

The anti-competitive agreements in the prospective of the law on competition protection

An inside in the Albanian practices and legal framework

Prof.Asoc.Dr. Rezana Konomi Perolla, PhD

Commissioner, Deputy Chairwoman of the Competition Authority Tirana, Albania

Prof. Asoc. Dr. Zhaklina Peto, PhD

Head of the Civil Law Department, University of Tirana, Albania

Abstract

In Albania legislation on competition was developed only after the 90s and this is natural depending on the economic development and market model, which before the 90s had spaces of a free and competitive development. Competition is an economic phenomenon that refers to such a state of a free market economy, where companies compete independently in order to benefit as many buyers so as to meet the objectives to increase profits and expansion of markets. In this way free competition is both beneficial for business development and profitable for consumers themselves, who should benefit from the prices set based on the demand–offer ratio. Competition should be perceived as a necessary mechanism that promotes increase of welfare in general, by providing enterprises with greater opportunities for profit and therefore better quality for consumers, a major benefit in the range of choices lower prices. Encouraged by the existence of competition, enterprises as market players should be motivated to be always on the alert and perhaps in uncertainty in order to be as much active in the way they compete with their competitors by providing investments and aggressive strategies as a reply to their, but also potential rivals. In competitive markets, the companies are motivated to gain market power in order to strengthen their positions in the markets where they operate and thereby they have an impact in the fulfillment of the growing needs of the consumer, which brings increase of welfare. Nevertheless, quite often companies have such an attitude that they may cause limitation of competition, such as the agreements, whose object or consequence is price fixing, market shares or the establishment of a market structure where competitors join (in case of concentrations). Price fixing is a classic element to all cases of cartels. By means of such behavior competitors try to avoid price competition between them to the detriment of the consumer, by applying higher prices. This may happen at horizontal level, but also at vertical level. What do we perceive with prohibited agreements under Albanian law of competition? What are the forms of agreements that are prohibited and which are excluded? These are some of the questions that this article addresses.

Keywords: agreement; competition; economic; consumers

The phenomenon of international cartelization has spread rapidly, especially in the mid twenties of the twentieth century. Definitely the main purpose for the formalization of this form was the moderation of competition on foreign markets. This period in Europe was characterized by strong economic growth as a result of industrialization and the development of international competition among enterprises. The states, "scared" from such foreign competition, in order to protect local economies, which followed the trend of rapid international developments, started the form of cooperation through subjecting agreements that determined the price of goods and market sharing, thereby eliminating the competition between signatory enterprises of these agreements. The first country which is also known as the homeland of cartel agreements is Germany, which in 1923 issued a decree: "Decree on the prohibition of abuse of economic power" by means of which it intended to control all cartel agreements.

Later on, in 1933, Germany adopted another decree "On price control" and "Mandatory Cartelization," which dictated the establishment of these agreements, but always with the approval of the Ministry of Economy. Hence, as noted, despite the prompt for signing cartel agreements, aiming at the strengthening of local economy, being aware, on the other side, of non-competing consequences among enterprises, the entire process required a careful review and approval. In the Treaty of the European Community about Carbon and Steel in 1951, which was signed in Paris, the US government conducted an intervention through two antitrust provisions, which were intended to regulate the typical anti-competitive behavior: 1) prohibited agreements, 2) abuse with dominant position, 3) concentrations¹.

In our country legislation on competition was developed only after the 90s and this is natural depending on the economic development and market model, which before the 90s had spaces of a free and competitive development. Competition is an economic phenomenon that refers to such a state of a free market economy, where companies compete independently in order to benefit as many buyers so as to meet the objectives to increase profits and expansion of markets. In this way free competition is both beneficial for business development and profitable for consumers themselves, who should benefit from the prices set based on the demand-offer ratio. Competition should be perceived as a necessary mechanism that promotes increase of welfare in general, by providing enterprises with greater opportunities for profit and therefore better quality for consumers, a major benefit in the range of choices lower prices. Encouraged by the existence of competition, enterprises as market players should be motivated to be always on the alert and perhaps in uncertainty in order to be as much active in the way they compete with their competitors by providing investments and aggressive strategies as a reply to their, but also potential rivals. If this element of activity invigoration will be missing in the market, it will hold back the development

¹ Eriona Katro, "Birth and importance of competition rules in the European Union", in *Juridical Studies*, No.2, Tirana, 2010, page 69

itself and the attempts to capture the latest technology, namely progress itself. The demand for the existence of competition should come as a demand of the business on its own, because enterprises as part of the competitive market will be in constant search to find ways and new innovations in order to challenge the existing competitive enterprises, so as to realize as much profit and to better respond to the requirements of the market itself. In this way, a strong competition promotes increased production, and increased benefits for consumers as well, because their range of choices is expanded based on the quality and prices offered. In this competition the beneficiaries are the strongest, the most powerful and the enterprises that cannot afford such competition because they are not efficient and come out of the market. In this manner, competition brings increased productivity and it is a gauge economy ability to create valuable goods and productive services in the globalized world, to raise the living standards and provide high employment. Competition is a vital market process, where firms offer lower prices, better quality, new products and multiple choices. Competitive markets provide the desired quality and quantity of goods, which corresponds to the best possible manner to customer needs and they are produced with much lower cost. Competition also puts pressure on firms in order to develop and organize their business activities so as to continuously improve their cost structure and achieve benefits in productivity. Over time, competition leads to the appearance of enhanced products and processes². The policy of competition plays an important role in order to have a much competitive economy. The scope of proactive competition policy is to support the process of competition in the internal market and to stimulate companies to be involved in competition and in the most efficient and dynamic behaviours. This makes possible the identification of sectors where there are obvious signs of a lack of competition as a result of failure to perform efficiently. The instruments of competition policy prohibit, penalize and determine uncompetitive behavior, the same as the cartels dividing market shares and help to remove the competition barriers or fix the prices by stiffening the market and damaging the consumer. In competitive markets, the companies are motivated to gain market power in order to strengthen their positions in the markets where they operate and thereby they have an impact in the fulfillment of the growing needs of the consumer, which brings increase of welfare. Nevertheless, quite often companies have such an attitude that they may cause limitation of competition, such as the agreements, whose object or consequence is price fixing, market shares or the establishment of a market structure where competitors join (in case of concentrations). For this reason, competition policy aims to prevent such attitude. In Europe, competition policy began to be implemented immediately with the establishment of the United Europe and was finalized in the Treaty of Rome, whose Article 81 specifically anticipates protection against secret agreements, decisions and practices among companies and in the following articles, abuse with dominant position

² Pelkmans, Jacques. *European integration: methods and economic analysis*. Pearson Education, 2006.

and rules for the control of concentrations. In a competitive market, companies tend to increase their profits by competing independently from one another, a fact which brings increased production. However, companies, in order to limit competition, interact and coordinate their actions, by entering into secret agreements which aim at fixing prices and other trading conditions, an attitude which is then reflected in the reduction of production and higher prices for consumers. Adam Smith in his work "Wealth of Nations" described in detail and specifically the tendency of companies to enter into prohibited agreements.³

But what is a prohibited agreement in itself? What is meant by the term "agreement" in view of the Law No. 9121, dated 28.07.2003 "On protection of competition". This law, including its further amendments, in Article 3 defines the concept of a secret agreement. According to it: "Agreements are agreements and/or concerted practices between two or more enterprises, as well as decisions or recommendations of associations' groupings, regardless of form, written or otherwise, or by their coercive force. Arrangements may be entered between enterprises operating in the same market level, known as horizontal agreements, or different market levels, i.e. vertical agreements. Competition is the basic instrument of market economy and encourages enterprises to provide services and products desired by consumers. It encourages them to carry out investments and innovations and, at the same time, it also serves as strength, because it puts pressure in terms of reducing prices. In order to perform this function and to be more effective, competition needs manufacturers and firms, who are independent from each other and each subject should exercise competitive pressure to the other. Agreements have positive and negative consequences. Among the negative consequences we mention the exclusion of other competitors by means of arising barriers to access, weakening of competition between different brands, increasing the possibility to enter agreements between competitors and reduction of competition between distributors of the same brand. On the other side, an agreement may also have positive effects, such as facilitating the access into a new market, promotion and encouragement of sellers towards new investments in equipment and new technology, etc.

In the European Community Treaty there are two rules which prohibit agreements, which are mandatorily to be complied with, so that effective competition is assured.

- First of all, agreements between two or more enterprises which restrict competition are prohibited under Article 81 of the Treaty. This condition involves a diverse range of companies' attitudes. The most obvious example that contradicts with Article 81 is the cartel among Competitors (which may involve price fixing or market sharing).

³ Hohn Vickers, "Competition is everything", *The Economist*, 6-12 December 2003, page 74

- Secondly, enterprises that are in dominant market position should not abuse with such dominant position, a prohibition which is anticipated in Article 82 of the European Community Treaty). This could be the case of pricing in order to eliminate competitors in the market.

Article 4 of the Law “On protection of Competition” defines the cases when an agreement is considered prohibited. “Prohibited are all the agreements which have as their object or consequence the prevention, limitation and distortion of competition in the market, in particular the agreements which:

- appoint directly or indirectly the prices of purchase or sale, or any other trading conditions;
- limit or control production, markets, technical development or investments;
- share markets or sources of supply;
- in trade relations with other parties, apply different conditions for equivalent transactions, thereby placing them at a competitive disadvantageous condition;
- condition entering into contracts upon acceptance by the other contracting parties of supplementary obligations which, by their nature or by their commercial use, have no connection with the subject of such contracts.

Referring to the above definition, within the concept of “agreement” are also included concerted practices. Concerted practices within the meaning of the Law no. 9121 dated 28.07.2003 “On Protection of Competition”, are a form of coordination between enterprises which without reaching the stage of conducting a proper agreement, knowingly substitute practical coordination to the detriment of competition. Thus, due to its nature, a concerted practice arises from a coordination that becomes apparent from the behavior of participants. A concerted practice can be accomplished through direct or indirect contacts between companies, whose goal or outcome is to influence the market behavior or give information to competitors about future actions. In such a case followed up by the Competition Authority, in a case investigated in the production market and wheat trading, it proved that among subjects operating in this market direct contacts had taken place by exchanging information on imports, quantity, price, value, customs fees, VAT, customs payments, customs clearance costs etc., and later on the same prices and prices with the same change trend were applied. For enterprises which have a major influence in the indicators of market concentration for “A” and “B” wheat import, it was rated the Herfindal-Hirschman Index (HHI), which is an indicator of market power assessment, but also an important factor to assess the impact of enterprise collaboration in the market. The Competition Authority in this case concluded that despite the causes that have affected pricing, *their fixing* constitutes violation of Law No. 9121, dated 28.07.2003 “On Protection of Competition”. Two competitive enterprises, regardless of changes in world markets,

have different capacities, different sources of supply, different structure, different costs, etc., and thus they should have had pricing policies in a different way. It was also proved that these enterprises, due to mutual communication had shared the sources of supply, besides the fact that they had had, for the same period, the same prices and the same trends regarding the change in price.⁴

As we cited above, cartels are generally harmful for consumers and for the whole society, due to the fact that the enterprises participating in a cartel set higher prices (obtaining in this way even greater benefits) than in a competitive market. The term cartel or “cartel activity” is used for agreements between enterprises, decisions by associations of enterprises or coordination practices that violate the law and include: price fixing, limitation of production or set of quotas, as well as market sharing. But, on the other hand an agreement between enterprises operating at a market level or in different market levels, may allow them to create new and more efficient products or to reduce production or distribution costs. Through their increased efficiency, the market becomes more competitive and thus consumers benefit high quality products and good prices. However, in practice these agreements may cause reduction of competition in the market because enterprises themselves do not act independently. All such attitude is obviously associated with harm to the interests of consumers translated into higher prices, reduced choices and fewer developments.

At present, in the conditions of increased competition in the single European and globalization in general, there are several factors that cause companies to join forces and increase their economic power. And, certainly, these re-organizations are welcome in cases they exhibit increased competition in European industries, because they should also bring the improvement of conditions, increase of living standards in the European Union countries and beyond. As we cited above, price fixing is a classic element to all cases of cartels. By means of such behavior competitors try to avoid price competition between them to the detriment of the consumer, by applying higher prices. This may happen at horizontal level, but also at vertical level. At this level, the price-fixing mode occurs when a service provider or manufacturer tries to force the distributor to apply a given price for its products. All such attitude constitutes illegality and it is involved in the most serious violations made to competition. Enterprises, which motivate a secret agreement, above all, are present in retail markets, for the products in the area of services, where companies generally compete more on the basis of price rather than quality. As a result of such attitude, consumers are obliged to pay prices that are higher than the competitive level. Specifically, these horizontal agreements, which cannot be justified with benefits and economic efficiency, must necessarily be stopped. However, in cases where an agreement brings economic benefits in terms of improving the production or distribution of products and

⁴ Decision No. 125, dated 08.10.2009 of the Competition Authority Commission on “Imposition of penalties to enterprises “A” and “B” definition of competition in the market of wheat import and production, sale of wheat for bread production”.

furthermore the promotion of technological and economic development, thereby to the benefit of consumers as well, it may be excluded from the ban, but always on a case-by-case assessment of the fact that such attitude should never produce restrictions in the activity of enterprises participating in the agreement, and not arise restrictions in a sensible way for the competition. In addition, exemption from prohibition may be benefitted by those agreements, whose participants do not exceed 10% of the relevant market, where participants are actual or potential competitors, or 15% of the relevant market, where participants are not actual or potential competitors.⁵ And this occurs for the simple reason of not enabling the establishment or strengthening of a dominant position, which would bring other more severe harms to competition. In our country with the transition from centralized economy to market economy, a series of structural reforms were undertaken in order to shift toward a market economy, which means the independence of economic agents, their ability to decide independently on their activities. Definitely, the legal basis would reflect these changes and it is still in this long progress path. The approach of the Albanian legislation of competition with the Community one is currently extended to all the elements of the *Acquis Communautaire*. This has led the whole legal framework upon which the Albanian Competition Authority operates, be in full compliance with the legal acts of the EU. Moreover, any domestic legal act which is drafted for the needs of domestic law on competition always refers to its analogue in the EU. For this reason it should be noted that the assessment of competition restrictions by the Competition Authority, is always oriented towards the best European practices. However, on the other side, if the competition policy towards horizontal agreements which fix prices should be the same with the policy followed up at international level, the analysis of competition restrictions and the balance of negative consequences and positive consequences, must necessarily take into account the characteristics of small economies, such as the Albanian market. In order to determine if we are in front of an agreement or not, some specific indicators should be evaluated, whose analysis would give us a complete picture and would determine case by case whether we are before an agreement between enterprises or not, whose existence shows signs of restriction or prevention of competition. For such an assessment, the analysis starts with the stipulation of the relevant market in which it is suspected that there is an agreement, revealing all market structure, which enables the analysis of market shares occupying respectively the participating enterprises in an alleged agreement. Meanwhile, the assessment of HHI index provides us information about the concentration of the relevant market which is being analyzed.⁶ Another indicator that should be considered is the existence of barriers on the access into the relevant market and opportunities for new entries of other operators. This term means the various difficulties faced by enterprises to enter a particular market. Factors that lead to barriers on access vary from one market to

⁵ Law No. 9121, dated 28.07.2003 "On the protection of Competition", Article 7 with further amendments.

⁶ HHI < 1000 – not concentrated, 1000 < HHI < 1800- moderately concentrated, HHI > 1800- much concentrated

another. In this regard, barriers to access may constitute technical barriers, unrecoverable costs, power and size of an enterprise, franchises, industrial property ownership, etc. However, in each case the barriers to access are associated with the advantages of having an existing firm against other companies entering the market recently. These advantages enable existing companies to profit above the level of competition and at the same time discourage the entry of new companies, which have to deal with the “strongest” and “oldest”. But if the new entries will be associated with reliefs and will be immediate and without cost, of course, the situation would be different because the market price would not fluctuate but would remain stable in the worst case and in the best case it would decrease, which would bring a normal competitiveness situation. Another barrier that might exist is the legal barrier. This is because the various economic operators in order to provide a new entry must meet all the legal criteria that are deemed necessary to be met in advance. For this reason it is necessary to comply with the principle of non-discrimination and equality. In reviewing the case for a possible agreement between the entities that operate in a particular market in vertical or horizontal level, the analysis of the attitude of participating enterprises plays an important role in an alleged agreement. Even in this case the agreement is alleged to exist until direct or indirect evidence is found so as to prove the alleged breach. A case observed and investigated by the Competition Authority is the procurement market of new vehicles and specifically the case of an agreement on bids among enterprises which participate in the public procurement of new machines. Procurement of goods and services occupy a significant place in relation to GDP, not only in our country. The world average of public procurement is estimated to be 15% in relation to GDP⁷. In some OECD countries the expenses on public procurement go up to 20%. The main objective of an effective procurement is to bring efficiency which means that suppliers are offering lower prices, better quality or better value for money, releasing public funds in other services. Agreements on bids or (prohibited agreements in tenders) occur when enterprises which are expected to compete, secretly conspire to raise prices and reduce the quality of products or services to the purchaser, which will provide products or services through the tender process. Public and private organizations often rely on a competitive bidding process to achieve “best value for money”. The process of competition may bring lower prices or better quality and innovation only when companies actually compete. Arrangements in bids are prohibited practices in all participating countries of the OECD and they may be investigated and sanctioned by law and the rules of competition. The analysis of several factors repeatedly present in public procurement helps and arises doubts about the existence of agreements in bids, i.e. in the public procurement market, a minimum number of tenderers usually participate and there are generally the same participants. Being a few bidders, the possibility of an agreement is greater.

⁷ OECD Source 2008 Fighting cartels in public procurement

Furthermore, other attitudes are analyzed, i.e. repeated bidding. Given that procurement procedures are often cancelled and repeated by the Contracting Authorities due to lack of competition or different causes, this enables that those few bidders in this market, being involved repeatedly in the same tenders, may communicate and resolve some issues in advance to avoid recurrence of similar situations (i.e. cancellation of the tender, etc.), reaching a potential agreement. All we mentioned above may be only signals, which can transmit only reasonable suspicions but no proofs. To reach the certification of an alleged agreement there must necessarily be found signs of communication between bidders.⁸ Given that the entities operating in this market know each other, it adds the possibility, as quoted above, to discuss related to procurement bids informally as well. In addition, during the procurement procedures it may be observed the ways how bids are repeated, starting with the way of subjects' formatting, which almost always it is repeated the same pattern of competing firms. In the case of the existence of a prohibited agreement between several firms in public procurement (but not necessarily in the case investigated by the Competition Authority), it may occur that bid levels change only when a new bidder submits another bid. Meanwhile, when the bidders are within the group, the presented bids are higher and relatively low when there is entry outside the group. Obviously during the full and comprehensive investigation of a secret agreement, it is important to identify the enterprise behavior after completing a procurement procedure (in the case we have taken as an illustration example). In this regard, the Competition Authority has discovered what happens with the relationship between bidders after the announcement of the winning bid. Hence, it was observed that once the winning bid is announced, the winning bidders are supplied by non-winning bidders, or non-participants in tenders. Such behavior generates doubts that the competing subjects that may have agreed previously to what will happen after the end of a tendering procedure. All such doubts should be followed by the entire discovery of the whole attitude. Herein there may be observed the documents that the parties submit to the competition. In this regard there may be found similar signs in the documents submitted by different bidders, with many similar features, such as the same spelling mistakes; the same handwriting; the same words used; consecutive serial numbers, etc. Covered bids are intended to give the impression of a fair offer and honest competition. A common objective of bid agreements offer is to increase the amount of the winning bid and at the same time it increases the amount that the bid winner will receive.⁹ All forms of Bid-rigging schemes have one thing in common: an agreement

⁸ Cited directly from the Report of In-Depth Investigation in the Market of New Vehicle Procurements by the Competition Authority. Look for any relationships among the bidders after the successful bid is announced. In some cases, bidders may attempt split the extra profit that is earned through bid rigging. This is especially true if one large contract is involved. Sometimes the winning firm may pay the other bidders directly; however, the 'profit split' can also be passed on through lucrative sub-contracts to do some of the work or to supply inputs to the project. Joint bids can also be used as a way to split profits.....

⁹ Pg 1 A common objective of a bid-rigging conspiracy is to increase the amount of the winning bid and thus the amount that the winning bidders will gain.

between some or all of the bidders, which predetermine the winning bidder and limits or eliminates competition between them. This occurs when an individual or firm accepts the agreement to bid higher than the bid of the selected winner. Enterprises under investigation use the scheme of the covered bid through an agreement in advance about the one who will present the winning bid in the procurement process where they will participate, so that the one with the lowest bid be qualified. It is observed that in cases when bidders are only parties doubted to be under a secret agreement, the bids submitted are very close to the limit fund and move very little from each other, realizing the objective of increasing the winning bid, also as the result of the amount that the bid winner will receive. Meanwhile it is easily observed a reduction of the bid in relation to limit fund, when other firms outside the group of agreement enter into. In conclusion, enterprises, which were under investigation by the Competition Authority, applying the scheme of covered bid in tenders or lots where new participants join, the winning bid and the bidding companies under investigation, is reduced at 75-89%. In the case investigated it was found that there were alternating bids, as the enterprises with agreements bid by agreeing to submit a higher bid in order to be winners in return. During rotation the rate of the winning bid is generally close to the limit fund and with little change to the competitive bid. It was also noted that there existed subcontracting schemes. Subcontract agreements (according to all European practices) are often part of the Bid-rigging schemes. In a subcontract agreement the competitors agree not to bid or submit a non-winning bid in exchange of subcontracting or supply contracts to the successful bidder or a bidder with the lowest bid agrees to withdraw its winning bid in favor the other following bidder with a lower bid in exchange for a lucrative outsourcing which will share the high amount (the price) won unfairly between them. In this way a subject, which is a potential competitor in the procurement market becomes active in this market through supplying the winning subject with the vehicle subject to procurement vehicle, at a price very close to the limit fund and with little difference from the other bids. Hence, supply is intended for benefit through profit sharing reached by the presentation of the too high winning bids.¹⁰ In this case the Authority found that among firms participating in public procurement of new car trading a prohibited agreement existed, because the subjects had used the subcontracting scheme in the form of the supply contract, as well as maintaining the resale price (RPM). Purchase and delivery of vehicles was made on the same date, which means after the public tender and after the award notification. Meanwhile in addition to these proofs, it was found that many documents submitted by the entities participating in the tender were the same, bearing the same date, with the same spelling mistakes, or names of persons in authorizations, who were employees in several companies simultaneously. Extracts

¹⁰ Decision 154, dated 01.10.2010 of the Competition Authority Commission "On stopping the agreement between the enterprises "C", "H", "N" and "U M", and imposition of penalties to them for limitation of competition in the market of new vehicle procurement".

of the Trade Registration for Subjects' data had the same common signs, which cast doubts that all documentation was prepared and completed by the same employees. This fact is quite compromising, because it is presumed that the parties are independent from each other, they are potential competitors in the same market and the trade secret is one of the tools that may provide information privacy and guarantee winning as subjects claim. Similar signs in the documents discovered by the Competition Authority in this case were numerous, in almost all of the documents submitted, a fact that rules out coincidence/chance. All these signs and numerous errors identified during the review of bids submitted at various procurements by the companies under investigation, led the Authority to the conclusion that the preparation of bids for participation in public procurement has been made by a number of common employees, who work closely with each other, a characteristic of bid. All the above findings prove a horizontal agreement on public procurement market of new vehicles between enterprises, participating subjects in these tenders. Article 4, paragraph 1 of 9121 states: "prohibited are all the agreements, whose object or consequence is the prevention, restriction or distortion of competition in the market. Agreements on bids (Bid-rigging) are one of the types of arrangements whose object or effect is the restriction of competition in the market by coordinating their actions in the preparation and submission of bids, in order to participate effectively in procurement and increase of profits.

Another case which is followed by the Competition Authority is the market production and trading of bread in the city of Vlora. In this case it was found that increasing the price of bread in the city of Vlora has been made abruptly, after a meeting of about 41 producers and traders of bread in the city of Vlora. Bread manufacturers in Vlora had gathered to decide on the price of bread trading, a fact which was proved by the minutes collected during the investigation process. At this meeting, bread manufacturers Vlora decided to increase the price of 900 gr massive bread to 120 leks and 450gr massive bread to 60 ALL. After the meeting in the city bakeries the following announcement was distributed: "The Association of bakeries Vlora decided on 21.03.2011 that bread on the date of 23.03.2011 shall have the price of 900 gr = 120 ALL and 450 gr = 60 ALL". Referring to the above, it resulted that bread manufacturers had fixed the selling price of the product massive bread 900gr, 450 gr. Based on Article 4, paragraph 1, letter (a) of Law 9121, dated 23.07.2003, "On protection of competition", this behavior might constitute a restriction or distortion of the competition in the market, stipulating directly the selling prices of bread. For this reason, the Competition Authority regarding the attitude of enterprises in the market, analyzed the trading prices of bread to verify the implementation of a prohibited agreement between subjects operating in the same market segment. From the investigation conducted, during which it was verified and proved by tax coupons, that the price of massive bread trading by enterprises under investigation, specifically 20 bread manufacturers in the city of Vlora, had increased

the price by applying the same price as they agreed in the meeting organized several days before. Referring to the above, bread manufacturers had directly stipulated the selling price of massive bread product. Such increase in price by 20% is considered with negative consequences for the final consumer. The Competition Commission found that this agreement for the price increase and price fixing of massive bread trading, made by companies under investigation operating in production market and trading market of bread in Vlora constitutes a serious violation of the Law "On the Protection of Competition", as this agreement restricts competition in this market. Given that for any investigation conducted, the issue is evaluated case by case because it is not only specific but also very complex. By reviewing the significance of the violation and the consequences generated from it, the Competition Commission in the assessment of such breach takes into account several mitigating circumstances (or aggravating if any) such as: the short duration of the infringement, the cooperation of the parties under investigation with the Competition Authority during the procedure, the immediate reaction of the subjects by reducing the price of massive bread trading, following the decision of the Competition Commission for interim measures, a high degree of informality that is expressed in the existence of unlicensed businesses and failure to report accurate tax invoices, the lack of balance sheets for many subjects under investigation, problems, which are still present in our market and which must be considered in every decision taken, where ultimately the goal is to increase awareness of culture and of all subjects for an effective competition, out of which everyone will benefit, the subjects themselves but also the consumers.

In these conditions the use of the advocacy instrument through investigative procedures, organization of the hearing and decisions on interim measures which prevent the violation until final adjudication of the case, together with the imposition of penalties (fines)¹¹ enable full implementation of the law "On protection of competition" with the ultimate goal of ensuring fair and effective competition in the market.¹²

Generally cartel forms are not legal, for this reason they are top secret and in order to find evidence about cartels is too difficult. However the existence fine relief policy encourages the company to make available to the Competition Authorities evidence regarding these cartels, which facilitate the work of the Authority in the discovery and restore of the competitive level in the market. In this way the first company, which offers and provides such evidence, will facilitate its position towards others and therefore it will not be penalized, stimulating its active role in the discovery of

¹¹ Law No. 9121, dated 28.07.2003, "On the protection of Competition" with further amendments in Article 73 determined the amount of penalty for small breaches and in Article 74 determined the amount of penalty for serious breaches.

¹² Referring to the Decision No. 202, dated 26.09.2011 of the Competition Authority Commission "On the imposition of penalties of enterprises participating in the forbidden agreement in the market of bread production and trading in the city of Vlora, as well as in the provision of several recommendation for the General Taxation Directorate".

a cartel. This is actually the best way, which leads to the discovery and destruction of the cartel. Such a policy has been successful in the European Union and in our country no such precedents have been established due to business mentality and lack of awareness. European practice has shown us that many cartels have been discovered by the European Commission as one of the members participating in the cartel has proved detrimental to them and has applied for penalty relief program, enabling and facilitating the work of the European Commission in order to undertake investigations for their detection. By ensuring proper application of the rules of the competitive game and competitive policy, the customers, manufacturers benefit, but the state as well because through increased commercial activity it will be provided better employment, increase of tax revenues, drafting of state social programs and in turn it will be ensured the improvement of export potential from industry and trade. In any case it should be the free market, which shall dictate and choose the best and most capable companies, which would afford a fair competition. In order to integrate into the European space, it is required to have a "competitive internal market". For this reason special importance is given to national competition policy, as a very strong direction towards price fixing, market sharing cartels, abuses with dominant position and anti-competitive concentration. And, definitely, in order to establish free and fair competition in the Albanian market, the Albanian State is committed to implement the obligations laid down in Articles 27, 38 and 39 of the Interim Agreement and Articles 40, 70, 71 and 72 of the SAA, because this is the only way to achieve the goal of being part of the European Union with equal rights, to be able to face any challenges.

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