

# Albania

## Chamber of commerce:

The Chamber of Commerce and Industry of Tirana

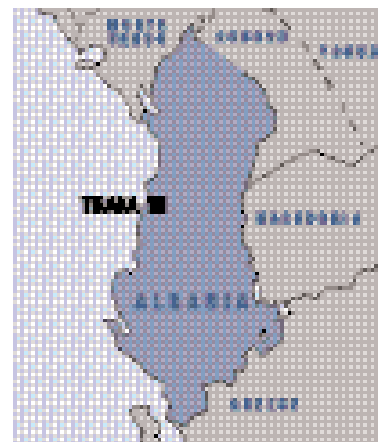
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## Albanian competition law

**Berardino Apicella**  
**Studio Legale Tonucci**  
**Tirana**

On July 28 2003 Albania enacted a new Law on Protection of Competition (the Competition Law), which came into force on December 1 2003. This law replaced the existing competition protection law system, which had been in effect in Albania since 1995.

### Merger control

Although the Competition Law maintains the basic structure of the prior regime, it establishes a preliminary control process on business concentrations under the supervision of a new Competition Authority (the Authority). The Competition Law therefore establishes for the first time a system of active regulatory control over potentially anti-competitive concentration practices in Albania.

The Authority is an independent body, directly appointed and controlled by the Albanian parliament. This marks a clear change from the previous structure, where the Directorate of Economic Competition was part of the Ministry of Economy. The Authority is composed of two bodies – the Commission and the Secretariat. The Commission is the decision-making body of the Authority, while the Secretariat handles administration and investigation. The duties of each body are clearly regulated by the new law.

### Concept of concentration

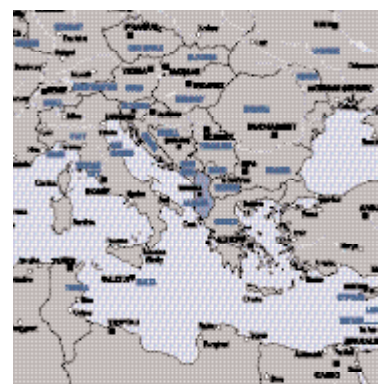
Article 10 of the Competition Law defines concentrations (the transactions subject to merger control) by reference to specific types of transactions, such as the merger of two or more undertakings or independent entities of undertakings and the creation of a joint undertaking, which exercises the functions of an independent business entity.

In particular the concept of a merger has been expanded to include the broader concept of the EU Merger Control Regulation – the direct or indirect acquisition of control over another company or group of companies.

More specifically, Article 10 of the Competition Law sets out that control (the acquisition of a controlling interest) may be established through rights, agreements or in any other way that jointly or separately give rise to the exercise of a decisive influence over the economic activity of the undertaking and particularly through: (i) ownership rights or rights of disposal of all or part of the undertaking's activities; and (ii) rights or agreements influencing considerably the structure, voting power or decisions of the decision-taking bodies of an undertaking.

### Quantitative thresholds

Under Article 12 of the Competition Law, the Authority must be notified if in the business year preceding the concentration of businesses: (i) the combined aggregate worldwide



turnover of all participating businesses is more than 70 billion lekë (\$660 million) or the turnover of all participating companies in the Albanian internal market is more than 800 million lekë; and (ii) the turnover in the Albanian internal market of at least one participating company was more than 500 million lekë.

The following are defined as *participating undertakings* in the sense of the law: (i) in the case of a merger, the merging companies; (ii) in the case of an acquisition of a controlling interest, the controlling and controlled companies; and (iii) any part of a company affected by the transaction.

#### Mandatory pre-merger notification

Concentrations within the meaning of Article 10 that meet the turnover thresholds are subject to mandatory pre-merger notification and may not be put into effect prior to receiving clearance from the Authority. Notification of relevant transactions to the Authority are made by completing a form that requires a large amount of information about the participating companies, the relevant transaction itself, the markets involved and the effects of the relevant transaction on the competition existing in such markets.

The Competition Law also provides that incorrect or misleading information, where supplied intentionally or negligently, could make the notifying party or parties liable to fines of up to 1% of the total turnover. In addition, the Authority may also revoke its decision on the compatibility of a notified concentration where it is based on incorrect information for which one of the undertakings is responsible.

#### Merger control procedure

Following the example of the EU Merger Control Regulation, the procedure before the Authority is divided into two separate phases. If the concentration does not show signs of the establishment or strengthening of a dominant market position, the Authority approves the concentration within two months from the date of the receipt of the notification. However, where the Authority decides that a thorough investigation is necessary, it can extend the approval period for a further three months. The reasons for its decision to undertake an in-depth investigation are published in the Authority's Official Bulletin. In both cases, failing a decision of the Authority within the terms provided by the law, the concentration may be implemented without further reservations.

#### Sanctions

The Authority prohibits concentrations that are expected to create or strengthen a dominant position. Transactions that violate the notification obligation or do not comply with the conditions set out in the authorization shall be deemed null and void.

Where companies carry out a concentration without notifying the Authority, in contravention of a ban on the concentration or in contravention with the conditions prescribed by the Authority, the Authority may require the participating companies to take all the necessary measures to re-establish the pre-concentration situation. The Authority may also require the companies to make proposals regarding the re-establishment of efficient competition. Where a company fails to take the necessary measures, or

when it has rejected the proposals submitted, the Authority can enforce temporary unilateral measures to try to eliminate the restrictive practices.

## Corporate and commercial

### Recommended firms

Boga & Associates

Kalo & Associates

Loloçi & Associates

Studio Legale Tonucci

Wolf Theiss

### Boga & Associates

Boga is associated with KPMG, and is considered by its competitors to be a major player in the Albanian market, with particular recognition given to its strong corporate practice. Genc Boga, the firm's founder, is recommended by his peers for his knowledge and experience, and in fact the market acknowledges that the firm has a reputation for employing "good, experienced lawyers".

While it might be a slight overstatement that "Boga & Associates and Kalo & Associates control the Albanian market," as one piece of feedback we received suggested, it is certainly true to say that the firm attracts high-quality work. In the last year, the firm advised on the privatization of Saving Bank of Albania, the opening of the Albanian branch of Swiss International Airlines, the establishment of Air Bp Albania, and the increase of the share capital of Procredit Bank. Clients of the firm include the Italian Albanian Bank, Albanian American Enterprise Firm, First Investment Bank, Seament Albania, Alcatel Italia and BerlinWasser.

#### Key contact partners

Genc Boga  
Sokol Elmazi  
Renata Leka

#### Leading lawyer

Genc Boga

### Kalo & Associates

Established in 1994, Kalo & Associates has built a strong reputation as a leading firm, with particular strength in banking and corporate work. Perparim Kalo is highly recommended for corporate work, especially on international deals, and the quality of the firm's other lawyers is also praised by peers and clients alike.

The firm lists among its clients Alpha Bank, the International Commercial Bank, and the Commercial Bank of Greece.

**Leading lawyer**

Perparim Kalo

**Loloçi & Associates**

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Loloçi & Associates maintains its position in the Albanian market, offering a wide range of general corporate and commercial advice. Name partner Krenar Loloçi continues to gain praise for the quality of his M&A expertise and advice.

**Key contact partner**

Krenar Loloçi

**Studio Legale Tonucci**

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The Albanian practice of Italian firm Studio Legale Tonucci has had a successful year. Its banking practice in particular has secured some big deals, including advising Raiffeisen Zentralbank on the \$126 million acquisition of the Savings Bank of Albania, the European Bank for Reconstruction and Development (EBRD) and the International Financial Corporation (IPC) on the financing of Fushe Kruje Cement Factory, and the EBRD on the financing of Hotel Rogner.

The firm has also advised the Export-Import Bank of the United States on an air traffic control project, and are advisors to the Albanian government on, amongst other deals, the privatization of the state-owned telecom company, Albtelecom. Neritan Kallfa is noted by his peers as a rising star in the banking law market.

**Key contact partners**

Berardino Apicella  
Mauro Baldissoni

**Leading lawyers**

Valerio Abbagnara  
Mauro Baldissoni  
Erinda Ballanca

**Wolf Theiss**

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The Austrian law firm Wolf Theiss opened in Albania in February 2004, taking over the former office of Allen & Overy. The team is small, but offers both local and international law advice, and is recognized by its competitors as a strong corporate and commercial practice.

The firm's work over the last year includes continuing advice to Deloitte & Touche and the Albanian government in connection with the concession for the Tirana International Airport, advising the European Bank for Reconstruction and Development (EBRD) on all legal aspects related to its equity investment in, and project financing of, the Hotel Tirana, and advising the

International Finance Corporation and the EBRD on the project financing of the Elbasan Cement Factory. The firm has also advised the Albanian Reconstruction Equity Fund, Titan Corp and Aziende Commerciali Industriali e Servizi.

**Key contact partners**

Horst Ebhardt  
Dieter Spranz