**The Abuse of Relative Market Power in Albania: Current Legal Landscape and Future Prospects**

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# **1. Introduction: Origin and Development of the Rules in Albania**

With the fall of the communist regime, Albania's main objective was to open the market, privatise state-owned enterprises and maintain macroeconomic stability.[[1]](#footnote-1) The first Competition Law was adopted in 1995. It introduced basic rules for protecting competition.[[2]](#footnote-2) As the Albanian economy for around 45 years was concentrated in the hands of the state, the transition to an open market “was characterised by high commodity prices, the privatization of state monopolies, high concentration in many markets, and the apparent activity of import cartels”.[[3]](#footnote-3)

In 1995, Albania adopted the first competition law. At that time, the level of concentration was very high due to the legacies of the communist regime. Due to this, the Albanian legislator opted for structural separation of undertakings having a dominant position. Companies that had a dominant position had to split into separate companies. The 1995 Competition Law explicitly expressed that newly established companies should maintain competitiveness in the market.[[4]](#footnote-4)

The 1995 Competition Law recognised the shortage-related dependence in vertical relationships between suppliers and buyers.[[5]](#footnote-5) Accordingly, Article 36 prohibited demanding or making payments for goods at a high price, as a result of restricting competition or exploiting a strong (superior) economic position. Basically, this provision ensured protection of the weakest party’s freedom from potential abuse resulting from the strong (superior) economic position of other undertakings by imposing excessive prices or limiting the supply of goods. Nevertheless, this provision did not explain what the concept of “strong economic position” means.

As the 1995 Competition Law was modelled in line with the (*Gesetz gegen Wettbewerbsbeschränkungen—GWB)*, the shortage-related dependence was included due to copying the GWB provisions. The GWB adopted in 1958 did not contain any rules prohibiting the abuse of economic dependence. The Second Amendment, adopted in 1973, introduced specific rules on the abuse of economic dependence for the first time.[[6]](#footnote-6) These rules were introduced to prevent large oil corporations from discriminating against small independent oil during the oil crisis and to protect other retailers from dependence on strong brands and the dependence that resulted from long-standing business relationships.[[7]](#footnote-7) Since then, the concept of relative market power has been expanded by protecting players against powerful buyers and the superior market power of competitors.[[8]](#footnote-8)

Although the 1995 Competition Law was well-drafted and included many novelties at the time, most of its provisions were never applied. The competent enforcement institution, the Directorate for Economic Competition (*Drejtoria e* *Konkurrencës Ekonomike),* lacked the necessary human and financial resources to foster a culture of competition or act as a deterrent to companies engaging in anti-competitive practices.[[9]](#footnote-9)

As a result of the EU integration perspective given with the Stability and Association Process and confirmation in the Thessaloniki Summit, a new Competition Act entered into force in December 2003.[[10]](#footnote-10) The 2003 Competition Law is modelled in line with the EU competition provisions, the main EU competition regulations (Regulations 1/2003 and 139/2004)[[11]](#footnote-11) and several other guidelines. The 2003 Competition Law has been amended twice. The first amendment changed the criteria for being elected as a member of the Albanian Competition Authority. In contrast, the second amendment expanded the scope of competition law to align with EU competition law. Moreover, it increased the level of harmonisation with the EU competition law.[[12]](#footnote-12)

Competition Law aims to protect fair and effective competition in the Albanian market by defining the substantive and procedural rules and establishing an independent institution for enforcing competition rules. Substantive rules comprise three pillars: i) anti-competitive agreements; ii) abuse of dominant position, and iii) merger control. Article 4 of the Albanian Competition Act, modelled in line with Article 101, prohibits agreements which have as their object or effect the prevention, restriction or distortion of competition, and in particular those which:

a) directly or indirectly fix purchase or selling prices, or any other trading conditions;

b) limit or control production, markets, technical development, or investment;

c) share markets or sources of supply;

ç) Apply dissimilar conditions to equivalent transactions to other trading parties, thereby placing them at a competitive disadvantage;

d) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of such contracts; shall be prohibited.

Article 9 of the Albanian Competition Law, modelled in line with Article 102, prohibits any abuse by one or more undertakings of a dominant position in the market. Similarly to the EU rules, the abuse may, in particular, consist of:

a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

b) limiting production, markets or technical development;

c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

ç) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Articles 10-17 of the Albanian Competition Law regulate the merger control. These provisions are in line with the main EU Merger Regulation provisions.

The Albanian Competition Authority is a public entity that is independent in performing its tasks. It is composed of the Commission and the Secretariat. The Commission, which has five members, is the decision-making body. Meanwhile, the Secretariat, headed by the Secretary General, conducts administrative investigations.

Currently, a draft amendment of the Albanian Competition Law has finished the public consultation.[[13]](#footnote-13) The draft amendment further increases the level of harmonisation with the EU competition acquis by introducing into the competition law new concepts such as i) bid rigging, ii) killer acquisition, iii) invitation to engage in prohibited agreements; iv) trade secrets and v) limitation period for fines.[[14]](#footnote-14) Moreover, the draft amendment clarifies further the ACA’s competencies on i) bid rigging; ii) killer acquisition and iii) invitation to collude. The draft law does not contain any provision on economic dependence.

# **2. Criteria for the Definition of Relative Market Power or of Similar Concepts**

**2.1. Definition and Legal Framework**

While EU competition law has traditionally included only exceptionally a specific type of economic dependence in its framework, it does not preclude Member States from adopting stricter rules on unilateral conduct, such as abuse of economic dependence[[15]](#footnote-15). In this context, EU Member States like Germany,[[16]](#footnote-16) France[[17]](#footnote-17) or Italy have specific rules to intervene in cases falling short of dominance, such as abuse of economic dependence.[[18]](#footnote-18) Albanian Competition Law does not contain such specific rules.

However, Albanian Competition Law recognise “the economic dependence of the suppliers and purchasers” as one of the criteria for assessing the dominant position. In the United Brands v Commission case, the Court of Justice defined dominant position as acting independently of all market participants, both competitors and consumers.[[19]](#footnote-19) The Court held that:

65. The dominant position referred to in this article relates to a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers.

66. In general a dominant position derives from a combination of several factors which, taken separately, are not necessarily determinative.

The Albanian Competition Law defines a company's dominant position as follows: “An undertaking is considered to be in a dominant position when it has the ability to act to a significant extent independently of its competitors, customers, OR consumers in the relevant market."[[20]](#footnote-20) Comparing the EU and Albanian definitions on the dominant position, it can be observed that Albanian Competition Law uses "or" in its definition of dominant position. This linguistic difference is significant because it means that a dominant undertaking can behave independently towards its customers only, which leaves the provision open to application in cases of economic dependency. This distinction has important practical implications since it includes economic dependence in the Albanian law through the definition of dominant position itself. In cases involving low market shares, the key criterion becomes whether the customer is dependent on the other, dominant company, and this criterion is already embedded in the law. The Albanian law, therefore, provides flexibility in applying Article 8 on economic dependency.

Furthermore, unlike the Central and Eastern European countries, which introduced sector-specific laws on the abuse of (relative) buyer power in (food) supply chains in the context of accession,[[21]](#footnote-21) Albania does not have sector-specific laws in the food supply chain. As Albania has opened the accession negotiations, it remains to be seen when and how Albania will transpose the Unfair Trading Practices Directive no. 2019/633 in business-to-business relationships in the agricultural and food supply chain.[[22]](#footnote-22)

**2.2. Market Criteria and Dominance**

Albanian Competition Law recognises abuse of dominant position, and economic dependence is already embedded in the definition of the dominant position. Therefore, Albanian law provides flexibility in applying Article 8 on economic dependency. Nevertheless, Albanian Competition Law lacks a clear legal basis for economic dependence or a definition.

Article 8 of the Albanian Competition Law presents the following criteria for the appraisal of a dominant position:

a) the relevant market shares of the investigated undertaking/s and those of the other competitors;

b) the barriers to entry to the relevant market;

c) the potential competition;

ç) the economic and financial power of the undertakings;

d) the economic dependence of the suppliers and purchasers;

dh) the countervailing power of buyers/customers;

e) the development of the undertaking's distribution network, and access to the sources of the supply of products;

ë) the undertaking's links with other undertakings;

f) other characteristics of the relevant market such as: the homogeneity of the products, the transparency of the market, the undertaking cost and size symmetries, the stability of the demand or the free production capacities.[[23]](#footnote-23)

This approach of listing a number of criteria for finding the dominance is flexible enough to cover the situation of economic dependence. Article 8 (d) of Albanian competition law mentions explicitly “the economic dependence of the suppliers and purchasers”. This criterion can be interpreted as covering cases of economic dependence of the suppliers and short of dominance where suppliers either concentrate from the outset on a few or even only one buyer, or where sales to such a buyer in fact account for a high proportion of the supplier’s sales in the relevant market.[[24]](#footnote-24) The main objective is to protect the weaker party in distribution agreements between producers and distributors.[[25]](#footnote-25)

**2.3–2.6. Company Size, Dependency, and Imbalance**

The Albanian Competition Law aims to protect fair and effective competition in the marketplace. It defines the rules of conduct by undertakings and the institutions responsible for protecting competition and their competencies. According to Article 3 (1), an undertaking means any legal or natural person, private or public, which performs an economic activity. In addition, public and local administration bodies, as well as public authorities and entities, are considered as undertakings if they engage in economic activity.

The Albanian Competition Law does not have criteria relating to the size, turnover, products, brands or other elements of the company under investigation of relative market power.

The Albanian Competition Authority currently does not assess dependency-related criteria outside the framework of dominant position.

3. **Abuse of Relative Market Power**

Under the current Albanian Competition Law, a finding of abuse must be predicated on dominance. As explained above, the Albanian Competition Law foresees only the economic dependence, which arises when a supplier is economically dependent on a buyer or the buyer is economically dependent on the supplier.

The Albanian Competition Law does not define economic dependence or stipulate the criteria for finding a situation of abuse of economic dependence. According to Article 3 (5) of the Albanian Competition Law, an undertaking that has a dominant position behaves independently of other market participants, such as competitors, customers, or consumers.[[26]](#footnote-26) As argued above, economic dependence is embedded in defining the dominant position. However, the Albanian Competition Law does not provide criteria for assessing abuse of economic dependence.

So far, the Albanian Competition Authority has relied on CJEU case law and Guidance on the “Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings” to assess an undertaking's dominant position.[[27]](#footnote-27) Abuse of dominant position and economic dependence, particularly in relation to essential facilities, and the exploitation of relative market power are key concerns in addressing unfair trade practices under competition law. When a dominant undertaking controls infrastructure or resources indispensable for effective competition—such as ports, energy networks, or distribution systems—it may engage in abuse by refusing access or imposing discriminatory conditions, triggering the essential facilities doctrine. Such conduct not only distorts market dynamics but can also unjustly exclude competitors or limit consumer choice. Separately, firms that do not hold a dominant position in the broader market may still wield relative market power over economically dependent trading partners, especially in vertically integrated sectors or where switching costs are high. In these scenarios, unfair contractual terms, exclusivity obligations, or exploitative pricing can constitute abuses, even absent formal dominance.

The Albanian Competition Authority has addressed several cases concerning market power abuse. The case of EMS-APO illustrates potential concerns under the essential facilities doctrine.[[28]](#footnote-28) EMS-APO held exclusive rights over the management and operation of the East Terminal at the Port of Durrës. As EMS-APO controls the infrastructure indispensable for bulk cargo handling, any unjustified refusal to grant access or discriminatory treatment of users may constitute an abuse of dominance by limiting market entry and distorting competition in port services.

In the Bankers Petroleum Albania case, the ACA examined Bankers Petroleum Albania’s conduct in light of its strong bargaining position in the upstream oil sector. Bankers’ commercial power over dependent contractors and service providers raised concerns related to relative market power and the imposition of unfair trading conditions.[[29]](#footnote-29)

These cases, EMS-APO and Bankers Petroleum Albania, highlight how both formal dominance and structural dependencies can lead to anti-competitive practices, underscoring the need for regulatory scrutiny to ensure non-discriminatory access to essential inputs and the protection of economically dependent undertakings in Albania’s evolving market economy. However, no case has been decided on distinguishing between economic dependence and dominant position.

Nevertheless, there is a possibility of relying on the CJEU practice to assess economic dependence. The ECJ has recognised the economic dependence of the suppliers and purchasers as one of the criteria in assessing the dominant position. Economic dependence complements the analysis of an undertaking that has a dominant position. In the case of low market shares, the Court of Justice allowed for economic dependence to be included in the analysis under *exceptional circumstances*.[[30]](#footnote-30)

As Albania has signed the Stabilisation and Association Agreement, the Albanian Competition Authority may rely on the CJEU case law to assess the abuse of economic dependence. According to Article 71 (2) of the SAA, any restrictive agreement or abuse of dominant position, so far as they may affect trade between the EU and Albania, “shall be assessed on the basis of criteria arising from the application of the competition rules applicable in the Community, in particular from Articles 81, 82, 86 and 87 of the Treaty establishing the European Community and interpretative instruments adopted by the Community institutions”.[[31]](#footnote-31) Despite the trade effect requirement, the Albanian Competition Authority has relied in several cases on EU treaty competition provisions, CJEU cases or Commission guidelines to interpret the domestic law.[[32]](#footnote-32) Similarly to the abuse of dominant position, the Albanian Competition Authority may refer to the ECJ practice for interpreting abuse of economic dependence.

# **4. Conclusion**

This national report shows that the concept of economic dependence is recognised in Albanian Competition Law. The Albanian Competition Law does not contain specific rules on economic dependence, nor does it recognise it, unlike Germany, France, Italy, or Switzerland. It recognises only one form of economic dependence as an additional criterion for assessing the dominant position, respectively, “the economic dependence of the suppliers and purchasers”. However, the Albanian Competition Authority has never applied it in practice for low market shares. In this context, the Albanian Competition Law should include special provisions on economic dependence.

Additionally**,** as Albania has opened the accession negotiation, harmonisation of domestic legislation with the EU acquis is the cornerstone of the process. The transposition of the Unfair Trading Practices Directive into the Albanian legal system will introduce legal protections for smaller suppliers in the food supply chain, based not on their dominant position but on their relative size and economic leverage.[[33]](#footnote-33) Thus, it will fill an important enforcement gap and in the same time, it would represent a first move toward regulating relative market power, albeit limited only in one sector. As it stands now, the Albanian legal framework does not yet provide sector-specific mechanisms to address dependency-based abuse.

The Unfair Trading Practice Directive establishes a minimum list of prohibited unfair trading practices in relations between buyers and suppliers in the agricultural and food supply chain. The Unfair Trading Practice Directive does not require market definition or proof of dominant position. Instead, as stipulated in Recital 9 of the Preamble, it presumes that

“Differences in bargaining power, which correspond to the economic dependence of the supplier on the buyer, are likely to lead to larger operators imposing unfair trading practices on smaller operators. A dynamic approach, which is based on the relative size of the supplier and the buyer in terms of annual turnover, should provide better protection against unfair trading practices for those operators who need it most. Unfair trading practices are particularly harmful for small and medium-sized enterprises (SMEs) in the agricultural and food supply chain.”

Moreover, the Albanian Competition Authority plans to transpose the new EU Commission Vertical Block Exemption Regulation (VBER) by the end of this year. The VBER provides a conditional exemption for vertical agreements that “the market share held by the supplier does not exceed 30% of the relevant market on which it sells the contract goods or services and the market share held by the buyer does not exceed 30% of the relevant market on which it purchases the contract goods or services”.[[34]](#footnote-34) However, the presence of relative market power may render certain vertical restraints abusive, even when they formally comply with VBER.

As the best example of vertical restraints, in 2020, the Albanian Competition Authority investigated several undertakings operating in the wholesale and retail market of paramedical materials (including masks, alcohol, and disinfectants) following unjustified price increases during the COVID-19 period.[[35]](#footnote-35) These undertakings (some operating as key importers and wholesale suppliers) used their bargaining power to impose retail prices on their supply chains. As part of the enforcement of Decision No. 685, dated March 18, 2020, which imposed a temporary measure to restore competition in the wholesale and retail markets of paramedical materials, several undertakings were fined for non-compliance and failure to provide information. Ten undertakings were fined 2,000,000 ALL (approximately 2,000 EUR) each, and 14 undertakings were fined 1,000,000 ALL (approximately 1,000 EUR) each. In conclusion, these cases demonstrate how vertical restraints, even in non-dominant market structures, can constitute unfair trade practices when undertaken by firms that exert relative market power over dependent trading partners or consumers.

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