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Grounds for Private Enforcement of Albanian Competition Law

by

Ermal Nazifi[*] and Petrina Broka[**]

CONTENTS[***]

Abstract

Infringements of competition law can cause serious harm to both consumers and undertakings. Aside from the development of public enforcement of competition law, much focus has been placed in recent years in the European Union on private competition law enforcement. Lawsuits raised by undertakings that sustained damages from anti-competitive practice concerning the compensation of such damages have historically not been widespread in Europe.
No such cases have been recorded in Albania at all yet, despite the fact that its competition protection legislation has provided this possibility since 1995. The main

[*] LL.M. PhD. Candidate, Attorney at Law; enazifi@gmail.com.
[**] PhD. Lecturer, University of Tirana, Faculty of Law; petrinabr@gmail.com.
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causes of the lack of private competition law enforcement in Albania include the absence of judicial practice and doctrinal approaches in this area. Relevant here is also the inability of Albanian businesses and consumers to react to competition protection cases as they still lack competition law knowledge and as a result of the absence of an appropriate legal framework for class actions.
The scope of this article is to analyze the current situation of private competition law enforcement in Albania. The paper emphasizes the current legal framework including existing obstacles to private competition law enforcement and improvements that should be introduced in the context of its competition law, the law of civil procedures and the law of obligations.

Resumé

Les violations du droit de la concurrence peuvent causer un préjudice grave aux consommateurs et aux entreprises. À part du développement de l'application publique du droit de la concurrence, beaucoup d'attention a été consacrée les dernières années à l'application privée du droit de la concurrence dans l'Union européenne. Néanmoins, les actions en indemnisation introduites par les entreprises qui ont subi des dommages résultant de la violation du droit de la concurrence n'étaient pas trop répandues en Europe.
Malgré le fait que depuis 1995 la loi albanaise sur la protection de la concurrence prévoit la possibilité d'introduire les actions en indemnisation par les entreprises qui ont subi des dommages resultant de la violation du droit de la concurrence, aucune de ces actions n'était pas été introduite en Albanie jusqu'à présent. Les raisons principales du non-développement de l'exécution privée du droit de la concurrence en Albanie sont: l'absence de la pratique judiciaire et l'absence de la doctrine juridique dans ce domaine. il faut aussi mentionner sur ce point l'incapacité des entreprises et des consommateurs albanais de répondre aux actions privées ce qui résulte du manque de connaissances en droit de la concurrence et l'absence d'un cadre juridique approprié pour les actions collectives.
Le but de cet article est d'analyser l'état actuel de l'exécution privée du droit de la concurrence en Albanie. L'article met l'accent sur le cadre juridique actuel, y compris les obstacles à l'exécution privée du droit de la concurrence, et propose les améliorations qui devraient être introduites dans le droit de la concurrence, dans la procédure civile et dans le droit des obligations afin de changer cette situation.

Key words: causal link; civil law; damages; fault; private enforcement of competition law.

JEL: K21; K41

I. Introduction

An efficient competition law and policy system is of utmost importance for the economic development of Albania, which is an economy in transition that looks forward to being part of the European Internal Market. Effective competition law application is essential to the establishment of a free and competitive market for undertakings and consumers, which will in turn profit from better products and services, lower prices, innovation, etc. The protection and welfare of consumers is one of the most important goals of competition law (Cengiz, 2010, p. 49; Hutchings and Wheeelan, 2006). Competition law and policy is thus of particular importance to the entire Albanian economic system.

For better protection of free and effective competition, it is not sufficient however to have well-crafted legislation in line with the developments of *acquis communautaire* – the most important issue here is the correct and efficient application of that law in practice. In this context, the application of competition law can be done either through public enforcement or through its private enforcement. While the former can be considered to be on the right track in Albania (UNCTAD, 2015, p. 26), no cases of private enforcement of competition law have been recorded yet. An increase in awareness is thus essential in this context for all stakeholders: consumers, lawyers, judges and policy-makers in Albania. They should be informed of the advantages of private competition law enforcement alongside of those of its public enforcement.

In the Albanian competition law system, public enforcement takes place through an intervention of the Albanian Competition Authority. By contrast, private enforcement of competition law can be performed directly by those who have suffered damages from an anti-competitive practice. In this case, the injured party has the right to demand not only the prohibition of the anti-competitive practices, but also demand compensation for the damage caused by that practice before a court. Such a right was first recognized in Article 62 of the Law on Competition of 1995[1] (Albania's first law in the field of competition protection), now abolished by the current Law on Competition Protection of 2004 (hereafter, ACPL). However, despite the fact that such a possibility is legally in operation for more than 20 years, there has never been a private enforcement case in Albania.

[1] Law No. 8044 of 22 December 1995 on competition (Official Journal no. 27, p. 1153).

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II. Private enforcement of competition law

1. Introductory remarks

According to the provisions of the Albanian Civil Code, those injured by an anti-competitive practice in order to be successful in raising before a court an action for damages deriving from an anti-competitive practice must cumulatively prove that:

1. There has been an illegal act (in the form of a prohibited agreement or an abuse of a dominant position)
2. The claimant has suffered damages,
3. There has a been fault[2] and
4. There is a causal link between them[3].

It is not easy to offer convincing evidence that these conditions were met in competition law cases. A thorough analysis is needed from the parties and from the courts.

2. The 'illegal act'

Restriction, distortion or obstruction of competition can occur through an agreement prohibited by Article 4 ACPL or through an abuse of a dominant position performed by one or more undertakings, prohibited by Article 9 ACPL. The prohibition of anti-competitive agreements is a key priority of competition law enforcement policies worldwide seeing as they undermine social welfare, create inefficiencies and shift benefits from consumers to the participants of the agreements.

Article 4(1) ACPL[4] lists a number of agreements considered especially dangerous for free and effective competition. Some of them can be considered "hardcore" cartels, especially price-fixing and market sharing agreements. However, this is not an exhaustive list as it is impossible to anticipate all agreements that may restrict, impede or distort competition. Such definition would potentially limit possible anti-competitive agreements from being stopped by the competition authority or courts. In so doing, the Albanian legislator gives a broad definition of the notion of prohibited agreements in

[2] Article 608 of the Civil Code of the Republic of Albania, states that: 'The person who illegally and due to his fault, causes damage to another person or to his property, is obliged to compensate the damage caused.'

[3] Article 609 of the Civil Code of the Republic of Albania states that: 'The damage must be an immediate and direct consequence of a person's action or failure to act.'

[4] Section 4(1) of the ACPL.

line with the definition given in Article 101 TFEU. The applicable definition corresponds also to the general attitude of modern legislators to avoid defining every detail, or giving exhaustive lists, a fact that can easily be turned into an obstacle for the implementation of the law.

Another illegal behavior to be considered in the framework of private competition law enforcement in Albania is the abuse of dominance[5] by a particular enterprise, or several undertakings jointly (joint dominance). Such practice can be very harmful to competition. Dominant companies may have the ability to raise prices above competitive levels, reduce the quality of products while still being able to secure profits, exclude competitors from the markets, etc. It should be emphasized that according to Albanian legislation, a dominant position is not prohibited *per se* – what is prohibited is its abuse[6].

Dominant companies have a special responsibility, because of their ability to disrupt free and effective competition, to consider the interests of competitors, suppliers, customers and clients. For this reason, in Article 9 ACPL as well as Article 673 of the Albanian Civil Code, undertakings with a dominant position are deprived of the right to behave in a certain way, which for non-dominant companies can be considered a normal market behavior (Gal, 2003)[7].

Dominance, especially in small markets like Albania, is often the result of legitimate competitive behavior[8]. However, it is not relevant how dominance was created if one abuses such position. What is prohibited by competition law is the intentional abuse of a dominant position in order to harm competitors and/or clients in its different forms (exclusionary or exploitative abuse).

3. Damage caused by an anticompetitive practice

The assessment and evaluation of damages suffered from an anti-competitive practice may be a major problem for private competition law enforcement. According to Albanian legislation, an injured person can submit a claim for the compensation of the actual damage, loss of profits as well as interest[9].

[5] See in general, Chapter II of the law No. 9121 of 28 July 2003 on competition protection.

[6] Article 9 of the law No. 9121.

[7] Article 673 of the Civil Code of the Republic of Albania states that: 'An enterprise that has a dominant position in the market is obliged to contract with anyone who seeks a contract within its field of activity, according to the laws and commercial customs.' Hence, a dominance company cannot refuse to deal without a legal reason.

[8] Small economies are often characterized from an oligopolistic market structure which affects the implementation of competition law.

[9] Article 640 of the Civil Code of the Republic of Albania, states that: 'Compensation for property damage consists of the damage that has been caused and the expected profit. The expenses done reasonably to avoid or reduce the damage are compensated, as are those

This approach is in line with the approach of the European Court of Justice in the *Manfredi* judgment[10]. Importantly, the jurisprudence of the CJ is not only important for the interpretation of the law from a theoretical point of view (that is, by academics and legal practitioners). In practice, the Stabilization and Association Agreement between Albania and the EU[11], provides also that in the field of competition, interpreting mechanisms of the European Treaties (Borchardt, 2010, p. 70)[12] should be used for the interpretation of this agreement despite the fact that Albania is not actually a member of the European Union.

While in general the legal framework and practice is somewhat clearer for *damnum emergens* and *lucrum cessans*, the Albanian legal framework needs to be clarified when it comes to the question how to set interest rates. In practice, this issue is determined by economic experts assigned by the judge in such cases. The Albanian Civil Code provides that the interest rate should be specified by the law[13], yet such law has not been enacted despite the fact that the Civil Code has been in operation since 1994.

In practice, plaintiffs are not always able to prove the exact amount of the damage sustained and/or the causal link between the unlawful conduct and the alleged damage because of problems in determining whether the damage and the losses came from the alleged anti-competitive practices or other factors (such as lack of resources, miss-management, etc.) (Oxera, 2009, p. 6).

Currently there are no guidelines or professional recommendations on how to calculate damages in competition law cases. The Albanian Competition Authority can, and should provide a positive contribution in this field by issuing a specific guideline on the calculation of damages in the framework of public enforcement. Such soft law could be used, *mutatis mutandis,* by analogy in private enforcement cases also. Albanian competition law stipulates that its Competition Authority shall calculate the fine based on the illegal gains of the undertaking concerned[14]. A guideline on how to calculate illegal gains could serve as a basis for the approximation of the EU guidelines in this

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necessary to define the liability and the amount of damage and the reasonable expenses done in order to obtain compensation through extra-judiciary ways.'

[10] The court noted that: 'the damage award includes not only effective damage *(damnum emergens)*, but also loss of profit *(lucrum cessans)* and related interests' – C-295/04 to C-298/04 *Vincenzo Manfredi and others v. Lloyd AdriaticoAssicurazioniSpA and others*, ECLI:EU:C:2006:461, para. 95.

[11] According to the Article 71/2 of the Stabilization and Association Agreement between Albania and the EU, any practices contrary to this article shall be assessed on the basis of criteria arising from the application of the competition rules applicable in the Community, and interpretative instruments adopted by the Community institutions.

[12] The interpretation of EU law is one of the key work areas of the Court of Justice.

[13] Article 450 of the Albanian Civil Code.

[14] Article 75 of the Albanian Competition Law.

field[15] that can be used by the court and the court experts on the quantification of the harm.

4. Causal link and fault

For the emergence of civil liability for the compensation of damages arising from an anti-competitive practice it is necessary to establish a causal link between the damages and the offender's fault. Albanian legislation on the requirement of fault is in line with that of the EU by presuming the existence of fault. It leaves the burden of proving that the damage has occurred without the fault to the defendant, and therefore that the defendant is not responsible for its compensation, to the defendant himself[16]. Such approach is in favour of the development of private competition law enforcement because the plaintiff is not charged with the burden of proving fault on the side of the defendant, which might be extremely difficult.

In the framework of an action for damages arising from an anti-competitive behavior, it must be established however what practice has caused the damages, as well as if the damage was caused by such practice. The fact must be acknowledged that the mere existence of an anti-competitive practice does not, automatically, mean that damages were caused by it. Indeed, damages can be caused by other reasons rather than as a consequence of the anticompetitive practice. It is important to note that the determination of a causal link between the anti-competitive practice and its effect is relevant also for the method used to calculate the amount of the damage, from the appropriate economic expert and quality of data used (Fummagalli, Padilla, and Polo, 2010).

However, finding a causal link is difficult in practice and still poses problems, which theoretically has not been solved yet (Muskaj, 2013). Contrasting opinions are presented regarding this issue (Muskaj, 2013). In fact, there is no precise scientific definition of a causal link, thus living its assessment to the practical experiences and evaluation of the courts (Muskaj, 2013). Individual competitors are likely to be among those most interested to lodge an action for damages[17]. The existing 'material' legal framework is certainly not making things easier for them.

[15] See in general the Practical Guide: Quantifying harm in actions for damages based on breaches of Article 101 or 102 of the treaty on the functioning of the European Union accompanying the communication from the Commission on quantifying harm in actions for damages based on breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union {C(2013) 3440}.

[16] Article 608(2) of the Civil Code states that: 'The person who has caused the damage is not liable if he proves that he is not at fault'. Therefore the burden of proof lies on the defendant.

[17] C-453/99 *Courage Ltd v Bernard Crehan and Bernard Crehan v. Courage Ltd and Others*, ECLI:EU:C:2001:181.

5. Procedural aspects

The lack of damages action cases arising from anti-competitive practices in Albania is mainly caused by problems or deficiencies in its procedural rather than material law, seeing that several procedural tools that could facilitate this process are absent from the Albanian legal system.

One of the most important roots of the lack of private enforcement in Albania is that is has no legal mechanisms for collective redress for damages suffered from anti-competitive practices. Most of the victims of anti-competitive practices are consumers. Consumers cannot 'pass-on' the damages that they have sustained from competition law violations because they are already at the very 'bottom' of the purchasing chain, and yet they rarely have the interest and the ability to sue the offenders individually. In truth, consumers are often even unaware of the damage that they may have suffered from an anti-competitive practice – they may face difficulties in identifying the harm suffered. Alternatively, they may know about the harm, but might not take the initiative to seek appropriate redress since the value of the damage in question is so small that it does not justify the efforts of court litigation for seeking compensation. Therefore, by assessing the costs and benefits of an action for damages suffered as a result of an anti-competitive practice, most consumers will conclude that the costs of seeking compensation are higher than its benefits (Dayagi-Epstein, 2007).

In such cases, companies involved in an anti-competitive practice causing large cumulative damages to many consumers gain large profits from the implementation of such a violation, while many individual consumers suffer small individual damages. Potential competition law infringers might thus see the unlikelihood of being held liable by individual consumers as a reason for engaging in a business strategy involving an anti-competitive practice.

For these reasons, it is necessary to provide as many collective redress mechanisms for damages as possible, in order to make up for their deficiencies and difficulties. Such collective redress mechanisms, called 'complex claims' (Broka, 2013), may include public interest lawsuits, collective actions under the 'opt in' model , or class claims under the 'opt out' model, as well as any other 'hybrid model' that bears such overlapping features (Ashurst, 2004). If consumers have varied possibilities to combine their claims for compensation, they would find it easier to demand compensation for damages suffered from anti-competitive behaviors, even if each of their individual loss was very small. This possibility would not only be a great tool to ensure compensation for damages actually sustained, but it would also serve as a strong deterrent against companies getting involved in anti-competitive behaviors (Lande and Davis, 2008).

The current Albanian legal system offers some collective redress possibilities. First, the Albanian Code of Civil Procedure makes it possible for a person to raise an action to protect a right of a third party if it is so explicitly allowed by the law[18]. However, such a possibility is not recognized by the ACPL. According to Article 65 ACPL, only those actually injured by an anti-competitive practice can turn to the courts with an action for damages.

Second, Article 161 of the Albanian Code of Civil Procedure speaks of the possibility of co-litigation (*litis consortium*)[19]. Two types of co-litigation are provided – facultative and obligatory[20]. In the case of facultative co-litigation, each party acts independently and therefore there is no gain or harm caused to other co-litigators[21]. In the case of obligatory co-litigation, the decision of the court and the actions of co-litigators affects the other parties[22]. Yet such obligatory co-litigation is allowed only when it so provided by the law, or on the basis of the nature of a relevant legal relationship such as obligatory co-ownership (condominium). In cases of damages suffered from anti-competitive behavior, it would be very difficult to convince the court that it is a case of obligatory co-litigation without having a special law stating so. The complete absence of such cases supports this conclusion.

Third, an example of representative actions to protect collective interests is foreseen in Albanian Consumer Protection Law[23]. According to its Article 54, consumer associations may address the court if consumer rights are breached. Yet the right of consumers to competition protection is not expressly recognized. However, given the importance of competition to consumers, it can be implied that free and effective competition is a pre-requisite for the enjoyment of consumer rights specifically mentioned in the Consumer Protection Law. Albanian Consumer Protection Law serves as a law that sets minimal standards to be met (*lex generalis*). It does not exempt the relations between consumers and traders regulated with other specific laws that offer higher standards of protection (*lex specialis*)[24].

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[18] Article 95 of Albanian Code of Civil Procedure, emphasis added.

[19] Article 161 of the Albanian Civil procedure code states that 'Actions may be taken jointly by many plaintiffs or against many defendants if: (a) they have common rights or obligations on the subject of the claim; (b) the rights and obligations in terms of fact or of law have the same basis'.

[20] See Article 162 of the Albanian Code of Civil Procedure.

[21] Article 162(1) of the Albanian Code of Civil Procedure.

[22] Article 162(2) of the Albanian Code of Civil Procedure.

[23] Law No. 9902 of 17 April 2008 on consumer protection, Fletore Zyrtare (Official Gazette) No. 61, p. 2703.

[24] See: Article 1 of the Law No. 10 444 of 14 July 2011 on some amendments and additions of the Law No. 9902 of 17 April 2008 on consumer protection.

The ACPL can be considered one of these specific laws (*lex specilis*). Hence, consumer law will be applied for customers affected by an anti-competitive practice, depending on whether the provisions of the ACPL offer better protection of consumer rights. Therefore, there might be some room for collective redress by consumer associations for the protection of consumers through a representative action under the current legal system in Albania. However, these rules are not clear enough to assure standing for consumer associations.

It should be noted, however, that under current legal provisions, consumer associations may address the court, through a representative action, only to request the cessation of a violation of consumer rights by a company – they do not have a right guarantying a claim for damages compensation. Therefore, there is no clear mechanism in place that enables collective redress for seeking damages for breaches of competition law based on Albanian Consumer Protection Law. For a more efficient application of competition law in Albania, this possibility should be, as soon as possible, clearly granted to consumer associations. They should not only be able to ask for the cessation of an anti-competitive behavior, but also to seek compensation for damages suffered by consumers. By doing so, the impact of actions for the protection of consumer rights will increase – they will assure better consumer protection as well as greater deterrence.

Even in the EU, associations representing consumer rights have played a very limited role in enforcing competition law in general and Article 102 TFEU in particular (Chacafeiro, 2008). Enforcement practice from different EU Member States shows that representative claims from consumer associations achieve only partial success. It is noticeable that although several EU countries provide such possibility, consumer associations are reluctant to file lawsuits against competition breaches because they are financially unable to fund such claims, or to pay their legal costs in the event of an unsuccessful outcome of the case (Hodges, 2007).

However, the Albanian lawmakers can benefit from both the positive and the negative experiences of EU Member States when it comes to collective actions and take the necessary measures to overcome the identified difficulties. Albania should transpose the recommendation on collective redress mechanisms[25]. The main goal of this initiative is to facilitate access to justice, to prevent illegal practices and to compensate injured parties in a situation of collective damages caused by the violation of rights recognized in the EU, as well as to provide appropriate procedural tools to avoid abusive litigation[26].

Nevertheless, the fact should be highlighted that consumers are not the only injured group that should be encouraged to file damages claims – so should

[25] Commission Recommendation 2013/396/EU of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law (OJ L 201, 26.07.2013, p. 60).

[26] Para. 1 of the above Recommendation.

businesses. Competitors and direct purchasers, for example, are potential private enforcers also[27]. In fact, businesses might be more inclined and less deterred than consumers to demand compensation for damages caused to them by a rival which has infringed competition rules. And yet Albania has not seen a single such case so far. The introduction of a mechanism to incentivize private enforcement especially by small businesses (EC, 2014)[28] should be considered. One possible measure that would help businesses engage in private competition law enforcement could be the provision of special rules for facilitating representative action by business associations.

Considering that Albania is a country where private competition law enforcement is totally undeveloped, it is necessary that its legislation foresees as wide a range of 'complex' civil law claims as possible, in order to provide better protection for victims of anticompetitive practices. This will facilitate access to justice for parties that have been damaged by such practices. It will also serve as deterrent to prevent anti-competitive practices in the future, improve judicial economy and assures more uniformity in judicial practice. But all this must be done through a qualitative legal reform, providing appropriate procedural means, well designed and well thought through, in order to avoid possible rights' abuses.

6. Missed opportunities for the development of private enforcement in Albania

6.1. Ease of proving the anti-competitiveness of 'naive' cartels

One of the main known obstacles for the development of private competition law enforcement is information asymmetry between the plaintiff and the defendant (Siraguza and D'Ostuni, 2006). In an action for damages caused by an anti-competitive practice, parties do not have the same position or opportunities when it comes to access to the evidence necessary to prove the anti-competitive practice. It is a widely accepted fact that the difficulty plaintiffs face in order to get all the evidence they need constitutes one of the fundamental obstacles for actions for the compensation of damages arising from competition law violations in many EU Member States.[29] It is likely to be one of the main reasons for the lack of such actions in Albania also.

[27] See for example C-453/99 *Courage v. Crehan*.

[28] SMEs in Albania account for 81% of employment (EU average: 67%) and generate about 70% of added value (EU average: 58%).

[29] See Chapter II of the Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ L 349/1).

The enforcement practice of developed countries shows that finding relevant evidences is especially difficult when it comes to anti-competitive agreements. Usually, parties involved in such practice do their very best to conduct such practices in great secrecy. They do so not only to avoid legal liability, but also to deceive consumers who fail to realize that they are being overcharged. Yet secrecy is ensured only when offenders have a high level of competition law awareness and knowledge, which makes them more careful in the implementation of their anti-competitive practices.

In countries where competition law is still under development, prohibited agreements may sometimes be carried out 'in the open' simply as a result of legal ignorance. Such agreements are known as 'naive cartels' – their participants not only fail to conceal the prohibited practice, they go so far as to announce it in the media (Nazifi, Broka, 2013). The Albanian Competition Authority has identified several such cases notably with respect to agreements intended to increase the price of bread concluded by *Fier*[30], *Korca*[31] and *Vlora*[32]. In all of these cases, the majority of the enterprises operating in the market participated in a meeting where a decision was made to fix the price of bread. The organizers of this meeting made statements to the media announcing the price increase as well as justifying it with wheat price increases on international markets and tax issues.

Another case of a 'naive cartel' was discovered in the market for the production of ready-mixed concrete in the Tirana region[33]. Here, the Concrete Producers Association not only made statements in the media announcing the agreement but even advertised it[34]. Yet despite the fact that the public was fully aware of these agreements, only the Albanian Competition Authority acted against them – no actions for damages were lodged by individual consumers, any of the affected businesses or even by a consumer association. This shows once again that there is an urgent need for the introduction of collective redress mechanisms.

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[30] Albanian Competition Authority decision no. 57 of 1 October 2007 on the prohibition of the agreement in the market of the production of bread in the Fier Circuit.

[31] Albanian Competition Authority decision no. 146 of 17 June 2010 on the closing of the preliminary investigation in the market of the production and sale of bread in the Korca City,

[32] Albanian Competition Authority decision no. 191 of 31 May 2011 on the opening of the in-depth investigation in the market of the production and sale of bread in the Vlora city.

[33] Albanian Competition Authority decision no. 56 on the abolishment of the agreement in the concrete production Market in Tirana Region.

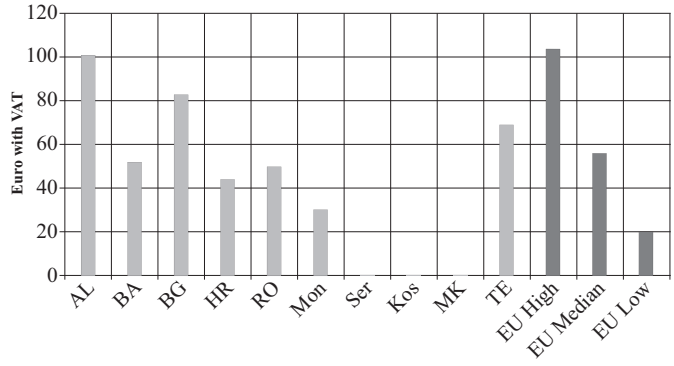
[34] See: *Forumi Shqiptar.* 2006. forumishqiptar.com (accessed December 1, 2012). In the case of the ready mixed concrete cartel, the undertakings were fined on procedural ground for refusing the delivery of information.

6.2. The mobile telephony case

In cases when the damage is caused by an anti-competitive practice in the form of an abuse of a dominant position, the plaintiff has to, first, prove the existence of the dominant position of the undertaking (or undertakings) and then, second, prove that such position was abused. Expert testimony and evidences are key to prove abuse, which largely rely on an economic analysis. Such analysis should thus be performed by economic experts, preferably ones with specific knowledge in the field of competition (industrial economics). Having said that, in the case of follow-on actions the burden of proof is much lighter for the plaintiff since a final decision of the Albanian Competition Authority is considered full evidence for the damages action[35].

In one of the most interesting cases investigated by the Albanian Competition Authority so far, two operators in the national mobile telephony market (AMC sh.a. and Vodafone sh.a.) were fined for an abuse of a dominant position in the mobile market. The Authority found that these companies held a joint dominant position and applied unfair prices. The Authority found that the price paid by Albanian consumers were among the highest in Europe, and the highest in the region of southeastern Europe, which includes countries comparable with Albania. Using Bulgarian prices as comparison (second highest in the region) Albanian customers paid around 20% more. Using the EU median used, Albanian consumers paid around 40% more.

Table 1. Average tariffs for high usage customers of mobile telephony services in Albania and in the countries of the region and European Countries in 2005.



Source: Albanian Competition Authority decision no 59 of 9 November 2007 on the Abuse of dominant position in the Mobile Telecommunications Market by the Albanian Mobile Communication sh.a. and Vodafone Albania sha, p. 20.

[35] See article 254 of the Albanian Civil Procedure Code (law no. 8116 of 29 March 1996 on Code of Civil Procedure), as amended.

This case constitutes a lost opportunity for Albanian consumers to seek compensation for damages suffered from the anti-competitive behavior of these two companies. The fact that they did not know about this possibility, as well as the absence of collective redress mechanisms, are the main reasons that caused it. Bulk users of mobile telephony, such as large companies and the Albanian government, should have started such actions to recover the damages.

6.3 Bid rigging and the Albanian Competition Authority

The Albanian Competition Authority has imposed a fine on 4 distributors of new cars and original spare parts for Volkswagen, Hyundai and Mitsubishi, for rigging a number of bids for the public procurement of new cars by several public bodies in Albania, including the Competition Authority itself. The Albanian government is one of the largest purchasers of new cars in the country since most of the cars sold in Albania are used.

When only the investigated companies took part in the tenders, the final price of the winning bids varied between 95% and 99% of the price cap set for the public procurement procedure. When other companies took part in the tender, the final price of the winning bid varied between 75% and 89% of the available public funding (Broka 2012a; Broka 2012b). The Albanian Competition Authority discovered in its investigation that Albanian public authorities paid an overcharge of between 10%-20%. One of the victims of this cartel was the Competition Authority itself. Unfortunately, none of the victims, not even the Albanian Competition Authority, lodged a damages action to seek compensation for this overcharge.

In a similar case at the EU level, the European Commission started an action for damages against several elevator and escalator companies involved in a price fixing cartel which also victimised EU institutions. The CJ decided in a preliminary ruling that the Charter of Fundamental Rights does not prevent the Commission from bringing an action, on behalf of the EU, before a national court for compensation for loss caused to the EU by an agreement or practice contrary to EU law[36].

III. Conclusions

An effective system for the enforcement of competition law in Albania is very important for the development of its free market economy. It is also one of the conditions for Albania's integration into the EU. Although its national

[36] C-199/11 *Rechtbank van koophandelte Brussel (Belgium),* ECLI: ECLI:EU:C:2012:684.

legal framework is similar to that of developed countries, private enforcement of competition law is still non-existent.

In order to improve this situation, it is important to raise competition law awareness of all stakeholders including businesses, consumers and public institutions that might have been, or can be damaged by an anti-competitive practice. They must be aware of the possibility of private competition law enforcement as well as of the consequences of their failure to react to a competition restriction. Awareness should also be improved among legal professionals such as attorneys and judges.

However, increasing awareness among stakeholders about the importance of competition law will not be enough to develop its private enforcement. A review of several aspects of Albania's substantive and procedural law is also needed in line with the developments of *acquis* as well as that of EU Member States. This way, private enforcement of competition law will have the chance to develop so as to assure compensation for victims of anti-competitive practice but also to deter potential offenders from engaging in such practices in the future.

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