

# Albania

## Chamber of commerce:

The Chamber of Commerce and Industry of Tirana

Rruga e Kavajes, 6, Tirana, Albania

**Tel:** +355 4 230284

**Fax:** +355 4 227997

**Email:** ccitr@abissnet.com.al

**Web:** www.cci.gov.al

## Albanian competition legislation

**Jonida Lakuriqi**  
**Kalo & Associates**  
**Tirana**

Albania's economic and legislative reform has been a bit of a roller-coaster ride over the past decade. The economy has had to deal with 1997's extreme period of social and political instability caused by the collapse of fraudulent pyramid schemes (which occurred at the same time as the economy was decentralized and trade was liberalized), variable output growth and the country's constant attempts to harmonize its legal framework with the *acquis communautaire*. Competition remains one of the core areas, especially in light of the recently signed Stabilization and Association Agreement.

In 2003, Albania significantly updated its competition regime law by adopting Law no 9121 On the Protection of Competition (the New Law), which replaced the previous, ambiguous and contradictory legislation. The New Law has essentially replicated the provisions of the EU competition law and regulations, meeting the first part of the implementation of SAA in the internal market.

The New Law focuses solely on economic competition, and as such Albania has separated antitrust legislation from the unfair competition regime, which is regulated by the provisions of the Albanian Civil Code.

The New Law (i) comprehensively defines to whom the law applies; (ii) introduces the concept of *abuse of dominant position*; and (iii) sets up a legal framework for an independent efficient competition authority.

### Object of application

A considerable improvement on the previous law, the New Law is wider in application, covering all types of natural or legal entities, both private and public, and their subsidiaries. The New Law applies the so-called "effect doctrine" for those entities that, as a result of commercial activity outside Albania, affect the domestic market.

### Agreements

Article 81 of the EC Treaty (and relevant regulations) has been transplanted explicitly into Albanian law. It provides for the introduction of a blacklist of vertical and horizontal agreements (that is, cartel agreements) that distort, restrict or hinder market competition. Such listed agreements are deemed null and void. The grey list, meanwhile, covers those agreements that are exempt from the prohibition as a result of the decision of the Competition Authority, upon notification of such being filed by the interested party. Although the main grey-listed

agreements benefit from the explicit approval for exemption by the Competition Authority, the law retains the right to treat certain agreements (relating to intellectual property rights, for example) specifically, for which exemption is granted automatically if the Competition Authority does not reply within three months of notification.

Unlike the 1995 law, the application of the New Law is no longer restricted to particular sectors, such as agriculture, forestry or food. It also applies to public sector entities such as electricity, gas and water which, at the time of writing, hold a *de facto* monopolistic position.

### Concentration of undertakings

The statutory definition of the concentration and control of undertakings as set out by the EU Council Regulations is a worthy addition to Albanian competition law, as it encourages the devolvement of such mergers in the market. Unlike the inclination of the law to not impede the dominant position in the market, the Competition Authority enjoys the prerogative to impede such concentrations where they would create or strengthen the dominant position of one or more undertakings.

The New Law replaces the previous merger notification threshold, the new threshold being triggered at the point where all entities involved in the concentration have an annual worldwide turnover of €500 million. The pre-merger notification procedure involves the Competition Authority deciding on a concentration within two months of the notification of the concentration. The Competition Authority might require further investigations to be held (for another three months), or might grant the authorization. If the Competition Authority fails to make a decision within two months of the notification, the proposed merger shall be considered authorized.

### Abuse of dominant position

Most conspicuously in the New Law, a dominant position is no longer prohibited per se. The new legislation prohibits only the abuse of a dominant position, and provides for a non-exhaustive list of examples of such abuse. While the definition of what constitutes a dominant position matches that given by the European Court of Justice in *United Brands v EC Commission*, the criteria for the identification of the abuse of a dominant position follows those set out in article 82 of the Treaty of Rome.

The law seeks to promote fair competition in Albania and applies to all types of undertakings that impact on the market in a way that distorts and impedes its competition, leaving unfair competition to the discretion of the Albanian Civil Code.

### The Competition Authority

One of the most important developments in the improvements made

to Albania's competition law has been the establishment of the Competition Authority, which aims to stop exclusionary and other anti-competitive practices and effectively advocate market-oriented regulatory reform. Because the independence of the Competition Authority is guaranteed by statute it is actually comprised of two bodies: the Competition Commission, the decision-making body that is elected and controlled by parliament; and the Secretariat, which is more of an executive body that has market monitoring and investigative powers.

#### Law enforcement tools

The Competition Authority can conduct investigations either on a formal complaint basis or informally. Based on the results of each investigation the Competition Authority issues its decision, which can be appealed in the Tirana district court within 30 days of the notification of the decision.

Furthermore, any interested party who has suffered loss as a result of a breach of the competition laws can claim indemnity directly from the relevant court. Court proceedings carry on independently from routine administrative proceedings. Embracing European Community practices, the law categorizes the sanctions into two groups (procedural infringements and serious infringements), and also provides the formulas for calculating fines.

In conclusion, competition legislation in Albania has to prove itself to be a success, which will be a challenge given Albania's lack of a competition culture, informal economy, political unrest and the influence certain interested parties might have on the work of the Competition Authority. Apart from the complexity of implementing competition legislation, however, Albania's success in providing a regulated market to domestic and international investors shows the country in a good light, especially as far as the European stabilization and association process is concerned.

## Corporate and commercial

### Recommended firms

#### Tier 1

Boga & Associates
Kalo & Associates
Loloçi & Associates
Studio Legale Tonucci
Wolf Theiss

### Boga & Associates

Another year of growth has seen Boga & Associates expand to 14 locally and internationally qualified lawyers who now offer their local expertise to the Kosovo region as well as the domestic market. Market rumours suggest that the already strong links with KPMG International may lead to a full merger, which "will be interesting to see as they are already one of the largest firms in Albania." In the meantime, clients remain to be impressed by "the good legal opinions" offered by Boga & Associates, a firm that is "well thought of" by the market.

Genc Boga is the managing partner of the firm and is consistently regarded as a "man who has a quality approach – he is really active and is the main representative of the firm." In addition, one commentator was keen to highlight the work Sokol Elmazaj does in assisting Boga.

Once again, Boga & Associates has had a successful year, an impressive highlight of which saw the firm assist the European Bank for Reconstruction and Development (EBRD) on the €65 million financing of Albtelekom. The firm also represented EBRD, alongside the International Finance Corporation, on the provision of an €85 million syndicated loan to Vodafone's Albanian operation. Equally impressive was advice to the Italo-Albanian Bank in relation to the €44 million private placement of all its shares to San Paulo IMI.

The firm has also been kept busy advising South Eastern European Development on drafting a new factoring law that was yet to be enacted at press time, and acting for Raiffeisen Bank in the review and implementation of Albania's forthcoming leasing law.

#### Leading lawyer

Genc Boga

#### Key contact partner

Genc Boga

### Kalo & Associates

Peer opinion of Kalo & Associates remains high: according to one client, "it is one of the main local law firms and it is doing very well in Albania." In addition, rivals regard the firm as particularly adept, strong and focused on domestic work, while clients view it as "a decent firm." Much of the credit for this can be awarded to the founding and managing partner of the firm, Përparim Kalo. He is, says one client, "the leading lawyer at the firm and he displays correct judgement," which a peer described him as "very professional and a successful businessman and lawyer."

Since Kalo & Associates' formation in 1994, the co-founding member of the South East Europe Legal Group has maintained an impressive client list. In banking and finance, it has worked for the World Bank, the International Commercial Bank, Western Union, ABN Amro, Deutsche Bank and many more. Multinational companies such as Colgate-Palmolive, Kodak and Michelin have also been attracted to Kalo & Associates. In addition, the firm retains its close working relationships with international law firms, including Allen & Overy, Clifford Chance, Clyde & Co and Baker & McKenzie.

In terms of personnel, year-on-year growth at Kalo & Associates continued in 2006, and the firm is now made up of two partners, four senior associates and 13 associates. The team offers a full range of financial law services in Albanian, French, English, German and Italian.

#### Leading lawyer

Përparim Kalo

#### Key contact partners

Jola Gjuzi  
Jonida Lukuriqi

### Loloçi & Associates

Competitors describe Loloçi & Associates as "a successful law firm" of "good quality" despite its smaller size in comparison to the rest of the market. There are only eight lawyers in the office, but clients believe this leads to "a more personal approach" to financial law advice. The firm specializes in corporate work, tax and duty matters, electronic media and intellectual property. Loloçi & Associates is also well established in telecommunications, and since 2000 has represented large companies such as Cosmote, Telenor and Vodafone Albania.

The most respected lawyer and head of the firm is Krenar Loloçi. On top of managing operations, he is also active in the

business community. For example, Loloçi was key to the formation of the American Chamber of Commerce in Albania and remains the president of the association.

**Leading lawyer**

Krenar Loloçi

**Key contact partners**

Kathleen Imholz

Krenar Loloçi

**Studio Legale Tonucci**

2006 marks Italian firm Studio Legale Tonucci's tenth anniversary in Albania. Over the past decade the firm has grown consistently in size and, with the hiring of a new partner in Giogio Giorgi, it now comprises four partners and 10 associates. Unfortunately both the well-regarded Bernardino Apicella and the "widely experienced" Mauro Baldissoni have moved on, and commentators are wary of how things will be affected. However, it is hoped that the new crop will combine well with local lawyers such as Erinda Ballanca, who has been with Studio Legale Tonucci since its entry into Albania. Indeed, the market perceives Ballanca as "active and very professional", so the overall market feeling is that the affect on the office should be minimal. This is especially the case considering clients view Studio Legale Tonucci as "a very good firm."

Project finance has been high on the agenda for Studio Legale Tonucci this year. The firm advised the European Bank for Reconstruction and Development on the €12 million financing granted for the modernization of Tirana's Rinas Airport. The Export-Import Bank of the United States was also a key project finance client; Tonucci advised it on the \$47.6 million modernization of Albanian Air Space Management. In M&A, meanwhile, the firm has had an equally good year, as seen in the advice given to San Paulo IMI in its acquisition of an 80% stake in the Italo-Albanian Bank.

At the start of 2006, Studio Legale Tonucci entered into a strategic alliance with US heavyweight Mayer Brown Rowe & Maw. Such strong links between Chicago, Rome, Milan, Padua, Florence, Tirana and Bucharest should only lead to more success for the Albanian office in the coming years, and it will be interesting to watch the firm's progress.

**Leading lawyers**

Erinda Ballanca

Gianluca Carlesso

**Key contact partners**

Erinda Ballanca

Gianluca Carlesso

Neritan Kallfa

**Wolf Theiss**

Wolf Theiss has had another fantastic year in Albania and continues to make an impression since it took over Allen & Overy's Albanian outfit in 2004. The firm now has seven full-time lawyers in the region, and the three partners that lead them are gradually directing a catch-up with some of the more established competition.

Insolvency and restructuring mandates have been a fruitful source of work for Wolf Theiss this year. For example, the firm watched over Kühne and Nagel's restructuring of Transalbania, as well as working on a linked acquisition of the governmental stake in the same company. In September 2005, Wolf Theiss assisted the Kosovo Trust Agency (KTA) and Pristina International Airport in the airport's privatization. The firm also advised the KTA on a European Agency for Reconstruction-funded project to restructure Kosovo's entire railway and energy sectors.

Citigroup has benefited from continuing Wolf Theiss advice regarding various aspects of Albanian banking legislation. Other deals have included working on Mittal Steel's public offer for shares in Arcelor, advising the sponsors on the construction and operation finance for two Albanian hydro power plants, and acting as counsel to a Luxembourg corporation's loan for a micro-security transaction in Albania.

Wolf Theiss's Albanian operation is still well respected by its predecessor, Allen & Overy. For example, the firm worked alongside Allen & Overy's Rome office to advise Acea regarding the acquisition of an Albanian shareholding company including the hydro power plant that it owned. Wolf Theiss's advice covered all areas of this deal, including analysing the energy regulatory framework, working on all corporate and concession matters, and researching the legislation relating to the sale and distribution of energy production in Albania.

**Leading lawyers**

Enyal Shuke

Dieter Spranz

**Key contact partners**

Enyal Shuke

Dieter Spranz