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Protection of Competition from Abuse with Dominant Positions and Anticompetitive Agreements in the Kosovo Market

Ochrona konkurencji przed nadużyciem pozycji dominującej i porozumieniami ograniczającymi konkurencję na rynku w Kosowie

ABSTRACT

Protection of competition from abuse with dominant positions and anticompetitive agreements in the Kosovo market is governed by the Constitution of Kosovo and the Kosovo Law on Protection of Competition. Following adoption of the law, the Kosovo Competition Authority was established, as a competent institution for protection of competition. The Kosovo Competition Authority is a public, independent institution, to exercise its duties set out in the law, and reports to the Assembly of the Republic of Kosovo. It is an obligation of the Kosovo Competition Authority to enforce the Constitution, Law on Protection of Competition, Charter of the Kosovo Competition Authority, Code of Ethics, Administrative Instructions, and Regulations, in order to protect competition from abuse with dominant positions and anticompetitive agreements. Abuse with dominant positions and anticompetitive agreements are detrimental to market participants and put companies in an unequal position in the market. As a result, in addition to the legal infrastructure, the state has an obligation to build information and enforcement mechanisms in order to create a genuine and stable market. Good and stable competition will benefit all types of companies in the market, as well as all consumers. Implementation of competition standards will enable a competitive and stable market. This paper aims to reflect legislation pertaining to protection of competition from abuse with dominant positions and anticompetitive agreements in the market, in full compliance with the Kosovo Law on Protection of Competition and in virtue of the Treaty on the Functioning of the European Union.

Keywords: protection of competition; abuse with dominant positions; anticompetitive agreements; law; market

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INTRODUCTION

Protection of competition from abuse with dominant positions and competitive agreements is obligation of the state in order to ensure a stable and well-supervised market. This is possible only when the state, in addition to well-designed legal infrastructure, as a result of harmonization with the practices of European countries, has built priorities and implementation mechanisms, establishing the competent institution, training the professional staff, creating cooperation with other competent institutions, in particular with consumers.

Crucial is to make aware and educate everyone pertaining the role and importance of competition in the market. Furthermore, awareness shall be promoted that abuse with dominant positions and anticompetitive agreements are illegal, and whoever is caught doing so will be subject for competent institution for protection of competition, which will initiate investigation, gather information, evidence, and impose punitive measures under its jurisdiction. Measures which do not fall under its domain will be referred to the respective bodies for further actions.

Abuse with dominant positions and anticompetitive agreements may be eliminated only when identified in timely manner and to assure that the market, competitors and the consumers are not harmed. This paper sets forth establishment of competition and its protection from abuse with dominant positions and anticompetitive agreements in the market, in virtue of the Treaty on the Functioning of the European Union (TFEU)[1] and Law No. 03/L-229 on Protection of Competition in Kosovo.[2]

In addition, there are also mentioned decisions, opinions, and conclusions that have been considered by the Kosovo Competition Authority, for the years 2017–2020. Challenges of the Kosovo Competition Authority for the following years are also raised to come up with several conclusions and recommendations.

METHODOLOGY

The methodology of this paper is developed based on a systematic analysis of various sources and materials. This paper is focused on legal aspects of competition, particularly in regards to abuse with dominant positions and anticompetitive agreements in the market, in accordance with the TFEU and Law No. 03/L-229. Apart

[1] Consolidated version of the Treaty on the Functioning of the European Union (OJ EU C 326/47, 26.10.2012).

[2] Law No. 03/L-229 on Protection of Competition in Kosovo (Official Gazette of the Republic of Kosovo of 25 November 2010), https://gzk.rks-gov.net/ActDetail.aspx?ActID=2727 (access: 9.10.2021), hereinafter: Law No. 03/L-229.

from analytical work, the comparative method is applied in this paper pertaining adherence and functioning of competition, providing several decisions, conclusions and opinions regarding abuse with dominant positions and anticompetitive agreements, issued by competent institutions for protection of competition. Herewith this paper is aimed to present negative impact constituted by abuse with dominant positions and anticompetitive agreements in the market.

PROTECTION OF COMPETITION FROM ABUSE WITH DOMINANT POSITIONS UNDER THE TFEU AND LAW NO. 03/L-229

1. Legal aspects concerning abuse with dominant positions in the market, in accordance with the TFEU

The primary competition law in Europe is the TFEU, otherwise known as the Lisbon Treaty. The TFEU contains in its content certain provisions relating to definitions in the field of competition, protection and strengthening of the internal market with a view to the protection and welfare of consumers.[3]

The second element of antitrust is the prohibition on the abuse of dominance in Article 102 TFEU. Here, the market definition is key, as it establishes dominance and abuse (the sector-specific rules for the network sectors are variations on this theme).[4] Dominance must always be assessed in relation to a specific product and geographic market.[5] In addition, the Treaty does not include an exemption for dominance abuse, although based on the Commission's practice it is possible to invoke efficiency based objective justification as well as a meeting competition defence, in contrast to Article 101 TFEU, there is no further secondary legislation on Article 102 TFEU (and the case law is comparatively scarce).[6]

Legal aspects of the abuse with dominant market positions, according to the TFEU are provided in Article 54, titled "Prohibition of abuse of rights under the consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union",[7] which states: "Nothing in this Treaty is interpreted as implying the right to engage in any activity or to take any action aimed at destroying any of the rights and freedoms recognized by this Treaty or restricting them to a greater extent

[3] J. Kazani, *Aspekte ligjore të së drejtës së konkurrencës dhe konkurrenca në sistemin elektroenergjetik Shqiptar* [*Legal Aspects of Competition Law and Competition in the Albanian Power System*], Tirana 2015 (doctoral dissertation), p. 33.

[4] W. Sauter, *Coherence in EU Competition Law*, Oxford 2016, p. 29.

[5] *Ibidem*.

[6] *Ibidem*.

[7] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (OJ EU C 326/1, 26.10.2012).

than provided herein".[8] Article 102 TFEU (ex Article 82 TEC) states: "Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States".[9] Such abuse may, in particular, consist in: "(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; (b) limiting production, markets or technical development to the prejudice of consumers; (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (d) 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".[10] In this regard, the prohibited behaviours contained in Article 102 TFEU will be considered as anticompetitive practices only in cases when they are committed by an undertaking in a dominant position.[11] The European Court of Justice underlines that "the abuse is an objective concept relating to the behaviour of an undertaking in a dominant position which is such as to,[12] influence the structure of a market where, as a result of the very presence of the undertaking in question, the degree of competition is weakened and which, by recourse to methods different from those which condition normal competition in products or services on the basis of the transactions of commercial operators, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition".[13]

Abuse of dominant position is an anticompetitive and unilateral activity, differing from the situations governed by Article 81 (ex Article 85) TEC (today Article 101 TFEU), which are bilateral or multilateral activities.[14] Article 82 (ex Article 86) TEC (today Article 102 TFEU) applies equally in the private sector and the public sector (where these structures act in their commercial capacity) and in all economic sectors, even in the agricultural sector.[15]

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[8] Article 54 of the consolidated versions of the TEU and the TFEU.

[9] European Commission, *EU Competition Law Rules Applicable to Antitrust Enforcement*, vol. 1: *General Rules*, 1.7.2013, https://ec.europa.eu/competition/antitrust/legislation/handbook_vol_1_en.pdf (access: 10.10.2021), p. 11.

[10] *Ibidem*. See also consolidated versions of the TEU and the TFEU.

[11] V. Zhezha, *Analizë e politikës së konkurrencës* [*Analysis of Competition Policy in the European Union*], Tirana 2016 (doctoral dissertation), p. 54.

[12] See J. Ratliff, *Abuse of Dominant Position and Pricing Practices: A Practitioner's Viewpoint*, EUI Conference, Fiesole, June 2003.

[13] See J. Maliszewska-Nienartowicz, *The Abuse of the Dominant Position Within the Internal Market of the European Community: from Theoretical Assumptions to Practice*, [in:] *Interdisciplinary Management Research III*, eds. D. Barković, B. Runzheimer, Osijek 2007, pp. 438–439.

[14] O. Maican, *Abuse of a Dominant Position*, [in:] *Current Issues in Business Law*, eds. K. Strada-Rozenberga, M. do Rosario Anjos, Bucharest 2018, p. 127.

[15] *Ibidem*.

2. Legal aspects of abuse with dominant positions in the market, according to the Law No. 03/L-229

Fair and genuine competition is based on the Constitution of each state and in Kosovo it is based on the regulation in the Constitution. In the Republic of Kosovo, competition is governed by Article 10 of the Constitution of the Republic of Kosovo of 2008, which states that: "A market economy with free competition is the basis of the economic order of the Republic of Kosovo",[16] then with Article 119 (3), which states that: "Actions limiting free competition through the establishment or abuse of a dominant position or practices restricting competition are prohibited, unless explicitly allowed by law".[17] For the purposes of this Article, exemptions from freedom of competition and the prohibition of abuses of a dominant position and economic monopoly shall be established only by law, provided that they are explicitly stated.[18] Based on the Constitution of Kosovo, Law No. 03/L-229 as well as Law No. 04/L-226 on Amending and Supplementing Law No. 03/L-229 on Protection of Competition,[19] harmonizing them with the Member States of the European Union.[20] And then based on the law in question was established the competent institution for protection of competition with the name Kosovo Competition Authority.[21] The Kosovo Competition Authority was established by the Assembly of the Republic of Kosovo on 7 November 2008, based on the Law on Competition No. 2004/36.[22] Kosovo Competition Authority based on the Law on Protection of Competition in force should create a strategy and good coordination with its employees in order to ensure a competitive market, and not allow companies to disrupt the market by creating anticompetitive agreements or by abusing of dominant position.

[16] Article 10 of the Constitution of the Republic of Kosovo of 15 June 2008, https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702 (access: 9.10.2021).

[17] Article 119 (3) of the 2008 Constitution of the Republic of Kosovo. See also V. Mulaj, *Improvement of the Kosovo Market through Implementation of the Competition Legal Framework*, "The Lawyer Quarterly" 2020, vol. 10(3), p. 349.

[18] E. Hasani, I. Čukalović, *Commentary of the Constitution of the Republic of Kosovo*, Prishtina 2013, p. 612.

[19] Law No. 04/L-226 on Amending and Supplementing Law No. 03/L-229 on Protection of Competition in Kosovo (Official Gazette of the Republic of Kosovo of 10 March 2014), https://gzk.rks-gov.net/ActDetail.aspx?ActID=2727 (access: 9.10.2021), hereinafter: Law No. 04/L-226. See also V. Mulaj, *op. cit.*, p. 348.

[20] V. Mulaj, *op. cit.*, p. 349.

[21] Kosovo Competition Authority, https://ak.rks-gov.net/ballina (access: 11.1.2021). See also V. Mulaj, *op. cit.*, p. 349.

[22] Work Report 2018 of the Kosovo Competition Authority, https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20punes/Reports%20i%20Punes%20i%20AKK-s%C3%AB%202018%20(FINAL).pdf (access: 8.11.2021), p. 9. See also V. Mulaj, *op. cit.*, p. 348.

In the first place, it is important to note when it is considered that an enterprise is in a dominant position in the market. Also in para. 2 of Article 10 of Law No. 03/L-229 it is stated that: "An enterprise is considered to have a dominant position if it has more than forty percent (40%) presence at the market".[23] However, this provision was amended in 2014, where the amendment law is worded as follows: "Article 10 (2) of the basic Law, the percentage of dominant position is changed from 40% to 25%".[24] As of 2014, companies with more than 25% market presence compared to other competitors are considered as the dominant position.[25] With a dominant position of over 40% under Article 6 (3) of Law No. 04/L-226 are said to be: "Two or more independent enterprises may be in a dominant position if, in relation to their competitors they operate jointly on the relevant market and if their general market share is higher than forty percent (40%) (collective dominance position)".[26] Having this market power, the enterprise can abuse this power, bringing illegal profits, eliminating competition, as well as reducing the welfare of the consumer.[27] Therefore, the abuse of a dominant position is contrary to Law No. 03/L-229.

Concerning abuse of dominant position, Article 11 (1) to (1.6) of Law No. 03/L-229 provides that: "1. Abuse of a dominant position by one or more enterprises on the corresponding market is prohibited, in particular, if: 1.1. direct or indirect setting of unreal purchase or sale prices and other unfair trade conditions, respectively; 1.2. limitation of production, markets or technological development to the prejudice of consumers; 1.3. implementation of different conditions for similar duties with other enterprises thereby placing them in a disadvantageous competitive position; 1.4. agreeing on contracts under condition that other contracting parties accept additional obligations; 1.5. setting prices or other conditions, the objective or the result of which is to prevent entering or exclude certain competitors or one of their products from the relevant market; 1.6. refusal of entrance of another enterprise, by giving an appropriate compensation, in the network or infrastructures of the enterprise with dominant position, if this refusal for usage of the network or infrastructures prevents the other enterprise to act as a competitor of the enterprise with dominant position".[28]

Enterprises abuse their dominant position if they offer their consumers products or services at very low prices or manage to benefit from low prices from their

[23] V. Mulaj, *op. cit.*, p. 352.

[24] *Ibidem*, p. 353.

[25] *Ibidem*.

[26] *Ibidem*.

[27] J. Lamaj, *E drejta e konkurrencës në kuadrin e lirisë kushtetuese ekonomike* [*Competition Law in the Framework of Constitutional Economic Freedom*], Tirana 2018 (doctoral dissertation), p. 39.

[28] According to Article 11 (1) to (1.6) of Law No. 03/L-229.

suppliers.[29] "Price increase" means the power to keep prices above competitive levels.[30] An enterprise in such a position may set prices below production costs only in order to exclude other competitors from the market, or not to allow new entrants into that market, initially accepting losses, while in the second stage it implements increase in prices, i.e. increase in profit.[31]

Law No. 03/L-229, as well as Law No. 04/L-226,[32] are drafted in adherence with the TFEU. The way they are governed and a reference to Article 102 TFEU and Article 11 (1) to (1.6) of Law No. 03/L-229 indicate how much is taken as a basis for the TFEU model. It is known that the states draft legislation in the national aspect for internal needs, but in the case in hand, the TFEU has helped many states to refer to this Treaty as a model for their legislation in the national aspect. And so far, it has shown an utmost success.

The 2018 report published by the Kosovo Competition Authority provides that: "The Authority is now in the process of amending the Law and in the Concept Paper submitted to the Government has been focused on incorporating in it the EU basic principles, rules and provisions for competition from the Treaty on the Functioning of the EU. It has also partially transposed Council Regulation EC No. 1/2003, Commission Regulation (EC) No. 773/2004, and Council Regulation (EC) No. 139/2004 (the so-called 'Basic Competition Regulations')".[33]

Moreover, the 2018 report published by the Kosovo Competition Authority, reinstates secondary legislation that partially transposes EU legislation includes: "AI No. 05/2012 on the criteria and conditions for the award of small value agreements, which partially transposes the notification of the Commission on agreements of minor importance (*de minimis*) that do not restrict competition under Article 81 (1) (now Article 101) of the Treaty establishing European Community (OJ EU C 368/13, 22.12.2001); AI No. 06/2012 on the manner of submitting the request and the criteria for ascertaining the concentration of enterprises – which transposes elements of the request and the criteria for merger/concentration defined in Commission Regulation (EC) No. 802/2004 implementing Council Regulation (EC) No. 139/2004 on the control of concentrations between enterprises. However, this regulation has been amended by Commission Implementing Regulation No. 1269/2013 together with annexes, and our secondary legislation should be reviewed in the medium term in order to further align with this rather voluminous secondary legislation on concentration; AI No. 07/2012 on the criteria for the release or re-

[29] Competition Authority in the Republic of Albania, *National Competition Policy*, 2006, http://caa.gov.al/uploads/publications/POLITIKA_aca.pdf (access: 18.10.2021), p. 20.

[30] V. Zhezha, *op. cit.*, p. 57.

[31] Competition Authority in the Republic of Albania, *op. cit.*, p. 20.

[32] Law No. 04/L-226.

[33] Work Report 2018 of the Kosovo Competition Authority, p. 7.

duction of an administrative measure – which transposes Commission Regulation (EC) No. 773/2004 of 7 April 2004 concerning the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty as amended by Regulation No. 2015/1348".[34]

The Kosovo Competition Authority through the 2018 report has suggested amendment of Law No. 03/L-229, taking into account all of the above. It is obvious that laws sometimes require amendments when practitioners in their work deem it needed and reasonable. Thus, a particular issue should be amended or supplemented through the amendment provision following discussions and arguments based on practices of developed countries, similar to elaboration provided hereupon.

The Kosovo Competition Authority, as a competent institution for the protection of competition, has started to publish annual reports that reflect the work of this institution. Herein is introduced the overview of abuse with dominant positions and anticompetitive agreements, pursuant to reports of the Kosovo Competition Authority for the years 2017–2020.

In the 2017 report published by the Kosovo Competition Authority, according to this report the Authority has handled 18 cases during 2017.[35] Only one case has been treated for "Abuse of a dominant position", rendering a decision with a conclusion to close the case.[36]

According to report of 2018 published by the Kosovo Competition Authority, the Authority has addressed two cases of abuse of a dominant position, where in both cases it was decided to initiate no investigation procedure.[37]

In the report for 2019, published by the Kosovo Competition Authority, it is stated that the Authority has handled no case regarding the abuse of a dominant position.[38]

The report for 2020, published by the Kosovo Competition Authority, provides that the Authority has treated two cases of abuse of a dominant position, where

[34] *Ibidem*.

[35] Work Report 2017 of the Kosovo Competition Authority, https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes%202017_FINAL_AKK.pdf (access: 8.11.2021), p. 3.

[36] Case 1 of 28 April 2017. Kosovo Competition Authority on 9 September 2013 received the complaint with protocol No. 145/13 by the complainant alleging abuse of a dominant position. The Commission of the Kosovo Competition Authority, after the preliminary review of the investigation on 28 April 2017, with protocol No. 98/17-02/D, has issued a conclusion with which it has concluded that the competition in the respective market has not been distorted in accordance with the provisions of the Law 03/L-229. See the Work Report 2017 of the Kosovo Competition Authority, p. 3.

[37] Case 1 of 12 February 2018, where it was decided not to open the investigation procedure. Case 2 of 27 February 2018, where it was decided not to open the investigation procedure. See Work Report 2018 of the Kosovo Competition Authority, pp. 16–17.

[38] Work Report 2019 of the Kosovo Competition Authority, https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20punes/Raporti%20i%20Punes%20i%20AKK-s%C3%AB%202019%20-%20FINAL.pdf (access: 25.2.2022).

in one case it was decided to commence with the investigation procedure, while on the other case it was decided with a conclusion to initiate the investigation.[39]

By publishing these reports, the Kosovo Competition Authority is meeting a criterion of transparency regarding its work. However, these reports indicate very few decisions regarding the abuse of a dominant position in the market. Thus, there is plenty of room for the Kosovo Competition Authority to be much more active with their assignments in order to further identify these types of abuses in the market. This can be done by establishing cooperation agreements with other local institutions, with consumers, and all types of companies in the market in order to have faster and more argumentative information about possible abuses in the market.

PROTECTION OF COMPETITION FROM ANTICOMPETITIVE AGREEMENTS UNDER THE TFEU AND LAW NO. 03/L-229

1. Legal aspects of anticompetitive agreements in the market according to the TFEU

Usually market processes do function, but there emerge dysfunctionalities, if there is a cartel in the market.[40] Anticompetitive agreements are all those agreements that are created between companies in the market that aim to profit them and damage the market. Through anticompetitive agreements, companies harm other competitors, and through their actions disrupt the market.

Article 101 TFEU is the provision of the Lisbon Treaty related to anticompetitive behaviours representing the outcome from collusion among undertakings.[41] Article 101 prohibits all agreements between undertakings, decisions by associations of undertakings, and concerted practices that may affect trade between Member States and that have as their object or effect the prevention, restriction, or distortion of competition within the common market.[42]

Antitrust consists firstly of Article 101 (1) TFEU which prohibits anticompetitive agreements practices by undertakings, unless the limited conditions for an

[39] Case 1 of 16 November 2020, where it was decided with a Conclusion not to initiate the investigative procedure. Case 2 of 4 December 2020, conclusion to initiate the investigation. See Work Report 2020 of the Kosovo Competition Authority, https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes%20i%20AKK-s%C3%AB%202020_FINAL.PDF (access: 28.2.2022), pp. 21–24.

[40] C. Lorenz, *Screening markets for cartel detection: Collusive markers in the CFD cartel-audit*, "European Journal of Law and Economics" 2008, vol. 26(2), p. 219.

[41] A. List, *EU Competition Law and the Financial Services Sector*, Abingdon 2013, p. 4.

[42] *Ibidem*.

exception (and an exemption) set out in Article 101 (3) TFEU are met.[43] The drafting of Article 101 (3) TFEU (then Article 85 (3) TEEC) was a compromise that allowed for both a directly applicable exception system (favoured by France), and a prior authorization system (favoured by Germany). The open texture of the resulting text allowed a shift from the prior authorization to the legal exception system to occur in the context of the 2003 modernization of antitrust without requiring a Treaty amendment.[44] Cartel is defined as an agreement or concerted practice between two or more legally independent firms operating on the same market on the fixing of prices (consumer overcharging or reductions in prices for suppliers), the restriction of output or sales quotas, and the allocation of markets in order to generate higher profits, restrict competition and autonomy of decision making.[45] Economic studies perceive cartels in terms of a game-theoretical problem: it starts from the idea that cartel participants are motivated instrumentally, and the perceived costs and benefits are part of a rational assessment.[46] With this comes a focus on incentives for players in the cartel to cheat, such as overselling or underpricing.[47] Firms will do so in order to maximise individual profits further or to expand market shares beyond the cartel's collective agreement.[48]

Legal aspects of anticompetitive agreements in the market are provided in Article 101 (ex Article 81 TEC) TFEU: "1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, 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; (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (e) 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. 2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void. 3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of: any agreement or category of agreements between undertakings, any

[43] W. Sauter, *op. cit.*, p. 28.

[44] *Ibidem*.

[45] I. Pekarskiene, J. Bruneckiene, *The Relationship between Cartels and Economic Fluctuations*, "Inzinerine Ekonomika-Engineering Economics" 2015, vol. 26(3), p. 285.

[46] J.D. Jaspers, *Managing Cartels: How Cartel Participants Create Stability in the Absence of law*, "European Journal on Criminal Policy and Research" 2017, vol. 23(3), p. 321.

[47] *Ibidem*.

[48] *Ibidem*.

decision or category of decisions by associations of undertakings, any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not: (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question".

Article 101 TFEU can be defined as the foremost means for the control of anti-competitive behaviours in the common market, it involves all possible types of action against a fair competition, prohibiting first of all anticompetitive agreements.[49] These kinds of agreement can be horizontal, "meaning that they are made between firms at the same level of the production cycle," or vertical, that is, "between firms at different levels of the distribution cycle".[50] In the opinion of other authors, vertical or horizontal agreements: are horizontal when concluded by participants of the same market level (all manufacturers or all distributors), while vertical agreements belong to the further steps of production and sale of a product (one manufacturer and other wholesale distributor).[51] Restriction of competition may be the result of horizontal agreements (between competitors) but also vertical agreements (between operators that are located at different levels of production or distribution) which are likely to lead to withdrawal from the market.[52] Article 101 TFEU does not refer to the vertical or horizontal character of the figures of agreements listed in these provisions as they can be displayed in both ways as, e.g., price fixing can be the subject of both a horizontal agreement (in the case where two companies agree to practice the same selling price to consumers) and a vertical agreement (in the case where the manufacturer and distributor enter into an agreement specifying that the latter should sell the products at a price x).[53] The regulation of exceptions to horizontal and vertical agreements in the European Union in terms of competition law has changed if we are based on recent years.

Thus in 2010, the Commission approved the Commission Regulation (EU) No. 461/2010 of 27 May 2010 on the application of Article 101 (3) of the Treaty on European Union to categories of vertical agreements and concerted practices in the motor vehicle sector, Commission Regulation (EU) No. 1218/2010 of 14 December 2010 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements, and Commission Regulation (EU) No. 1217/2010 of 14 December 2010 on the application of

[49] A. List, *op. cit.*, p. 5.
[50] *Ibidem*.
[51] V. Zhezha, *op. cit.*, p. 32.
[52] J. Kazani, *op. cit.*, p. 58.
[53] V. Zhezha, *op. cit.*, p. 34.

Article 101 (3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements.[54]

Second, Article 101 TFEU concerns "decisions by associations of undertakings"; because the Treaty does not specify the notion of "decision", this concept was developed by the European Court of Justice. Giving a broad definition of "decisions", the Court stated that this notion covers "not only agreements between its members, but also recommendations issued by the association, provided that they are shown to be binding, either in law or in fact, on its members".[55]

2. Legal aspects of anticompetitive agreements in the market according to the Law No. 03/L-229

Legal aspects of anticompetitive agreements in the market according to Article 4 (1) to (1.5) and (2) of Law No. 03/L-229 states that: "1. All agreements between two or more independent enterprises are prohibited, decisions made by business associations and concerted practices that aim or may significantly influence on disturbance of market competition in relevant market, and in particular the ones that: 1.1. directly or indirectly impose purchase or sale price or any other condition in trade; 1.2. limit or control production, market, technological development and investments; 1.3. share markets or supply sources; 1.4. implement unequal conditions for similar transactions with other enterprises, consequently placing them in an unfavourable competitive position; 1.5. apply conditions for agreements on contracts to rely on other contracting subjects, through other supplementing conditions that do not have any natural or common trade practice connection to the object of such contract. 2. Agreements or decisions prohibited by paragraph 1 of this Article and which are not excluded according to Articles 5, 6, 7 and 8 of this law, are null and void".[56] Article 3 of Law No. 04/L-226 states: "Article 4 paragraph 2 of the basic Law shall be reworded with the following text: 2. Prohibited agreements, referred to in paragraph 1 of this Article and that are not exempted under Articles 5, 6, 7, 8 of the basic Law and Article 4 of this Law are null and void".[57]

Anticompetitive agreements, same as the abuse with dominant positions presented above, are governed by Law No. 03/L-229 as well as Law No. 04/L-226 which during the drafting were based and have taken as a model the TFEU. And we can see this best through their regulation, where if we refer to Article 101 TFEU and Article 4 (1) to (1.5) and (2) of Law No. 03/L-229, we understand how much is taken for model TFEU. It is important to note that both under the TFEU and

[54] *Ibidem*, pp. 34–35.
[55] A. List, *op. cit.*, p. 5.
[56] According to Article 4 (1) to (1.5) and (2) of Law No. 03/L-229.
[57] According to Article 3 of Law No. 04/L-226.

Law No. 03/L-229, abuse with dominant positions and competitive agreements are protected by law and companies that abuse dominant positions and create anticompetitive agreements are punished, and the competent institutions that have been established impose punitive measures based on the competencies they have. The competent institution for the protection of competition in Kosovo was established under the name of the Kosovo Competition Authority,[58] where its strategic objective is, strengthening professional and administrative capacities in order to implement the Law on Protection of Competition, promotion of competition policies, fulfilment of obligations arising from the European Integration process,[59] as well as not allowing companies to abuse dominant positions and anticompetitive agreements in the market. The Kosovo Competition Authority, as a competition monitoring institution in the country, should maintain genuine competition in the country and as a result should not allow companies in the market to sign prohibited agreements or otherwise called unlawful agreements because if prohibited agreements are allowed, they put the competitor companies in an unequal and unfavourable position.[60] Whereas, when manufacturers intend to limit competition, by coordinating their actions through secret agreements, aimed at fixing prices and other trading conditions, the level of production decreases and, as a rule, consumers have to pay more.[61] Prohibited agreements that undermine competition in the country are, e.g., if there are two competing companies in the market that supply the same product in the country and are in competition with each other.[62] If these two companies create a merger agreement or the acquisition of one company by the other, this kind of agreement should not be allowed to be implemented because competition becomes a monopoly and the state should not allow it.[63]

The Kosovo Competition Authority publishes on its website the annual reports of its work in order for all citizens to be informed about the functioning of the market. This makes it possible for them to see for every year how many businesses have reached prohibited agreements, how many are in a dominant position, and how many of them have abused the dominant position, and also the concentrations of enterprises. Additionally, the reports presented below, reflect the opinions, recommendations, and professional conclusions given by the Kosovo Competition Authority.

[58] Kosovo Competition Authority, https://ak.rks-gov.net/ballina (access: 29.11.2021).

[59] Strategic Objectives of the Kosovo Competition Authority, https://ak.rks-gov.net/objektivat (access: 29.11.2021).

[60] V. Mulaj, *op. cit.*, p. 355.

[61] Competition Authority in the Republic of Albania, *op. cit.*, p. 19.

[62] V. Mulaj, *op. cit.*, p. 355.

[63] *Ibidem*.

In the 2017 report published by the Kosovo Competition Authority, the Authority has handled 18 cases during 2017.[64] It has handled 10 cases of "Prohibited agreements/ cartels", one case of "Abuse of a dominant position", two cases of "Merger" and has given five "Professional opinions".[65] The Kosovo Competition Authority from 10 cases handled against anticompetitive agreements, has been decided to close seven of them.[66] In two cases a decision was made to close the case.[67] One case was decided with a Conclusion for initiating the investigative procedure.[68]

[64] Work Report 2017 of the Kosovo Competition Authority, p. 3.

[65] *Ibidem*.

[66] Case 1 of 28 April 2017. The request was submitted to the Kosovo Competition Authority by the Ministry of Justice on 10 October 2014, but at that time the Kosovo Competition Authority did not have a functioning Commission and consequently it was impossible to take any legal action regarding this issue. From the Ministry of Justice on 30 March 2017 through a letter, written statement, we are informed that the procedures in question for servicing and maintenance of vehicles of the Ministry of Justice have been conducted and completed during 2015, so now after a long period, the Ministry of Justice agrees to close this case. The case as such is closed according to Article 51 (1) of Law No. 02/L-028 on Administrative Procedure and the Commission considers that the party has withdrawn its request. Case 2 of 28 April 2017, regarding the request registered with protocol No. 55/16-01 of 26 May 2016, it was concluded that such a request is not in the competence of the Commission, but in the competence of the Municipal Assembly of Suhareka and this case was closed with a Conclusion. Case 4 of 5 October 2017, regarding the request with protocol No. 37/16-01/H at KCA. The case as such, after the consent or approval has been given by the relevant Ministry and is in favour of the party ceases to be reviewed by the Kosovo Competition Authority. Case 5 of 5 October 2017, regarding the request with protocol No. 2014/1903 at the Kosovo Competition Authority. It is decided with a Conclusion for closing the case. Case 6 of 5 October 2017, regarding the case, the Kosovo Competition Authority ex officio on 17 July 2017 has authorized the investigative inspectors to inspect the relevant market, regarding the suspicion of a prohibited agreement between the owners. During the monitoring of the respective market, we estimated that the agreement was made because the owners had no knowledge of provisions of Law No. 03/L-229, and on this occasion, we found that this agreement has not been implemented, there have been neither market impacts nor injured parties. Finally, we consider that this agreement was made due to lack of knowledge of the provisions of the Law No. 03/L-229; moreover, it did not produce any consequences for the parties involved and was considered by the Commission as a naive agreement which had no impact or effects of distortion of market competition. Case 7 of 5 October 2017 is decided with Conclusion for closing the case. Case of 5 October 2017 is decided with Conclusion for closing the case. See Work Report 2017 of the Kosovo Competition Authority, pp. 9–14.

[67] Case 3 of 6 July 2017, the Kosovo Competition Authority has reviewed the request, with protocol No. 50/17-02/H of 1 March 2017. After analysing the case from the available data and documentation, we assess that the case, respectively the allegations of the applicant, are not subject to review by the Kosovo Competition Authority, therefore do not fall under the provisions of Law No. 03/L-229, and the Kosovo Competition Authority does not handle cases and does not conduct procedures for issues that are not within its competence. And Case 8 of 5 October 2017, the Kosovo Competition Authority has reviewed the request, with protocol No. 70/17-03/H of 30 March 2017. After analysing the case from the available data and documentation, we assess that the case, respectively the allegations of the applicant, are not subject to review by the Kosovo Competition Authority, therefore do not fall under the provisions of Law No. 03/L-229, and the Kosovo Competition Authority does not handle cases and does not conduct procedures for issues that are not within its competence. See *ibidem*, p. 10 and 13.

[68] Case 9 of 5 October 2017, it was decided with a Conclusion for the initiation of the investigative procedure. See *ibidem*, p. 10 and 13.

In the 2018 report published by the Kosovo Competition Authority, the Authority has handled six cases of prohibited agreements.[69] Three of six cases were decided with a conclusion for initiation of the investigative procedure.[70] In one case it was decided to commence with no investigative procedure.[71] For one other case a decision has been made to take on obligations.[72] While one other case has been decided that the agreement does not distort competition.[73]

Based on the reports of 2017 and 2018 published by the Kosovo Competition Authority, not many cases are presented that this institution has imposed punitive measures regarding the abuse with dominant positions or the prohibited or anticompetitive agreements. It remains for this institution to further extend cooperation with all other local institutions, businesses and citizens in order to obtain necessary information pertaining violations occurring in the market. Moreover, raising professional awareness about competition in the country would be beneficial for everyone to easily identify what is a violation, a competition distortion.

Within the framework of primary activities in the field of competition in 2019, the Kosovo Competition Authority resolved 18 cases,[74] handled four cases of "Prohibited agreements/cartels", four cases of "Concentrations", and gave 10 "Professional opinions and recommendations".[75] The Kosovo Competition Authority from four cases handled on anticompetitive agreements, presented in this report these data to the public.[76]

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[69] Work Report 2018 of the Kosovo Competition Authority, pp. 11–16.

[70] Case 1 of 10 January 2018, it was decided to initiate an investigative procedure. Case 4 of 4 May 2018, it was decided with a Conclusion to start the investigative procedure. Case 6 of 16 October 2018, it was decided with a Conclusion to start the investigative procedure. See *ibidem*, p. 11, 13 and 16.

[71] Case 2 of 20 February 2018, it was decided not to open the investigation procedure. The Commission of the Kosovo Competition Authority based on Article 35 (5) of Law No. 03/L-229 assesses that there are no arguments for initiating the investigative procedure and decided as in the provision of this conclusion. See *ibidem*, pp. 11–12.

[72] Case 3 of 30 March 2018, a decision has been made to take on obligations. See *ibidem*, p. 12.

[73] Case 5 of 10 October 2018, it has been decided that the agreement does not distort competition. See *ibidem*, pp. 13–15.

[74] Work Report 2019 of the Kosovo Competition.

[75] *Ibidem*.

[76] Case 1 – *Imatinib Mesylate 400 MG in the Ministry of Health*. The allegations were that there could be a prohibited agreement in the public tender process of the Ministry of Health between the bidders of this medicine. From the Competition point of view, this case is treated as Bid Rigging or manipulation of bids, specifically, if the enterprises have applied the principle of Rotation (Bid Rotation) to win contracts in public tenders in the Ministry of Health. Case 2 – *(Bus) Transporters of Passengers in the Prishtina-Lipjan Route* – according to the complaints of the citizens, the allegations were that the bus companies of Prishtina-Lipjan route have increased and fixed the ticket prices by agreement. But after consultations with the Kosovo Competition Authority officials, they abrogated the agreement and ticket prices will be determined based on supply and demand in the relevant market. The Authority described this agreement as having no impact on the market, and closed the case. Case 3 – *Deregulation of Competition in the Oil Derivatives Market* – based on concerns raised by the public, through the

In the 2020 report, published by the Kosovo Competition Authority, the Authority reported on handling 18 cases during that year.[77] It handled five cases of "Prohibited agreements/cartels", two cases of "Dominant position" where it was alleged that there had been abuse with dominant positions, five cases of "Concentrations", gave four "Professional opinions", and monitored five markets.[78] The Kosovo Competition Authority from five cases handled on anticompetitive agreements, had decided on two cases with a conclusion that there are no arguments for initiating the investigative procedure.[79] And in two other cases, a decision was taken to close the investigative procedure.[80] While for one case, it imposed an administrative sanction.[81]

media and civil society about their claims for prohibited agreements or coordinated practices between companies engaged in the trading of fuel products of oil in the wholesale and retail sale of oil and petrol in the territory of the Republic of Kosovo, the Kosovo Competition Authority Commission, in the meeting held on 24 December 2018, decided to monitor the market of the oil sector (by-product: Euro diesel and Petrol). Case 4 – *Ministry of Public Administration (Framework Contract) for Services* – during 2019, the Authority held several meetings with the parties to the proceedings, Telekom, KSF, and MPA, on aspects of procedural development of the Kosovo Competition Authority. DMT analysed the legal framework in this field, the framework contract for mobile, fixed telephony services, GPRS, data for various institutions in Kosovo, taking into account the protection and preservation of the principles of free and effective competition. The case is in procedure. See *ibidem*, p. 9.

[77] Work Report 2020 of the Kosovo Competition Authority. See the official website: Kosovo Competition Authority, https://ak.rks-gov.net/ballina (access: 11.1.2021).

[78] Work Report 2020 of the Kosovo Competition Authority.

[79] Case 1 of 15 October 2020, Conclusion for the Notaries against the Ministry of Justice: "During the preliminary review of the investigation of the situation in the relevant market, based on the provisions of the Law on Protection of Competition, the Kosovo Competition Authority concluded that there are no arguments for initiating investigative procedures against the Ministry of Justice for the process of selection of Notaries". Case 2 of 15 October 2020, Conclusion for GAP against the CBK regarding the increase of TPL tariffs: "During the preliminary review of the investigation of the situation in the relevant market, based on the provisions of the Law on Protection of Competition, the Kosovo Competition Authority concluded that there are no arguments for initiating an investigation procedure against the Central Bank of the Republic of Kosovo". See *ibidem*, pp. 9–14.

[80] Case 3 of 6 May 2020, Final Decision for the company K.G. SHPK: "I. The investigation procedure against the enterprise K.G. SHPK is closed. II. During the investigation procedure, it was ascertained that the enterprise K.G. SHPK did not deregulate the commercial competition, in accordance with the provisions of the Law on Protection of Competition No. 03/L-229, Article 4 'Prohibited Agreement or Coordinated Practice', paragraph 1 under paragraph (1.1). III. It is found that the enterprise K.G. SHPK has not abused its dominant position in the individual or collective market, respectively there is no legal violation according to Article 11 of the Law on Protection of Competition". Case 4 of 6 May 2020, Final Decision for company B.O. SHPK: "I. The investigation procedure against the enterprise B.O. SHPK is closed. II. During the investigation procedure it was ascertained that the enterprise B.O. SHPK did not deregulate the commercial competition, in accordance with the provisions of the Law on Protection of Competition No. 03/L-229, Article 4 'Prohibited Agreement or Coordinated Practice', paragraph 1 under paragraph (1.1). III. It is found that the enterprise B.O. SHPK has not abused its dominant position in the individual or collective market, respectively there is no legal violation according to Article 11 of the Law on Protection of Competition". See *ibidem*, p. 15 and 19.

[81] Case 5 of 6 May 2020, with the Final Decision, the Kosovo Competition Authority has imposed administrative sanctions on some enterprises. See *ibidem*, p. 19 and 20.

The Kosovo Competition Authority, in all published reports, presented the challenges of this institution for the mentioned years, and some of these challenges were met over the years but not all since there are challenges which are repeated from year to year. The following are the challenges and recommendations of the Kosovo Competition Authority in the 2020 report, which state that "1. Law No. 03/L-229 on Protection of Competition was amended with the amendment No. 04/L-226, while the challenge remains for the Law to be completely amended by harmonizing it with the EU Directives. 2. The Charter of the Authority should be harmonized with the Law in force. 3. Training of judges, for a more complete and adequate knowledge of the characteristics of competition law, as well as European law in this field, in order to justify their decisions, based on a realistic assessment of competition, as a public good. 4. Advocacy with large, medium, and small businesses. 5. Advocacy with the media which are a very important factor. 6. Capacity building (training) of staff in general. 7. Ex officio (according to official duty) monitoring and initiating procedures for violators of competition. 8. The challenge of the Authority remains in unannounced controls over enterprises and confiscation of facts. 9. The challenge of the Authority also remains in the promotion of the program of facilities by enterprises".[82]

An example of an anticompetitive deal: Claimants in the case of *Emerald Supplies v British Airways* sought to argue that cartelist behaviour could, in addition to a breach of statutory duty, constitute a breach of the English law tort of unlawful means conspiracy and the related tort of interference with a business by unlawful means, but the Court of Appeal struck out that portion of the claim on the grounds that the defendant could not have known which entities in the supply chain would suffer any loss caused by the cartel (due to the possibility that the claimants passed-on some or all of any overcharge to their customers) and could not therefore have intended that the claimants suffer any harm (such intention being a key ingredient of both torts).[83] In practice it is not possible to rely on these so-called economic torts under English law in a cartel damages action, save perhaps in a case where the direct purchasers of the cartelised product are also end consumers, such that the cartelist(s) could only have intended to injure them, which it would be necessary to prove.[84]

According to Article 103 (ex Article 83 TEC) of the consolidated version of the TEU and the TFEU: "1. The appropriate regulations or directives to implement the principles set out in Articles 101 and 102 shall be adopted by the Council, on a proposal from the Commission and after consulting the European Parliament. 2. The regulations or directives referred to in paragraph 1 shall be drawn up, in par-

[82] *Ibidem*, p. 41.

[83] D. Ashton, *Competition Damages Actions in the EU: Law and Practice*, Cheltenham 2018, p. 27.

[84] *Ibidem*.

ticular: (a) to ensure compliance with the prohibitions provided for in Article 101 (1) and Article 102 through the imposition of periodic fines and sanctions; (b) to lay down detailed rules for the application of Article 101 (3), taking into account the need to ensure effective oversight, on the one hand, and to simplify administration as much as possible, on the other; (c) to determine, if necessary, in the various branches of the economy, the scope of the provisions of Articles 101 and 102; (d) to determine the respective functions of the Commission and of the Court of Justice of the European Union in relation to the implementation of the provisions set out in this paragraph; (e) to determine the relationship between national legislation and the provisions contained in this Section or the provisions adopted pursuant to this Article".

According to Article 104 (ex Article 84 TEC) TFEU until the entry into force of the provisions adopted pursuant to Article 103, the authorities in the Member States shall decide on the admissibility of concerted agreements, decisions and practices and on the abuse of a dominant position in the internal market, in accordance with the legislation of their countries and with the provisions of Article 101, in particular paragraph 3 thereof, and Article 102.

CONCLUSIONS

Abuse with dominant positions and anticompetitive agreements in the market are unlawful pursuant to the TFEU and Law No. 03/L-229. Drafting of the Law on Protection of Competition in Kosovo was initially based on the Kosovo Constitution which is a statement of the basic principles and laws of Kosovo. Furthermore, the TFEU and international practices have been taken into account. It is obvious that the law is drafted based on a good standard but there is still space for amendment. Pursuant to Law on Protection of Competition, the competent institution for protection of competition is established, named Kosovo Competition Authority. As a result, the Charter of the Kosovo Competition Authority is drafted and approved by the Kosovo Assembly. In pursuit of this Charter relevant regulations and bylaws are drafted. The Kosovo Competition Authority was challenged with several difficulties such as incomplete composition of the commission for years resulting resulted in delays with rendering decisions on violations occurred in the market and prompt identification of violators. Key indicator of such situation is law number of decisions issued by the Kosovo Competition Authority, since its establishment up to date, in regards to abuse with dominant positions and anticompetitive agreements in the market.

The competent institution for protection of competition in the country should, in accordance with the law and all bylaws, its charter of association supervise the competition in the country, establish a good cooperation with all institutions and

consumers in order to identify more quickly the enterprises that abuse dominant positions and those that establish anticompetitive agreements. The institution, at the moment it identifies them, must collect proof, evidence and impose punitive measures within the competencies it has. Through punishment is increased the awareness of the companies on which measures are taken at the moment they violate the Law on Protection of Competition. However, this is possible only through hiring professional staff who will be continuously trained and educated so the competent institution for protection of competition becomes professional and responds in timely manner to the parties' demands for protection in the market from abuse with dominant positions and anticompetitive agreements.

Enterprises that are in dominant positions and which abuse with dominant positions aim to have advantage over other competing enterprises. However, such actions constitute violation of the Law on Protection of Competition, and create inequality in the market. For this reason, the competent institutions for protection of competition are necessary and shall be professional in exercising their responsibilities. This institution shall be supported by the state in order to establish a stable and competitive market.

It is vital that every owner of all types of companies in the country is provided with sufficient information about the Law on Protection of Competition, about the role and importance of competition in the market, in order to understand whether any of their actions constitute a violation.

Information and awareness regarding competition in the country and abroad should be available to all consumers in order to be as cooperative as possible with the competent Institution for Protection of Competition and the competent Institution for Consumer Protection.

Only with proper information, education and cooperation the occurrence of abuse with dominant positions and anticompetitive agreements can be prevented, which may harm the market. However, proper information shall be guaranteed by the state through established mechanisms ensuring good cooperation with all stakeholders. If the prompt information and awareness is reached, performance of the Kosovo Authority of Competition will be much more fruitful by easy and rapid identification of violations of competition in the market. Consequently, the Kosovo Authority of Competition will be able to impose fines in timely manner against potential violators of the competition.

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ABSTRAKT

Artykuł dotyczy ochrony konkurencji przed nadużyciem pozycji dominującej i porozumieniami ograniczającymi konkurencję na rynku Kosowa w świetle Konstytucji Kosowa oraz ustawy o ochronie konkurencji. Po uchwaleniu ustawy powołano Urząd Ochrony Konkurencji Kosowa jako organ właściwy do spraw ochrony konkurencji. Urząd Ochrony Konkurencji Kosowa jest niezależną instytucją publiczną realizującą kompetencje określone ustawowo i podlegającą Zgromadzeniu Republiki Kosowa. Urząd Ochrony Konkurencji Kosowa ma obowiązek wykonywania przepisów Konstytucji, ustawy o ochronie konkurencji, Statutu Urzędu Ochrony Konkurencji Kosowa, Kodeksu etycznego, wytycznych administracyjnych i rozporządzeń w celu ochrony konkurencji przed nadużyciem pozycji dominującej i porozumieniami ograniczającymi konkurencję. Nadużycie pozycji dominującej i porozumienia ograniczające konkurencję szkodzą uczestnikom rynku i stawiają przedsiębiorstwa w nierównym położeniu na rynku. Wobec tego państwo ma obowiązek zapewnienia oprócz infrastruktury prawnej również informacji i mechanizmów wykonawczych służących do stworzenia prawdziwego i stabilnego rynku. Na prawidłowej i stabilnej konkurencji korzystają wszystkie przedsiębiorstwa działające na rynku, a także konsumenci. Wdrożenie standardów ochrony konkurencji zapewni konkurencyjny i stabilny rynek. W niniejszym artykule podjęto temat rozwiązań prawnych w zakresie ochrony konkurencji przed nadużyciem pozycji dominującej i porozumieniami ograniczającymi konkurencję na rynku w pełnej zgodności z ustawą o ochronie konkurencji w Kosowie i na mocy Traktatu o funkcjonowaniu Unii Europejskiej.

Słowa kluczowe: ochrona konkurencji; nadużycie pozycji dominującej; porozumienia ograniczające konkurencję; prawo; rynek