



Muja Law office brings you the second issue of the *Legal Update* for February 2020.

The Albanian Competition Authority, through Decision No.678, dated 13.02.2020 of the Competition Commission has approved the Instruction “On best practices for conducting procedures related to the implementation of articles 4 and 9 of Law No. 9121, ‘On Protection of Competition’, as amended” (“*The Instruction*”).

The Instruction provides practical rules on the Competition Authority's procedures, aiming and ensuring effective implementation of competition rules and at the same time ensuring the respect of fundamental rights for protection. It sets out the principles on which the Competition Authority's activity is based, taking into account the principles of legality, transparency, the right to information, confidentiality, proportionality, fairness, impartiality, objectivity and non-discrimination.

More specifically, the Instruction provides the steps to be followed during the investigative process of the Competition Authority (“CA”) and thereby enhances the efficiency of investigations by providing a high degree of process transparency.

Some of the most important aspects of this Instruction are as follows:

Starting a procedure

A case related to an alleged violation of article 4 (“*Anti-competitive agreement*”) and 9 (“*Abuse of dominant position*”) of Law No. 9121/2003, “*On protection of competition*”, as amended, may start with a complaint from an enterprise or on the initiative of the CA. There is also the possibility that other institutions like the Parliament or other regulators request the CA to conduct a general investigation in any sector of the economy.

Citizens or enterprises can provide to CA information that is important in stimulating investigations. Therefore, CA encourages citizens and businesses to report suspected violations of competition rules. *This can be done either by filing an official complaint or by simply giving CA information on the market.*

The CA may open a case on its own initiative. CA can take this initiative when it has certain facts/data regarding a case, or in cases where this data is provided and the information is collected in the context of any

questionnaires in any sector of the economy, informal meetings with industry representatives, or by monitoring markets. Cases related to anti-competitive agreements can also be initiated based on an application for relief from fines.



Preliminary Investigation - Investigative Measures

All cases, no matter how a case begins, undergo an initial assessment phase. During this phase, the CA examines whether the case will go to further investigation and if so, specifies in particular the parties, markets and conduct to be investigated.

Initial assessment means that in some cases investigative procedures will not be followed because the case does not need further investigation. In this regard, CA focuses its human resources on cases where a breach appears to be potentially detectable, ensuring the application of articles 4 and 9 of the law no. 9121/2003 “*On protection of competition*”, as amended.

Request for information, as well as inspection, may be one of the first investigative measures. Requests for information can be made both before and after the procedure is opened.

When the first investigative measure is addressed to the enterprises (normally a request for information or an inspection), the addressees are informed of the fact that they are subjects of a preliminary investigation, as also on the case and the purpose of such investigation.

Request for information

The CA can request enterprises and associations of enterprises to provide all necessary information. Information may be requested in writing by the Secretariat or by decision of the Competition Commission.

It should be highlighted that requests for information may be sent not only to the enterprises under investigation, but also to enterprises or to other associations of enterprises that may have relevant information on the case. Information is needed, in particular when it allows the Commission to verify the existence of the alleged violation mentioned in the request.

Information is necessary especially if it enables the CA to verify the existence of a violation. Where enterprises respond with inappropriate information and documents that are not relevant to the case, the CA may return this type of information to the addressee.

The addressee of a request for information is protected by the principle of privilege against self-incrimination.

The request for information shall specify what information is required and the time limit within which the information will be

provided. Addressees are given a reasonable timeframe to respond to the request. In this case, CA takes into account the complexity of the case and that of the information.

If enterprises have difficulty in responding and filing the information within the given time limits, they may request the CA to extend this period. *In this case, a written request must be made before the expiry of the time limit specified in the CA request.*

The request for information also requires the addressee to indicate whether he considers the information provided in the response to be confidential. In this case, the addressee must provide a non-confidential version of the information.

The non-confidential version of the information shall be filed in the same format as the confidential version to which the paragraphs have been replaced. In general, the non-confidential version should be filed at the same time as other documents. *If the enterprises do not comply with these requirements, the CA may assume that the documents or statements do not contain confidential information.*

During the investigative phase, the CA may hold meetings (or make telephone calls) with the parties subject to the proceedings, with the complainants or third parties. When a meeting is held at the request of the parties, complainants or third parties, they generally have to submit an agenda in advance of the issues to be discussed at this meeting, and if appropriate, a presentation that includes the issues in more detail

Any written document prepared by the parties participating in these meetings shall be part of the file. A non-confidential version of this documentation may be made available to the parties under investigation during the file access phase, if the matter is further pursued.

The CA may request the parties in this meeting to submit all information in writing.

The law and regulations also provide for the possibility of receiving statements from natural and legal persons who are deemed to have valuable information in connection with the alleged infringement. For this reason, CA may interview (also by telephone or video conference) any natural or legal person who consents to be interviewed for the purpose of gathering information. *In this case, the interviewee is informed about the legal basis of the interview, its voluntary nature and the opportunity to consult with a lawyer. CA informs him about the purpose of the interview and its recording.*



Inspections

The CA has the right to carry out inspections at the premises of an enterprise and under certain circumstances in other premises, including private premises.

Legal Professional Privilege

Some types of confidential communications, between external or independent lawyers and their clients, may be protected by the principle of Legal Professional Privilege (also referred to as "Lawyer/Client Relations"/LPP). These communications are protected by legal professional privilege, if they are made for the purpose and interest of the exercise of client protection rights in the proceedings followed in a competition case.

The parties must present to the CA appropriate justification for this claim by providing also redacted versions, in which parts that are under the protection of the LPP principle have been removed. In some cases, a cross-examination of these documents by CA representatives usually during an inspection (usually the subject/object of the letter or communication, title, or other superficial elements) enables them to reach a conclusion if such types of documents are involved. However, there may be cases where the enterprise does not allow such a thing, because such viewing cannot be carried out without the contents of the document being deconstructed.

The preliminary investigation ends with the Preliminary Investigation Report.

In-depth investigation (Opening of proceedings)

CA initiates proceedings when the initial assessment concludes that further investigations are needed.

The decision to open the proceedings defines the parties to the proceedings and briefly describes the object/purpose of the investigation. In particular, it defines a conduct implying potential violation of Articles 4 or 9 of Law No. 9121/2003 “On

protection of competition”, as amended, that will include the investigation and may identify the territory and sector(s) where that conduct occurs.

The CA shall publish the opening of proceedings. The Competition Commission’s decision to initiate an in-depth investigation establishes the time limit within which the parties to the investigation as well as other interested parties may express their views on the decision. Although there is no legal obligation in this regard, the parties to the investigation should be informed in advance of the opening of proceedings before this process can be made public.

The opening of proceedings does not in any way prejudice the existence of a breach. It simply indicates that CA will pursue the matter further.



Investigative Report

An important procedural step in proceedings that may lead to a prohibition decision is the approval of the Final Investigation Report by the Secretariat. However, the approval of the Final Investigation Report does not prejudice the outcome of the investigation. This may

lead to the closure of the case without the adoption of a prohibition decision or a commitment decision by the Commission.

The Final Investigation Report sets out the Secretariat's preliminary position regarding the alleged violation, following an in-depth investigation. Its purpose is to inform the parties concerned of the allegations made against them in order to enable them to exercise their right to be defended, in writing or orally, at a hearing.

Although not legally binding, the Final Investigation Report should clearly indicate whether the Secretariat proposes to impose fines on enterprises. It will also show the essential facts and aspects of the law, which may contain elements for imposing a fine, such as the duration and significance of the violation and whether the violation was committed intentionally or negligently. The Final Investigation Report will also mention facts that may lead to aggravating and mitigating circumstances.



Making a decision regarding the breach of competition principles

Decisions concerning violations of Articles 4 and 9 of Law No. 9121/2003 “*On protection of competition*”, as amended, shall be

adopted by the Commission, on a proposal from the Secretariat.

The right of the parties to the proceedings to be heard before a final decision affecting their interests is a fundamental principle. The CA is committed to ensuring that the effective exercise of the right to be heard is respected in its proceedings. Therefore, before adopting a decision finding that there is a violation, the CA shall give the parties subject to the proceedings the opportunity to be heard (in writing or orally) on the issues raised.

The CA shall grant this right, by notifying them of the Final Investigation Report, drawn up by the Secretariat for each of the parties subject to the proceedings. When submitting the Report, the Secretariat shall specify a time limit within which the parties may submit their written submissions.

If requested in their written statements, the Commission shall hear the parties at a hearing. Where necessary, third parties may be invited to attend the hearing if such persons so request in their written statements.

Immediately after the decision has been approved, the parties shall be informed of the decision. In the interest of transparency, a non-confidential version of the CA decisions will be published in the CA Official Bulletin and on the official website of CA.

Interim measures

At any time during the procedure, the Commission may adopt necessary provisional measures in the event of an emergency from a serious and irreparable risk causing harm to competition.



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Muja Law is a family-run law office where we work hard for the success of our clients and to provide excellence in legal service. Our roots go back to 2001 when our Managing Partner, Krenare Muja (Sheqeraku), opened her law practice office in Tirana, Albania. Krenare's son Eno joined her in 2014, and the other son Adi entered the practice in 2019. What started in Tirana as a small, family-run law office has grown and flourished in the community for the last 20 years. The office consists of various respected and talented lawyers who possess outstanding educational and community service backgrounds and have a wealth of experience in representing a diverse client base in various areas of the law.

The office is full-service and advises clients on all areas of civil, commercial and administrative law. With significant industry expertise, we strive to provide our clients with practical business driven advice that is clear and straight to the point, constantly up to date, not only with the frequent legislative changes in Albania, but also the developments of international legal practice and domestic case law. The office delivers services to clients in major industries, banks and financial institutions, as well as to 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. In our law office, we also like to help our clients with intermediary services, as an alternative dispute resolution method to their problems.

While we have grown over the past 20 years and become recognized as one of Albania's leading law offices, we are grounded in the essence of "who" we are and "where" we started. We understand the importance of family, hard-work, and dedication.

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