frame for rendering of decisions by the Competition Authority and other important matters of the Competition Law.

Loriana Robo, LLM, Associate

PROJECT UPDATES

MOTORWAY PRISHTINA – HANI I ELEZIT:

Two out of the three prequalified companies in the bid for the construction of the ‘Pristhine - Hani i Elezit’ Motorway have submitted their offers to the Ministry of Infrastructure of the Republic of Kosovo. This motorway, otherwise known as ‘Route 6’, will be firstly built up to Kacanik; then another bidding will be carried out for the constructions that will precede toward the border with Macedonia, in Hani i Elezit. The World Bank asked the government of Kosovo to divide this project into two stages in order to avoid the high cost of the works for the section from Kacanik to Hani i Elezit.

PTK PRIVATIZATION:

Governmental Privatization Committee in Kosovo (‘GPC’) has postponed for the fourth time the signature of the agreement for the privatization of 75% of the shares in Post Telecommunication of Kosovo. This time, the privatization has been deferred until 26 December 2013, due to the fact that the Kosovo Assembly has not revised the Report on Privatization, thus it has not formally approved yet the signature of the privatization agreement by GPC.

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