

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

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ABSTRACT

The protection of competition from the abuse with dominant positions and anticompetitive agreements in the market, should first be regulated by the Constitution and then by the Law on Protection of Competition which should be drafted in accordance with the Constitution as the highest act of a country. The Law on Protection of Competition should provide for the establishment of a competent Institution for the Protection of Competition, which institution should be established with a Charter of Association, which is the highest act of this institution. The institution in question has an obligation to implement the Law on Protection of Competition and to protect the market from abuse with dominant positions and competition agreements. Abuse with dominant positions and anticompetitive agreements are detrimental to market participants, and place 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. Through a good and stable competition benefit all types of companies in the market, as well as all consumers because through the implementation of competition standards, we have a stable and competitive market. This paper aims to reflect legislation of competition and protection of competition from abuse with dominant positions and anticompetitive agreements in the market, in full adherence with the Treaty on the Functioning of the European Union and the Law on Protection of Competition in Kosovo.

Keywords: Protection of competition, abuse with dominant positions, competitive 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 and the Law on Protection of Competition in Kosovo.

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 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 Treaty on the Functioning of the European Union and the Law on Protection of Competition in Kosovo. Apart from analytical work, the comparative method is applied with 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 TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION AND
THE LAW ON PROTECTION OF COMPETITION IN KOSOVO

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 par. 2 of Article 10 of the LPC it is stated that: “An enterprise is considered to have a dominant position if it has more than forty per-cent (40%) presence at the market”.¹ However, this provision was amended in 2014, where the amendment law is worded as follows: “Article 10 paragraph 2. of the basic Law, the percentage of dominant position is changed from “forty percent (40%)” to “twenty-five percent (25%)”.²⁶ As of 2014, companies with more than 25% market presence compared to other competitors are considered as the dominant position.² With a dominant position of over 40% under Article 6 (3) of Law No. 04/L-226 on amending and supplementing the Law No. 03/L-229 on Protection of Competition 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)”.³ Having this market power, the enterprise can abuse this power, bringing illegal profits, eliminating competition, as well as reducing the welfare of the consumer.⁴ Therefore, the abuse of a dominant position is contrary to the Law on Protection of Competition in Kosovo and to the Treaty on the Functioning of the European Union.

LEGAL ASPECTS CONCERNING ABUSE WITH DOMINANT POSITIONS IN THE
MARKET, IN ACCORDANCE WITH THE TREATY ON THE FUNCTIONING OF THE
EUROPEAN UNION

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1. Legal aspects of Anticompetitive agreements in the market, according to the Treaty on the Functioning of the European Union

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¹ V. Mulaj, *Improvement of the Kosovo Market through Implementation of the Competition Legal Framework*, Journal: “The Lawyer Quarterly” 2020, Vol. 10 (3), p. 352.

² *Ibidem*, p. 353.

³ *Ibidem*, p. 353.

⁴ J. Lamaj, *E drejta e konkurrencës në kuadrin e lirisë kushtetuese ekonomike (Competition law in the framework of constitutional economic freedom)*. Doctoral dissertation, Tirana 2018, p. 39.

The primary competition law in Europe is the Treaty on the Functioning of the European Union, otherwise known as the Lisbon Treaty.⁵ The Treaty on the Functioning of the European Union 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.⁶

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.).⁷ Dominance must always be assessed in relation to a specific product and geographic market.⁸ In addition, the Treaty does not include an exemption for dominance abuse, although based on the Commission's practice it is possible to invoke an 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).⁹

Legal aspects of the abuse with dominant market positions, according to the Treaty on the Functioning of the European Union are provided in: Article 54, entitled: 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, 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 than provided herein.¹⁰ Article 102 (ex Article 82 TEC) 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

⁵ Consolidated version of the Treaty on the Functioning of the European Union. See website: [Traktati i Lisbonës - Verzioni i Konsoliduar.pdf \(mei-ks.net\)](#), (access: 10.12.2021).

⁶ 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)*. Doctoral dissertation, Tirana 2015, p. 33.

⁷ W. Sauter, *Coherence in EU Competition Law*. Oxford studies in European Law. First Edition published in 2016, p. 29.

⁸ *Ibidem*, p. 29.

⁹ *Ibidem*, p. 29.

¹⁰ Article 54 Consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union. See website: [Traktati i Lisbonës - Verzioni i Konsoliduar.pdf \(mei-ks.net\)](#), (access: 09.10.2021).

internal market in so far as it may affect trade between Member States.¹¹ 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.¹² In this regard, the prohibited behaviours contained in Article 102 will be considered as anticompetitive practices only in cases when they are committed by an undertaking in a dominant position.¹³

LEGAL ASPECTS OF ABUSE WITH DOMINANT POSITIONS IN THE MARKET ACCORDING TO THE LAW ON PROTECTION OF COMPETITION IN KOSOVO

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 regulated 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”¹⁴, then with Article 119 paragraph 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”.¹⁵ 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.¹⁶ Based on the

¹¹ EU Competition Law Rules Applicable to Antitrust Enforcement. Volume I: General Rules. Situation as at 1st of July 2013, p. 11.

¹² EU Competition Law Rules Applicable to Antitrust Enforcement. Volume I: General Rules. Situation as at 1st of July 2013, p. 11.

¹³ V. Zhezha, *Analizë e politikës së konkurrencës (Analysis of Competition Policy in the European Union)*. Doctoral dissertation, Tirana 2016, p. 54.

¹⁴ Article 10 of the Constitution of the Republic of Kosovo of 2008. See the official website: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>, (access: 09.10.2021).

¹⁵ Article 119 paragraph 3 of the Constitution of the Republic of Kosovo of 2008. See the official website: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>, (access: 09.10.2021).

¹⁶ E. Hasani, I. Čukalović, *Commentary, The Constitution of the Republic of Kosovo*. Issue (I), Prishtina 2013, p. 612.

Constitution of Kosovo, Law no. 03/L-229 on Protection of Competition¹⁷ as well as Law no. 04/L-226 on Amending and Supplementing Law no. 03/L-229 on Protection of Competition,¹⁸ harmonizing them with the member states of the European Union. And then based on the law in question was established the competent institution for protection of competition with the name Kosovo Competition Authority.¹⁹ 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. 2004/36.²⁰ 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 the dominant position.

Legal a regarding the abuse with dominant market positions according to Article 11 paragraph 1 to paragraph 1.6 of Law no. 03/L-229 on Protection of Competition, states 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*

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¹⁷ Law on Protection of Competition in Kosovo, 2010. See official website: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2727>, (access: 09.10.2021).

¹⁸ Law No. 04/L-226 on Amending and Supplementing Law NO. 03/L-229 on Protection of Competition. See the official website: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2727>, (access: 09.10.2021).

¹⁹ Kosovo Competition Authority. See the official website: <https://ak.rks-gov.net/ballina>, (access: 11.01.2021).

²⁰ Work Report 2018, p. 9, from the Kosovo Competition Authority: See the official website: [https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20punes/Reports%20i%20Punes%20i%20AKK-s%20C3%AB%202018%20\(FINAL\).pdf](https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20punes/Reports%20i%20Punes%20i%20AKK-s%20C3%AB%202018%20(FINAL).pdf), (access: 11.10.2021).

infrastructures prevents the other enterprise to act as a competitor of the enterprise with dominant position”.²¹

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 suppliers.²² “Price increase” means the power to keep prices above competitive levels.²³ 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.²⁴

Even Law No. 03/L-229 on Protection of Competition,²⁵ as well as Law no. 04/L-226 on Amending and Supplementing Law no. 03/L-229 on Protection of Competition in Kosovo,²⁶ during the drafting was based and had taken as a model the Treaty on the Functioning of the European Union. And we can see this best through their regulation, where if we refer to Article 102 of the Treaty on the Functioning of the European Union and Article 11, paragraphs 1 to 1.6 of Law no. 03/L-229 on Protection of Competition in Kosovo, we understand how much is taken as a basis for the TPFEU model. It is known that the states draft legislation in the national aspect for internal needs, but in the case in hand, the TPFEU has helped many states to refer 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*

²¹ According to Article 11 paragraph 1 to paragraph 1.6 of Law no. 03/L-229 on Protection of Competition in Kosovo: See official website: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2727>, (access: 11.10.2021).

²² National Competition Policy published by the Competition Authority in the Republic of Albania. 2006, p. 20. Approved by the Competition Commission, with decision no. 43, dated 28.12.2006, pursuant to article 24/a of law no. 9121 “On the Protection of Competition”. See the official website: http://caa.gov.al/uploads/publications/POLITIKA_aca.pdf, (access: 18.10.2021).

²³ V. Zhezha, *Analizë e politikës së konkurrencës, (Analysis of Competition Policy in the European Union)*, Doctoral dissertation, Tirana 2016, p. 57.

²⁴ National Competition Policy published by the Competition Authority in the Republic of Albania. 2006, p. 20. Approved by the Competition Commission, with decision no. 43, dated 28.12.2006, pursuant to article 24/a of law no. 9121 “On the Protection of Competition”. See the official website: http://caa.gov.al/uploads/publications/POLITIKA_aca.pdf, (access: 19.10.2021).

²⁵ Law no. 03/L-229 on Protection of Competition in Kosovo: See official website: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2727>, [access: 19.10.2021].

²⁶ Law no. 04/L-226 on Amending and Supplementing Law no. 03/L-229 on Protection of Competition in Kosovo. See the official website: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2727>, (access: 19.10.2021).

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 1/2003/EC, Commission Regulation (EC) no. 773/2004, and Council Regulation 139/2004/EC (the so-called “Basic Competition Regulations”).²⁷

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 point 1 (now Article 101) of the Treaty establishing European Community (OJ/C 368/13, dated 22 December 2001) 1; 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 No. 802/2004 implementing Council Regulation 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 reduction of an administrative measure - which transposes Commission Regulation (EC) No. 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”.²⁸

The Kosovo Competition Authority through the 2018 report has suggested amendment of the Law on Protection of Competition, 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

²⁷ Work Report 2018, of the Kosovo Competition Authority. p. 7. See the official website: [https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Reports%20i%20Punes%20i%20AKK-s%20C3%AB%202018%20\(FINAL\).pdf](https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Reports%20i%20Punes%20i%20AKK-s%20C3%AB%202018%20(FINAL).pdf) (access: 08.11.2021).

²⁸ Work Report 2018, of the Kosovo Competition Authority. p. 7. See the official website: [https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Reports%20i%20Punes%20i%20AKK-s%20C3%AB%202018%20\(FINAL\).pdf](https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Reports%20i%20Punes%20i%20AKK-s%20C3%AB%202018%20(FINAL).pdf) (access: 08.11.2021).

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 eighteen (18) cases during 2017.²⁹ Only one (1) case has been treated for “*Abuse of a dominant position*”, rendering a decision with a conclusion to close the case³⁰

According to report of 2018 published by the Kosovo Competition Authority, the Authority has addressed 2 (two) cases of abuse of a dominant position, where in both cases it was decided to initiate no investigation procedure.³¹

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.³²

The report for 2020, published by the Kosovo Competition Authority, provides that the Authority has treated 2 (two) cases of abuse of a dominant position, where in one case it was

Z komentarzem [EC11]: Case 1 dated: 28.04.2017, should be only italic not bold

²⁹ Work Report 2017, of the Kosovo Competition Authority. p. 3. See the official website: https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes%202017_FINAL_AKK.pdf, (access: 08.11.2021).

³⁰ **Case 1 dated: 28.04.2017**, Kosovo Competition Authority on 09.09.2013, received the complaint with protocol prot. 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 28.04.2017, with prot. 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/L229 on Protection of Competition. See the Work Report 2017, of the Kosovo Competition Authority. p. 3. See the official website: https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes%202017_FINAL_AKK.pdf, (access: 08.11.2021).

³¹ **Case 1 dated: 12.02.2018**, where it was decided not to open the investigation procedure. **Case 2 dated: 27.02.2018**, where it was decided not to open the investigation procedure. See Work Report 2018, of the Kosovo Competition Authority. p. 16 and 17. See the official website: [https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Reports%20i%20Punes%20i%20AKK-s%20C3%20AB%202018%20\(FINAL\).pdf](https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Reports%20i%20Punes%20i%20AKK-s%20C3%20AB%202018%20(FINAL).pdf), (access: 25.11.2021).

³² Work Report 2019, of the Kosovo Competition Authority. See the official website: <https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes%202019%20Punes%20i%20AKK-s%20C3%20AB%202019%20-%20FINAL.pdf>, (access: 25.02.2022).

decided to commence with the investigation procedure, while on the other case it was decided with a conclusion to initiate the investigation.³³

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 TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION AND THE LAW ON PROTECTION OF COMPETITION IN KOSOVO

1. Legal aspects of Anticompetitive agreements in the market, according to the Treaty on the Functioning of the European Union

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 of the TFEU is the provision of the Lisbon Treaty related to anticompetitive behaviours representing the outcome from collusion among undertakings.³⁴ 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.³⁵

³³ *Case 1 dated: 16.11.2020*, where it was decided with a conclusion not to initiate the investigative procedure. *Case 2 dated: 04.12.2020*, Conclusion to initiate the investigation. See the Work Report 2020, of the Kosovo Competition Authority. p. 21-24. See the official website: https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes%20i%20AKK-s%C3%AB%202020_FINAL.PDF, (access: 25.02.2022).

³⁴ A. List, *EU Competition Law and the Financial Services Sector*, First published 2013, 4.

³⁵ *Ibidem*, p. 4.

Antitrust consists firstly of Article 101 (1) of the Treaty on the Functioning of the European Union (TFEU) which prohibits anticompetitive agreements practices by undertakings, unless the limited conditions for an exception (and an exemption) set out in Article 101 (3) TFEU are met.³⁶ The drafting of Article 101 (3) TFEU (then Article 85 (3) EEC) 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.³⁷

Legal aspects of anticompetitive agreements in the market, according to the Treaty on the Functioning of the European Union are provided in Article 101 (ex Article 81 TEC) 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:³⁸ (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.³⁹

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 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

³⁶ W. Sauter, *Coherence in EU Competition Law*, Oxford studies in European Law. First Edition published in 2016, p. 28.

³⁷ *Ibidem*, p. 28.

³⁸ EU Competition Law Rules Applicable to Antitrust Enforcement. Volume I: General Rules. Situation as at 1st of July 2013, p. 10.

³⁹ *Ibidem*, p. 10.

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.⁴⁰

Article 101 can be defined as the foremost means for the control of anticompetitive behaviours in the common market, it involves all possible types of action against a fair competition, prohibiting first of all anticompetitive agreements.⁴¹ 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.”⁴² 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).⁴³ 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.⁴⁴ Article 101 of the 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).⁴⁵ 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.

⁴⁰ EU Competition Law Rules Applicable to Antitrust Enforcement. Volume I: General Rules. Situation as at 1st of July 2013, p. 10.

⁴¹ A. List, *EU Competition Law and the Financial Services Sector*, First published 2013. 5.

⁴² *Ibidem*, p. 5.

⁴³ V. Zhezha, *Analizë e politikës së konkurrencës, (Analysis of Competition Policy in the European Union)*, Doctoral dissertation, Tirana 2016, p. 32.

⁴⁴ 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)*, Doctoral dissertation, Tirana 2015, p. 58.

⁴⁵ V. Zhezha, *Analizë e politikës së konkurrencës (Analysis of Competition Policy in the European Union)*, Doctoral dissertation, Tirana 2016, p. 34.

Thus in 2010, the Commission approved the Commission Regulation No. 461/2010 dated 27 May 2010 “On the implementation of Article 101/3 of the Treaty on European Union for the categories of vertical agreements and coordinated practices in the motor vehicle sector”; Regulation no. 1218/2010 dated 14 December 2010 “On the implementation of Article 101/3 of the Treaty on the Functioning of the European Union for certain categories of specialization agreements” and Regulation no. 1217/2010 dated 14 December 2010 “On the implementation of Article 101/3 of the Treaty on the Functioning of the European Union for certain categories of Research and Development agreements”.⁴⁶

Second, Article 101 concerns “decisions by associations of undertakings”; because the Treaty does not specify the notion of “decision,” this concept was developed by the European Courts of Justice. Giving a broad definition of “decisions,” the Courts 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.”⁴⁷

2. Legal aspects of Anticompetitive agreements in the market, according to the Law on Protection of Competition in Kosovo

Legal aspects of anticompetitive agreements in the market according to Article 4 paragraph 1 to paragraph 1.5 and paragraph 2 of Law no. 03/L-229 on Protection of Competition in Kosovo, 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*

⁴⁶ V. Zhezha, *Analizë e politikës së konkurrencës (Analysis of Competition Policy in the European Union)*, Doctoral dissertation, Tirana 2016, pp. 34-35.

⁴⁷ A. List, *EU Competition Law and the Financial Services Sector*, First published 2013. 5.

*contract 2. Agreements or decisions prohibited by paragraph 1 of this Article and which are not excluded according to Article 5, 6, 7 and 8 of this law, are null and void”.*⁴⁸ Article 3 of Law no. 04/L-226 on Amending and Supplementing Law no. 03/L-229 on Protection of Competition, 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”.⁴⁹

Anticompetitive agreements, same as the abuse with dominant positions presented above, are regulated by Law no. 03/L-229 on Protection of Competition, as well as Law no. 04/L-226 on Amending and Supplementing Law no. 03/L-229 on Protection of Competition in Kosovo, which during the drafting were based and have taken as a model the Treaty on the Functioning of the European Union. And we can see this best through their regulation, where if we refer to Article 101 of the Treaty on the Functioning of the European Union and Article 4, paragraphs 1 to 1.5 and paragraph 2 of Law no. 03/L-229 on Protection of Competition in Kosovo, we understand how much is taken for model TPFEU. It is important to note that both under the Treaty on the Functioning of the European Union and under the Law on Protection of Competition in Kosovo, 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,⁵⁰ 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,⁵¹ as well as not allowing companies to abuse dominant positions and anticompetitive agreements in the market. The Kosovo Competition

⁴⁸ According to Article 4 paragraph 1 to paragraph 1.5 and paragraph 2 of Law no. 03/L-229 on Protection of Competition in Kosovo: See official website: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2727>, (access: 26.11.2021).

⁴⁹ According to Article 3 of Law no. 04/L-226 on Amending and Supplementing Law no. 03/L-229 on Protection of Competition in Kosovo. See the official website: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2727>, (access: 26.11.2021).

⁵⁰ Kosovo Competition Authority: See the official website: <https://ak.rks-gov.net/ballina>, [access: 29.11.2021].

⁵¹ Strategic Objectives of the Kosovo Competition Authority: See the official website: <https://ak.rks-gov.net/objektivat>, (access: 29.11.2021).

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.⁵² 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.⁵³ 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.⁵⁴ 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.⁵⁵

The Kosovo Competition Authority in Kosovo 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 reflect the opinions and recommendations, professional conclusions given by the Kosovo Competition Authority which are presented below:

In the 2017 report published by the Kosovo Competition Authority, the Authority has handled eighteen (18) cases during 2017.⁵⁶ It has handled 10 cases of “*Prohibited agreements/cartels*”, one (1) case of “*Abuse of a dominant position*”, two (2) cases of “*Merger*” and has given five (5)

⁵² V. Mulaj, *Improvement of the Kosovo Market through Implementation of the Competition Legal Framework*, Journal: “The Lawyer Quarterly” 2020, Vol. 10 (3), p. 355.

⁵³ National Competition Policy published by the Competition Authority in the Republic of Albania. 2006, p. 19. Approved by the Competition Commission, with decision no. 43, dated 28.12.2006, pursuant to article 24/a of law no. 9121 “On the Protection of Competition”. See the official website: http://caa.gov.al/uploads/publications/POLITIKA_aca.pdf, (access: 29.11.2021).

⁵⁴ V. Mulaj, *Improvement of the Kosovo Market through Implementation of the Competition Legal Framework*, Journal: “The Lawyer Quarterly” 2020, Vol. 10 (3), p. 355.

⁵⁵ *Ibidem*, p. 355.

⁵⁶ Work Report 2017, of the Kosovo Competition Authority. p. 3. See the official website: https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes%202017_FINAL_AKK.pdf, (access: 29.11.2021).

“Professional opinions”.⁵⁷ The Kosovo Competition Authority from 10 (ten) cases handled against anticompetitive agreements, has been decided to close 7 (seven) if them.⁵⁸ And in 2 (two) cases a decision was made to close the case.⁵⁹ While 1 (one) case was decided with a Conclusion for initiating the investigative procedure.⁶⁰

⁵⁷ *Ibidem*, p. 3.

⁵⁸ **Case 1 dated: 28.04.2017**, The request was submitted to the Kosovo Competition Authority by the Ministry of Justice on 10.10.2014, 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 30.03.2017 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 paragraph 1 of the Law on Administrative Procedure no. 02/L-028 and the Commission considers that the party has withdrawn its request. **Case 2 dated: 28.04.2017**, regarding the request registered with prot. no. 55/16-01 dated. 26.05.2016, 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 dated: 05.10.2017**, regarding the request with prot. 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 dated: 05.10.2017**, regarding the request with prot. no. 2014/1903 at KCA. It is decided with a Conclusion for closing the case. **Case 6 dated: 05.10.2017**, regarding the case, the Kosovo Competition Authority ex officio on 17.07.2017, 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, on Protection of Competition, and on this occasion we found that this agreement has not been implemented, there has been no market impacts nor injured parties. Finally, we consider that this agreement was made due to lack of knowledge of the provisions of the Law on Protection of Competition, 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 dated: 05.10.2017**, is decided with Conclusion for closing the case. **Case dated: 05.10.2017**, is decided with Conclusion for closing the case. Work Report 2017, of the Kosovo Competition Authority, p. 9-14. See the official website: https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes%202017_FINAL_AKK.pdf, (access: 29.11.2021).

⁵⁹ **Case 3 dated: 06.07.2017**, the Authority has reviewed the request, with prot. no. 50/17-02/H dated 01.03.2017, 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 on Protection of Competition, therefore the Authority does not handle cases and does not conduct procedures for issues that are not within its competence. And **Case 8 dated: 05.10.2017**, the Authority has reviewed the request, with prot. no. 70/17-03/H dated 30.03.2017, 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 on Protection of Competition, therefore, the Authority does not handle cases and does not conduct procedures for issues that are not within its competence. See Work Report 2017, of the Kosovo Competition Authority, p. 10 and 13. See the official website: https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes%202017_FINAL_AKK.pdf, (access: 02.12.2021).

⁶⁰ **Case 9 dated: 05.10.2017**, it was decided with a Conclusion for the initiation of the investigative procedure. See Work Report 2017, of the Kosovo Competition Authority, p. 10 and 13. See the official website: https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes%202017_FINAL_AKK.pdf, (access: 02.12.2021).

In the 2018 report published by the Kosovo Competition Authority, the Authority has handled 6 (six) cases of prohibited agreements.⁶¹ Three out six cases were decided with a conclusion for initiation of the investigative procedure.⁶² In one (1) case it was decided to commence with no investigative procedure.⁶³ For 1 (one) other case a decision has been made to take on obligations.⁶⁴ While 1 (one) other case has been decided that the agreement does not distort competition.⁶⁵

Based on the reports of 2017, 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, KCA resolved eighteen (18) cases,⁶⁶ handled four (4) cases of “*Prohibited agreements/cartels*”, four (4) cases of

⁶¹ Work Report 2018, of the Kosovo Competition Authority. p. 11-16. See the official website: [https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Reports%20i%20Punes%20i%20AKK-s%20C3%20AB%202018%20\(FINAL\).pdf](https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Reports%20i%20Punes%20i%20AKK-s%20C3%20AB%202018%20(FINAL).pdf), (access: 02.12.2021).

⁶² **Case 1 dated: 10.01.2018**, it was decided to initiate an investigative procedure. **Case 4 dated: 04.05.2018**, it was decided with a conclusion to start the investigative procedure. **Case 6 dated: 16.10.2018**, it was decided with a conclusion to start the investigative procedure. See Work Report 2018, of the Kosovo Competition Authority. p. 11, 13 and 16. See the official website: [https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Reports%20i%20Punes%20i%20AKK-s%20C3%20AB%202018%20\(FINAL\).pdf](https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Reports%20i%20Punes%20i%20AKK-s%20C3%20AB%202018%20(FINAL).pdf), (access: 02.12.2021).

⁶³ **Case 2 dated: 20.02.2018**, it was decided not to open the investigation procedure. The Commission of the Kosovo Competition Authority based on Article 35 paragraph 5 of the Law on Protection of Competition assesses that there are no arguments for initiating the investigative procedure and decided as in the provision of this conclusion. See the Work Report 2018, of the Kosovo Competition Authority. p. 11-12. See the official website: [https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Reports%20i%20Punes%20i%20AKK-s%20C3%20AB%202018%20\(FINAL\).pdf](https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Reports%20i%20Punes%20i%20AKK-s%20C3%20AB%202018%20(FINAL).pdf), [access: 02.12.2021].

⁶⁴ **Case 3 dated: 30.03.2018**, a decision has been made to take on obligations. See Work Report 2018, of the Kosovo Competition Authority. p. 12. See the official website: [https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Reports%20i%20Punes%20i%20AKK-s%20C3%20AB%202018%20\(FINAL\).pdf](https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Reports%20i%20Punes%20i%20AKK-s%20C3%20AB%202018%20(FINAL).pdf), (access: 02.12.2021).

⁶⁵ **Case 5 dated: 10.10.2018**, it has been decided that the agreement does not distort competition. See Work Report 2018, of the Kosovo Competition Authority. p. 13-15. See the official website: [https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Reports%20i%20Punes%20i%20AKK-s%20C3%20AB%202018%20\(FINAL\).pdf](https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Reports%20i%20Punes%20i%20AKK-s%20C3%20AB%202018%20(FINAL).pdf), (access: 02.12.2021).

⁶⁶ Work Report 2019, of the Kosovo Competition Authority. See the official website: <https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Raporti%20i%20Punes%20i%20AKK-s%20C3%20AB%202019%20-%20FINAL.pdf>, (access: 25.02.2022).

“Concentrations”, and gave ten (10) “Professional opinions and recommendations”.⁶⁷ Kosovo Competition Authority from four (4) cases handled on anticompetitive agreements, presented in this report these data to the public.⁶⁸

In the 2020 report, published by the Kosovo Competition Authority, the Authority reported on handling eighteen (18) cases during that year.⁶⁹ It handled five (5) cases of “Prohibited agreements/cartels”, two (2) cases of “Dominant position” where it was alleged that there had been abuse with dominant positions, five (5) cases of “Concentrations”, gave four (4) “Professional opinions”, and monitored five (5) markets.⁷⁰ The Kosovo Competition Authority from 5 (five) cases handled on anticompetitive agreements, had decided on two (2) cases with a conclusion that there are no arguments for initiating the investigative procedure.⁷¹ And in two (2)

⁶⁷ Work Report 2019, of the Kosovo Competition Authority. See the official website: <https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Raporti%20i%20Punes%20i%20AKK-s%20C3%AB%202019%20-%20FINAL.pdf>, (access: 25.02.2022).

⁶⁸ **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 KCA 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 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 KCA commission, in the meeting held on 24.12.2018, decided to monitor the market of the oil sector (by-product: Eurodiesel 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 KCA. 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. Work Report 2019, of the Kosovo Competition Authority, p. 9. See the official website: <https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes/Raporti%20i%20Punes%20i%20AKK-s%20C3%AB%202019%20-%20FINAL.pdf>, (access: 26.02.2022).

⁶⁹ Work Report 2020, of the Kosovo Competition Authority. See the official website: https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes%20i%20AKK-s%20C3%AB%202020_FINAL.PDF, (access: 28.02.2022).

⁷⁰ Work Report 2020, of the Kosovo Competition Authority. See the official website: https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes%20i%20AKK-s%20C3%AB%202020_FINAL.PDF, (access: 28.02.2022).

⁷¹ **Case 1 dated: 15.10.2020** - 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

other cases, a decision was taken to close the investigative procedure.⁷² While for one (1) case, it imposed an administrative sanction.⁷³

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 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*

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 dated: 15.10.2020** - 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. Work Report 2020, of the Kosovo Competition Authority. p. 9-14. See the official website: https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes%20i%20AKK-s%C3%AB%202020_FINAL.PDF, (access:28.02.2022).

⁷² **Case 3 dated: 06.05.2020** - 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.” And in **Case 4 dated: 06.05.2020** - 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 Work Report 2020, of the Kosovo Competition Authority. p. 15 and 19. See the official website: https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes%20i%20AKK-s%C3%AB%202020_FINAL.PDF, (access: 28.02.2022).

⁷³ **Case 5 dated: 06.05.2020**, – With the Final Decision, the Kosovo Competition Authority has imposed administrative sanctions on some enterprises. See Work Report 2020, of the Kosovo Competition Authority. p. 19 and 20. See the official website: https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20i%20Punes%20i%20AKK-s%C3%AB%202020_FINAL.PDF, (access: 28.02.2022).

***An example of an anticompetitive deal:** Claimants in the case of Emerald Supplies v British Airways sought to argue that cartelised 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).⁷⁵ 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 cartelised(s) could only have intended to injure them, which it would be necessary to prove.⁷⁶*

Article 103 (ex Article 83 TEC) Consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union: 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.⁷⁷ 2. The regulations or directives referred to in paragraph 1 shall be drawn up, in particular: (a) to ensure compliance with the prohibitions provided for in Article 101 (1) and Article 102 through the imposition of

⁷⁷ Article 103 (ex Article 83 TEC) Consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union. See website: [Traktati i Lisbones - Verzioni i Konsoliduar.pdf \(mei-ks.net\)](#), (access: 19.10.2021).

periodic fines and sanctions; 89 (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.⁷⁸

Article 104 (ex Article 84 TEC) 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 102.⁷⁹

CONCLUSIONS

Abuse with dominant positions and anticompetitive agreements in the market are unlawful pursuant to Treaty on Functioning of the European Union and the Law on Protection of Competition in Kosovo. 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 Treaty on Functioning of the European Union 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

⁷⁸ Article 103 (ex Article 83 TEC) Consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union. See website: [Traktati i Lisbonës - Verzioni i Konsoliduar.pdf \(mei-ks.net\)](#), (access: 19.10.2021).

⁷⁹ Article 104 (ex Article 84 TEC) Consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union. See website: [Traktati i Lisbonës - Verzioni i Konsoliduar.pdf \(mei-ks.net\)](#), (access: 19.10.2021).

Assembly. In pursuit of this Charter relevant regulations and by-laws are drafted. The Kosovo Competition Authority was challenged with several difficulties such as incomplete composition of the commission for years resulting 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 an 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 is 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.

As the journal is under evaluation by a Web of Science expert, I would very much appreciate it if you could extend the literature with bibliographic items from journals indexed in Web of Science or Scopus.

REFERENCE

the remark of the editorial board

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