

**Template pursuant to Section 3 (a) of the  
ICN Framework on Competition Agency Procedures**

**Albania Competition Authority**

The following template is submitted by the **Albanian Competition Authority** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures ("CAP").

**I. Introduction**

The Albanian Competition Authority (ACA) has the status of an independent public institution, according to law no. 9121, dated 28.07.2003 "On protection of competition" (hereinafter law no.9121/2003). The provisions of the law no 9121/2003 clearly state that the main objective of the Competition Authority is to protect free and effective competition in the market in the territory of the Republic of Albania. The authority of this institution extends to all sectors of the economy indiscriminately, whether private or state-owned, including those units whose effects are felt in the domestic market although exercising their activity outside the territory of Albania.

The organization of ACA incorporates the principle of balance of power between the executive structure and decision-making one.

The executive structure is the Secretariat of the ACA, whose staff enjoys the status of the civil servant.

The decision-making structure is the Competition Commission, composed by 5 (five) members elected by the Albanian Parliament, one of whom is elected to the position of the Chairperson of the Commission, which among other things runs the daily activities of the Authority.

Based on law no. 9121/2003 the three main pillars of the ACA are:

- Prohibition of the agreements which have as their object or effect the prevention, restriction or distortion of competition – Art. 4 of law no.9121/2003;
- Prohibition of any abuse by one or more undertakings of a dominant position in the market- Art.9 of law no.9121/2003;
- The notification of concentrations – merger and acquisition – Art.10 and 12 of law no.9121/2003.

In addition, the object of the activity of the ACA is the legal assessment *ex ante/ex-post* for any draft normative act which, particularly includes: (a) quantitative restrictions concerning trading and market access; (b) establishment of exclusive rights or special rights in certain areas, for certain undertakings or products; (c) imposing uniform practices in prices and selling conditions - Art. 69 of law no.9121/2003.

During its activity in particular, ACA assess the regulatory barriers of competition incorporated in the economic and administrative regulations, for reasons of protecting a general economic interest. In this case, the Authority shall issue appropriate recommendations.

For implementing the law no.9121/2003 in regulated sectors, ACA cooperates with regulatory bodies and other regulatory institutions – Art. 70 of law no.9121/2003.

## **II. Laws, Regulations, and Policies relevant for the implementation of the CAP**

*For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.*

*Please update your Template reflecting significant changes as they relate to the CAP, as needed.*

### **b) Non-Discrimination**

*Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.*

ACA ensures that its investigation and enforcement policies and procedural rules affords Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances, based in legal framework in force:

- The Albanian Constitution, Art.16 provided: (1) “The fundamental rights and freedoms and the duties contemplated in this Constitution for Albanian citizens are also valid for foreigners and stateless persons in the territory of the Republic of Albania [...]. (2) The fundamental rights and freedoms and the duties contemplated in this Constitution are valid also for juridical Persons so long as they comport with the general purposes of these persons and with the core of these rights, freedoms and duties”.
- Law no. 10221/2010 “For protection from discrimination”, Art 2, d) provided: “The purpose of this law is to assure the right of every person to effective protection from discrimination and from every form of conduct that encourages discrimination”.
- The Administrative Procedures Code, Art.11 provides: “In relations with private persons, the public administration is guided by the principle of equality in the sense that no one should be privileged or discriminated because of gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic, educational or social status or parental affiliation”.

- Law no. 9121, dated 28.07.2003 “On protection of competition”, Art.32 provides: “In carrying out its duties, the Authority applies the Administrative Procedures Code [...]”.

### **c) Transparency and Predictability**

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

- i) ACA assures that according to the law no. 119/2014 “For the right of information”, all the legal framework regarding competition is publicly available, in hard copy and in ACA’s website.
- ii) Pursuant to law no. 9121/2003, the Competition Commission, by decision no. 17/2011, has approved the Regulation “On investigation procedures of the Competition Authority”. The purpose of this Regulation is to establish the rules to be followed by the CA in the investigation procedure of a prohibited agreement (Art. 4); in the investigation procedure of abuse of dominant position (Art. 9).

ACA, conducts preliminary investigations (Art.42), and in-depth investigations (Art.43). The Authority may conduct a general investigation in any sector of the economy, on its own initiative or following a request by the Parliament or other regulators, if the rigidity of prices or other circumstances suggest that competition is being restricted or distorted in the market (Art.41).

- iii) Pursuant to law no. 9121/2003 the procedural rules that apply to investigations and enforcement proceedings are publicly available. Chapter III - Procedures on agreements and abuse of dominant position, Section I - Procedures on investigations (Art. 41-47), expressly provides procedural rules which are followed by the ACA in any investigative procedure. In addition the Regulation “On investigative procedures of the ACA”, regulates these investigative procedures in more detail. These legal acts are published on ACA’s website and are easily accessible by the public.

The ACA follows rigorously applicable procedural rules in its investigations and enforcement proceedings. If these rules are not being followed, the decision of the Competition Commission will be subject of the Administrative Court, under the Administrative Procedures Code.

**d) Investigative Process**

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

- i) The Regulation “On the investigation procedures of the ACA” expressly provides for ACA’s obligation to notify the parties subject to an investigation to ensure: (1) their participation in an investigation; (2) their right to be heard.

Article 6 of the Regulation explicitly provides for the right of “participating in an investigation”. Investigations can be attended by: (1) The companies that have been notified regarding the beginning of the investigation. (2) Persons representing public or private interests, and associations representing consumers, who may be directly and immediately affected from any offense constituted by the object of investigation or any measure taken as a result thereof. Participating parties in an investigation:

- Can provide written statements, documents, arguments, and opinions;
- Have the right to examine the investigation file, in whole or in part, only to the extent necessary to enable the parties involved directly in the procedures to exercise their right to defense.

Furthermore, Article 47 of law no. 9121 / 2003 obliges ACA for “publishing the start of investigations and decisions”. The Authority shall give notice of the opening of an in-depth investigation in the Authority’s Official Bulletin. Such notice shall state the purpose of the investigation and the parties concerned. It shall further invite third interested parties to come forward if they wish to take part in the investigation.

The Commission decisions taken for the infringement of articles 4 (Prohibited agreements) and 9 (Abuse of dominant position) shall be published in the Authority’s Official Bulletin. The publication shall state the names of the undertakings, their registered headquarters, economic activity of the undertakings concerned, the main content of the decision, including also any penalties imposed.

- ii) The Regulation “On the investigative procedures of the ACA”, in support of Article 39 of law no. 9121 / 2003 explicitly provides for the right of “hearing parties”.
- The Competition Commission should provide the parties to which the Secretariat has sent the Investigation Report, the opportunity to be heard before the decision is taken.
  - The Commission gives the parties the opportunity to present their arguments in a verbal hearing, if this is required in their written submissions.
  - The Commission may allow the parties to whom the Investigation Report has been sent to ask questions.
  - The Commission expresses a decision only on the claims for which the parties have been given the right to be heard (Articles 18,19,21 of the Regulation).

In view of the “right to be heard” before the hearing, the Secretariat delivers to the parties the agenda of the hearing, for their comments and suggestions (Article 21 of the Regulation).

- iii) ACA focuses investigative requests only on information relevant to competition issues under review and provides Persons reasonable time to respond to requests during investigations, based on procedural deadlines, provided by the provisions of the Administrative Procedures Code.

Administrative Procedures Code, available at:

<https://www.euralius.eu/index.php/en/library/albanian-legislation/category/6-administrative-procedure-code>

#### **e) Timing of Investigations and Enforcement Proceedings**

*Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.*

Time limits regarding investigative procedures as well as for controlling and issuing authorization for mergers and acquisitions are expressly provided for in the provisions of law no. 9121/2003 “On protection of competition” and when law does not express these terms, pursuant to Article 32 of law no. 9121/2003, the provisions of the Administrative Procedures Code shall be applied.

An in-depth investigation may be conducted for a period of 6 (six) months from the date of the Commission’s decision on the opening of the in-depth inquiry. The period of time mentioned above may be extended by a Commission decision if further investigations are required in relation to additional evidence, data and specialized expertise needed to review the case (Art. 43, point 2 and 3)

In the simplified procedure, if the concentration does not show any indications of significant restriction of competition in the market or a part therein, in particular as a result of the establishment or strengthening of a dominant position, the Commission shall decide to

authorize the concentration within 2 (two) months from the date of the notification (Art. 56, point 1).

The Commission shall decide whether to stop or not the concentration within 3 (three) months from the start of the in-depth proceeding (Art. 57, point 1).

In accordance with the Guideline "On simplified procedures for dealing with certain concentrations" it takes approximately up to 3 (three) weeks.

Alongside, Article 7 of the Regulation "On investigative procedures of ACA", explicitly provides the deadline for beginning of investigative proceedings. The timing of the investigations begins, from the date when the undertakings or interested persons become familiar with the decision of the Competition Commission "for the opening of the investigation".

Available at: <http://www.caa.gov.al/laws>

#### **f) Confidentiality**

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

- i) Confidentiality is one of the basic principles in ACA's activity. Preservation of the confidentiality of the information held by each employee at ACA (member of the Competition Commission, as well as civil servant, member of the Secretariat), but without prejudice to the implementation of obligations deriving from law no. 8503, dated 30.6.1999 "On the right to information on official documents", amended, is not limited to time, it extends for as long as he/she is employed at ACA and after leaving office.

Article 30 of Law no. 9121/2003 expressly provides: "The members of the Commission and all other Secretariat employees or other persons authorized by the Commission to enforce this law shall be subject to professional secrecy and shall not divulge to any person or authority whatsoever, confidential information acquired owing to their duties, except for cases when it is necessary to testify in front of a court. Such obligation shall continue to apply even after the termination of the duty".

In pursuance of this rule, provided for in the law, all other sub-legal acts that regulate ACA's daily activity sanction this principle:

- Regulation "On the functioning of the ACA";
- Code of Ethics;
- Regulation "On investigative procedures of the ACA";

- Instruction "On the form of notification of concentration".

Available at: <http://www.caa.gov.al/laws>

- ii) The Regulation on investigation procedures, pursuant to Article 30 "Keeping confidentiality and commercial secrets" of law no.9121 / 2003, provide that during investigations and enforcement proceedings, the ACA will protect from unlawful disclosure all confidential information obtained or used by the Participant.

In addition, the protection from the unlawful disclosure of all confidential information obtained or used by the Participant during investigations and enforcement proceedings, is the obligation deriving from the law no. 9887/2008 "On protection of personal data", as amended, as well as the ACA Regulation "For protection, processing, storage and security of personal data", available at: <http://www.caa.gov.al/laws>.

- iii) Regulation "On the investigative proceedings of ACA", expressly provides rules for a rational balance between the interests of the persons concerned and of the public in fair, effective and transparent enforcement of the confidentiality of information during an enforcement proceeding.

Thus, Article 17 "Access to requested documents and information required" of the Regulation on investigation procedures expressly provides that: Parties directly involved in investigative proceedings referring to a prohibited agreement or abuse of a dominant position have the right to access any document drafted or temporarily stored by the Commission and the Secretariat, after they have been presented with the Investigation Report.

In cases where the foregoing documents contain personal, commercial, industrial and financial information of a confidential nature with respect to individuals or undertakings involved in the proceedings, the right of review is permitted, in whole or in part, only to the extent that it is necessary to enable parties directly involved in the procedures to exercise their right to defense.

In accordance with the provisions of Article 30 "Keeping confidentiality and commercial secrets" of law no. 9121/2003, when access is granted in the cases provided for above, all Secretariat employees or other individuals authorized by the Commission to enforce this law, keep the professional secret and do not share confidential information gained while performing their duties, to no individual or institution, except in the cases when they must testify in front of a court.

Each Party, pursuant to Article 17 of the Regulation on investigation procedure, seeking to protect the confidentiality of confidential information provided during the investigation, must submit a special request for that purpose to the Secretariat, whereby the latter shall notify the Competition Commission. This requirement should contain details of the documents or parts of the documents for which they consider that access should not be granted and identify the undertakings in respect of which such documents will be considered confidential, specifying the reasons for such request.

Available at: <http://www.caa.gov.al/laws>

#### **g) Conflicts of Interest**

*Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.*

A full legal framework regulates "Conflicts of interest" within the ACA.

- Law no. 9367/2005, "On the prevention of conflicts of interest in exercising public functions", as amended;
- Law no. 9131/2003 "On the rules of ethics in public administration";
- Law no.152/2013, "On civil servant", as amended.

Available at: <http://www.qbz.gov.al>

On the other hand, the law no. 9121 / 2003 "On protection of competition" in its Article 23 "Conflicts of interest" provides: "No members of the Commission, including the Commission Chair and Deputy Chair, may take part in a case in which he/she has an interest, or if he/she has represented one of the parties concerned. In such instances, the Commission shall take a decision in the absence of a Chairman, Vice Chairman or the member concerned".

In the internal legal acts, which regulate the daily activity of the ACA, the "Conflicts of Interest" are regulated respectively.

- Internal Regulation "On the functioning of ACA";
- Internal Regulation "On the prevention of conflicts of interest in the exercise of public functions in the Competition Authority".

Available at: <http://www.caa.gov.al/laws>

#### **h) Notice and Opportunity to Defend**

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the*

*requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*

- iii. *Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

- i) ACA provides for each Person subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them.

The investigation shall commence only when the Secretariat has been informed of the decision of the Commission authorizing or requesting the Secretariat to initiate the investigation to the undertakings and persons concerned. The investigation can begin simultaneously with the notification. In the case of several parties under investigation, the investigation is conducted after the notification addressed to them is delivered to each of them individually (Article 7, point 1 of the Regulation on Investigation Proceedings).

Means of notification under Article 25 of the Regulation are: (a) by mail, with registered distribution; (b) Hand over with acknowledgment of receipt; (c) fax, with a written confirmation request on the arrival date; (d) telex or telegram. In the case of telex, telegram or fax service, the documents are considered to have been received on the date on which they are sent, unless the opposite can be proven.

- ii) ACA provides for each Person subject of an enforcement proceeding a reasonable timely access to the information in it's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative law.

Pursuant to Article 32 "General principle" of law no.9121/2003 "In carrying out its duties, the Authority shall apply the Administrative Procedures Code, except for cases where the law provides the other".

- iii) ACA provides for each persons subject to a Administrative Proceeding, reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.

Article 39 "Hearings of the parties" of law no. 9121/2003 clearly provides: "Before the Commission takes a final decision, the undertakings and the associations of undertakings have the right of being heard on the subject of the proceedings. The Commission shall base its decisions only on objections on which the parties concerned have been able to comment".

Available at: <http://www.caa.gov.al/laws>

#### **i) Representation by Counsel and Privilege**

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

- i) The right to legal representation is regulated by a full legal framework where every person has the right to be represented.

The Civil Code of the Republic of Albania (Article 64) regulates the right of every person to be represented by a voluntary legal representative.

Law no. 55/2018 “For the profession of lawyer in the Republic of Albania” provides for the provision of the right of a lawyer as a legal representative of his party to represent them in front of the public administration’s bodies, courts and any other institution (Article 6).

Available at: <http://www.qbz.gov.al>

- ii) Article 39 of law no. 9121/2003 stipulates clearly the parties right to be heard: “Before the Commission takes a final decision, the undertakings and the associations of undertakings have the right of being heard on the subject of the proceedings. The Commission shall base its decisions only on objections on which the parties concerned have been able to comment”.

This right can be exercised directly by the parties, or through a nominated legal representative.

Article 21 “Hearing Sessions” of the Regulation “On investigation procedures of the ACA”, establishes the rule: Invited persons to attend may be presented in person or represented by their legal representatives or their authorized representatives. Enterprises and associations of undertakings may be represented by an authorized person.

- iii) Law no. 55/2018 “On the profession of lawyer in the Republic of Albania”, in its articles regulates the confidentiality relations between the lawyer and the party represented by him.

The principle of confidentiality should guide the activity of a lawyer (Article 3), and “The lawyer shall maintain the professional secrecy and confidentiality regarding the data for which it has been informed by the client or the documents made available by him/her, in function of the requested defense, except the case when the client has given written consent” (Art. 10).

On the other hand, law no. 9887/2008 “On the protection of personal data”, and the Internal Regulation of the ACA “On the Protection, Processing, and Safeguarding of Personal Data”, are based on and for the implementation of this law, impose the rule of the treatment of privileged information.

On the other hand, law no. 9887/2008 “On the protection of personal data”, and the Internal Regulations of the ACA: (1) “On the protection, processing, safeguarding and securing of personal data”; (2) “On the administration of electronic data during ACA inspections” impose the rule of the treatment of privileged information.

According to the Regulation “On the administration of electronic data during inspections by ACA” : Legal-Professional Privilege of Lawyers, means - “Confidentiality of communication between the subject under investigation and the attorney, excluding lawyers who are part of the staff of the subject under investigation” (Art. 3, point 4).

#### **j) Decisions in Writing**

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

- i) Article 12 “Rationale, Publication and Forms of Decisions” of the Regulation “On the Functioning of ACA” expressly provides: (1) The decisions of the Competition Authority’s Commission shall be given reasoned but not later than 15 days from the relevant meeting of the Commission where they have been taken. (2) Any decision adopted by the Competition Commission shall be in writing and shall include, inter alia: (i) The object of the act; (ii) The legal basis; (iii) The reasoning part; (iv) The Ordering Part; (v) The names of the members who participated in the voting; (vi) The number and date of approval.

The decisions of the Competition Commission, together with the opinion in opposition, if there is any, are published in the Official Bulletin of the Competition Authority’s Decisions and are posted on the official website of the ACA.

Article 47 “Publication of opening investigations and decisions” shall ensure that all final decisions are publicly available, and in particular: The Commission's decisions taken for the infringement of Article 4 (Prohibited agreement) and Article 9 (Abuse of dominant position) shall be published in the Authority’s Official Bulletin. The publication shall include the names of the undertakings concerned, the main content of the decision, including any penalties imposed.

On the other hand, pursuant to Article 30, paragraph 2 of law no.9121/2003: The publications of the ACA should not contain data that constitute commercial secret.

- ii) Article 45 “Commission decisions”: “Where the undertakings concerned offer commitments such as to meet the Authority’s objections expressed in a preliminary estimation communicated to the undertakings, the Commission may, by decision, make those commitments binding on the undertakings as conditions and obligations”.

Since the decisions of the Competition Commission, as mentioned above, are only in writing, and necessarily public, the commitments are necessarily written and published, preserving in their publication what is considered a “trade secret” (Articles 30 and 47).

On the other hand, the Regulation “On engagement procedures” regulates in detail all the issues identified in point 2 of this session in relation to: (i) make public the commitments it accepts, and (1) describe the basis or (ii) provide a summary explanation of the commitments and the reasons for them.

Available at: <http://www.caa.gov.al/laws>

#### **k) Independent Review**

*No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).*

The decisions of the Competition Commission are administrative acts (Article 105 Administrative Procedures Code), and as such, each interested party has the right to exercise the right to appeal to the District Court of Tirana due to the legal location of ACA’s headquarters.

Article 40 “Appeal of decisions” of law no. 9121/2003 expressly provides for this right: “An appeal may be lodged against the Authority's decision before the District Court of Tirana within 30 days from the date of the notification of the Authority Decision”.

Administrative Procedures Code, available at:

<https://www.eurallius.eu/index.php/en/library/albanian-legislation/category/6-administrative-procedure-code>