

## Functionality of the Kosovo Competition Authority on the basis of European Union standards a guarantee for loyal economy in Kosovo

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### Abstract

Legal regulation of market mechanisms and the implementation of economic policies for a fair competition in TEs is a challenging issue. The competition is a complex economic phenomenon that is manifested and characterized by the strength and content that gives to the market economy. In Kosovo specific economic entities, in one way or another, are tempted to gain as much buyers or markets and create much more profits. The problem is connected with the irregularity. Such behavior and unfair actions are not only damaging the image of the country but are a serious threat the harmonious development of the national economy and the country's accession process to the EU. The parliament of Kosovo established the Kosovo Competition Authority as an independent institution with special competences to control and fight this negative phenomenon. Based to official data it turns out that the effectiveness of this institution is not only incomplete but also non-functional. This is because of the "ignorance" and non-adequate treatment that is reserved for this authority by the parliamentary and governmental institutions. All this because the members are not elected based to regular procedures and not allocating the necessary financial means to operate. At least so far, the Kosovo Competition Authority was not allowed to hire professionals with clear competences to act and investigate the negative phenomenon of unfair competition. Certainly, this situation does not guarantee effective implementation of laws and quality protection of competition. Therefore, the mobilization of parliamentary and governmental levels is needed to enhance professional capacities and increase their competence in scope of the investigation including cooperation with prosecutors and courts. These actions should be reconsidered with the aim of creating a competitive safe environment for all operators. To conclude, the loyal competition policies and legislative framework should be harmonized in forms and content with the policies and rules of the EU.

**Keywords:** *Competition, competences, legislation, the regulatory authority, EU.*

### Introduction

The Republic of Kosovo is a country with an open economy towards the international trade that was supposed to be characterized by dynamism and growth. During recent years the country has a macroeconomic stability with small economic growth. Despite this, these positive parameters are not sufficient for a dynamic economic development. A particular attention has been paid to the institutional changes including the establishment of regulatory mechanisms, adoption of a legal framework for competition, the establishment of institutions and development of policies that supports markets. The institutional changes regarding the enterprises and businesses, in the legal, financial and

social framework that support the market process and enterprises constitute the essence of the transition (Riinvest Bulletin, Business Climate in Kosovo, 2014). In this regard, the main challenges for today and in the future is the consolidation of a fully functioning market economy, able to withstand the competitive coercion and market forces by powerful commercial operators, both at the regional and global level. Soon the relevant state institutions have to finalize and sign the Stabilization and Association Agreement with EU. These are proofs that in one hand reflect the progress that the country has made in the EU structures toward the consolidation of political and democratic institutions and toward and consolidated market economy and in other hand the willingness to making their respective obligations arising from this process. To enable a sustainable growth and faster integration into EU structures, the country needs a more advanced climate for businesses and strong and efficient governance. However, the situation may worsen if state intervention is not effective. The practice shows that solutions stand not only between imperfect markets and state intervention, but in many cases also between imperfect markets and imperfect or incomplete interventions of the state. One of the mechanisms to be strengthened is the competition authority of the Republic of Kosovo<sup>1</sup>. To the Governing Body of the Kosovo Competition Authority since November 2011 some members some members are missing. On the other hand the Commission for Protection of Competition, the body that runs the ACA, has received only a few decisions about the market from the time it was left with only three commissioners as part of the institution. The current members do not recognize the authority of each other and also almost all the members have secondary commitments out of the institution. Such institution is not only alarming but it risks an institution like the Competition Authority of Kosovo that is the institution for distorting the competition. This condition should be solved by the Parliament of Kosovo.

### **The competition and the economy in the Republic of Kosovo**

After 1999, and especially after the declaration of independence in early 2007, the economy of Kosovo is faced with an extremely low dynamic development and integration of its markets. In addition, a disturbing situation is considered the appearance of various forms of unfair competition. These forms and the high level of uncertainty of doing business reflect a state of economic hopelessness which urgently requires professional preventive treatment but also much more serious institutional commitment.

With the unfair competition, the markets have been battered more and more, leaving different spaces for manipulations and abuses, damaging not only the operators and consumers but also Kosovo's economy. According to the publication of the Kosovo Businesses Alliance certain forms of "valorized" unfair competition with also the effects

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<sup>1</sup>Kosovo Competition Commission was established by the Assembly of Kosovo date: 07 November, 2008, and based on the Competition Law no. 2004/36. Kosovo Competition Commission is an independent body and has responsibility and authority for law enforcement and promoting of competition among undertakers and protection of consumers in Kosovo. KCC is composed from five members, president of commission and four commissioners which are appointed from Assembly of Republic of Kosovo. For more see: <https://ak.rks-gov.net/?cid=1,1> (10.3.2015).

of the informal economy, which now has become “the principal employer” in the country, perhaps risk becoming problematic areas. The competition and its protection take a significant place in the economic policies of developed countries and for their importance they have a special treatment (Osmani, 2005). Such importance is much needed today in the global economic crisis time and its recession. The protection of competition from various abusive actions and the establishment of genuine market are state institutions obligations toward EU. The Kosovo’s economy is creating spaces for such activities that damage the free competition. The Kosovo market is relatively small. Concentrations of commercial activities in the hands of a few actors occur more easily than in major markets and even these have a major impact on the final consumer. This imposes the need for proper functioning of the regulatory mechanisms of the market by the state. The significant areas where the violation of competition is present in: communication technology sector, transportation, insurance sector, energy, pharmaceuticals, media, procurement, import of oil, banking sector and other financial services feel the need of inter-institutional cooperation, especially economic cooperation with other regulators. Because of the need to adhere in EU, the Parliament of Kosovo has approved the Law on Competition since 2004 and in 2009 the Kosovo Competition Commission was established, with the competencies of the regulatory agency that is independent and responsible for the execution of this law (Law on Protection of Competition 03/L-229 ). All these actions have created a mechanism of institutionalization of competition policies in our country. The aim of this law is to ensure a sustainable development of the market in the Republic of Kosovo, by preventing the actions that damage the market, distort and abuse with this law. Such disturbing actions can be caused by, cartels and other secret agreements, concentration of enterprises and abuse their dominant position. Free and fair competition in our market, can be implemented when every participant in the market “plays” a fair game by not damaging the other. The competition policy must contribute in increasing the quality of the services in favor of the costumers and in favor of Kosovo in general. From the abovementioned analysis we can conclude that the establishment of free competition, is a major challenge that arises before the Kosovo Competition Commission and enforcement of the laws of the Republic of Kosovo.

### **Development trends of competition policy in the European Union**

The current characteristic of competition policy in the European Union, in the broad sense, deals also with the inclusion of other sectorial policies that are related to the competition (or rules that prevent the limitation of the competition) through the combination with the final aim to regulate and adapt efficiently the common market structure. This group of rules includes: assigning the control on the grants’ right and special and exclusive prevention of state support. The European Commission, in close cooperation with national competition authorities of the Member States have established an European network of authorities responsible to protect the competition (European Competition Network), that insure the effective execution of the competition law of EU. The Regulation 1/2003 has been executed in full sense in the context of legal reform of the competition in European Union. This reform has been reflected in the approval of new rules for the execution of

the article 81 and 82 of EC treaty, and the rules on controls and concentrations. ([http://ec.europa.eu/index\\_en.htm](http://ec.europa.eu/index_en.htm)). The introduction of such rule that acts in the general interests of the Union has created conditions to effectively execute the disposition of the Regulation nr. 1/2003. The previous legal system (created with the Regulation 17/62), despite its deficiencies, has realized its mission, by reflecting an increased awareness of the culture and respect toward the EU competition rules. However, in the late stage of its development, the trend of this culture is treated and regulated in the actual right of the EU competition. In this point of view the tendencies are established for gradual transition process through the decentralization based to the article 81 and 82 of the Agreement of EU. The current reforms of the competition law of EU have reflected the enforcement of an economic approach on the basis of analysis that deal with the behavior of the enterprises in the market. Despite the transfer of responsibilities to national competition authorities responsible for protection of competition is combined with the role of national courts. In this point of view the function of European Commission has reserved the right to control and execute the article 81 and 82 of the Agreement. This phenomenon is known as cross-border effects (border effect). In such circumstances, the national authorities directly apply Article 81 and 82 of the EC Treaty. Separation of competencies with the increasing number of national authorities is allowed when it is estimated that a body can not prosecute the case until the end; The European Commission – as a body is obligated to investigate the prohibited agreements that damage the competition of three or more members of EU. In its competences are also all cases which can positively affect the development of competition policy.

Another revolutionary step in EU is reflected this supranational organization has direct interests in supporting the certain companies. This policy is institutionalized with a special program in 2006 with a facilitating purpose which it refers only to those companies that are willing to cooperate in the investigation of illegal cartel agreement. These companies under this program gain a privileged position and therefore have the opportunity to take partial or full immunity (in case where is seen y that are part of the cartel or have been reported depending on the level of cooperation ). Implementation of this program has not yet been harmonized across the EU. The program is a result of the reforms of the European competition law also influenced by the need for changes and priorities in EU competition policy. Today, the fight against cartels is considered the most important goal of common policies (Competition Policy in the European Union - [http://ec.europa.eu/dgs/competition/index\\_en.htm](http://ec.europa.eu/dgs/competition/index_en.htm)). The 2008 will be remembered as the year of the fight against cartels and consumer protection year. Due to unfavorable financial and economic situation and global crisis that have affected the operations of European companies, the annual report on competition policy for 2008 pay a special attention to rescue the companies and restructuring measures. In 2008, there were significant effects of increasing preventive penalties toward those companies that have entered repeatedly in cartel. The Commission has condemned the 34 companies since it has found that they have been a member of seven cartels and the penalties paid was 2,271 million euros. The Commission has been active in the area of state subsidies with the implementation of the Action Plan of the State Aid (State Aid Action Plan – SAAP), ([http://europa.eu/legislation\\_](http://europa.eu/legislation_)

summaries/competition/state\_aid/l26115\_en.htm) as well as the adoption of the correct field, which until recently has been legalized by judicial practices and positioned on top of competition policy. The undertaken reforms imposes the inclusion of precise and more stringent requirements for union members.

Commission for a relatively short period, made three Communications (called communications protocols) to regulate the role of state aid connected with the global crisis and the need for a process of recovery. The communication for state support rules and the measures related with the function of the financial institutions deals with: The redefinition of the process to permit the member states to implement the recapitalize the bank in crisis time with the aim to stabilize the financial market; Temporary Framework to ensure that members additional opportunities in order to overcome the crisis in the lending industry sector. In 2009 it was the EU and the rest of the world that were hit by severe financial crisis and economic. Therefore, the European Commission focus its efforts towards the stabilization of the financial system of the EU and took measures to prevent the occurrence of a possible crisis. Since continuation of the crisis the Commission has set two important objectives in the field of competition policy in the EU.

### **What should be the role and function of the Kosovo Competition Authority?**

The focus on what must be the work of Kosovo Competition Authority, as an independent public institution, is the effective implementation of the competition legal framework and advocacy in a way to influence the government and the public sector to execute pro-competition policies (International Competition Network – Seminar on Competition Agency Effectiveness, 2009). Until now the Commission has started only some investigation procedures in sectors like: GSM Mobile communication, bank system and insurance companies. Of course, this is not even close to the market needs of the country in the sphere of regulation of competition. Therefore, the obligation of competition legislation implementation should be related with decision that must be based in detail and general studies of the market. Providing information composes the fundamental element for a healthy judiciary. By reviewing the relations of the Kosovo Competition Authority with the court, this will increase the culture of the courts for the implementation of the competition legal framework. From the analysis for the activity of the Competition Authority we can conclude that the creation of contemporary legislation for the Competition respectively has not created the necessary conditions for the implementation of law and competition policies. This makes it necessary to strengthen the institutional and professional capacities of the Competition Authority in order to play a more proactive role to implement strictly and effectively the law on protection of competition and to be an advocate of the development of economic reforms according to the principles of competition. This makes it necessary to strengthen the institutional and professional capacities of the Competition Authority in order to play a more proactive role to implement strictly and effectively the law on protection of competition and to be an advocate of the development of economic reforms according to the principles of competition. The Parliament of the country should focus on the completion of the Authority with the necessary human and financial resources to review and increase the

budget in this segment (Lionis & Sokol, 2012). The Competition Authority in quality of the competent institution for the implementation of competition policies must adjust and meet its goals in order to be an independent public institution with the necessary power and capacity to undertake active actions against anti-competitive attitudes and create a pro-competitive environment (International Competition Network – Seminar on Competition Agency effectiveness, 2009).

It is essential that in exercising this function, the arbiters must be fair and provide a free and effective competition in the market between operators, where all actors should be satisfied. Competition policies and their implementation must ensure that all market players compete and win only on merit. As a specific mechanism, competition must become an important segment in the process of creating a competitive economy in the regional and European market. Kosovo Assembly as the founder of authority and also other governmental and non-governmental segments systematically must take care for the further completion of the legal framework under the legal acts in the form of regulations, directives, according to EU standards. Specific task should be the development and effective implementation of national competition policy. This can only be achieved through ensuring a process of monitoring and analysis of market conditions for the development of free and effective competition. It is legal but also ethical that the Competition Authority must be a really advocate for the competition (International Competition Network – Report on assessment of ICN Members' Requirements and Recommendations on Further). This function should be ensured by giving the evaluations and recommendations to the parliamentary Commission, to the body of central administration and to other public institutions, trade associations, trade unions, consumer associations, chambers of commerce and industry, for the development of sectoral policies, as well as other strategies and policies associated with competition and legislation in this area (International Competition Network – Seminar on Competition Agency effectiveness, 2009).

The cooperation with other central and local administration, regulatory institutions, other public and private institutions, domestic and foreign, on matters related to competition are not only necessary but also essential and will bring bilateral and multilateral international and national collaboration that will guarantee the realization and the implementation of the law and of the competition policies. This it should be regulated through the establishment of mutual contacts with counterpart authorities in the region and wider, to ensure the exchange of information on matters of competition policy enforcement. These events and activities are conditioned by an active process of training within and outside Kosovo, in a way to strengthen the administrative capacity, as well as all other activities (seminars, conferences etc.), which have to do with the competition in the region and beyond.

The guiding principles based on law, national policies and other related policies are: Equality, Application of Principles of competition in such a way that does not allow discrimination of economic enterprises in the same circumstances; Comprehensiveness, which means a wide application of regulatory principles and competition in economic activity, which includes goods, services, private and public businesses, recognition of the scale of competition in development policies and reforms that affect the efficient

functioning of markets, protecting the process of competition and creating an environment for maintaining an open and effective competition. Also, competitive markets require a good comprehensive legal framework, clear property rights and a non-discriminatory environment that is efficient and effective: the transparency in conducting the activities of the Competition Authority should be open, indicating the reasons for the decisions taken, as well as informing on the activities and results achieved.

The Competition Authority is responsible to the public through the annual report to the Parliament, statements and press releases on the website, press conferences, etc. This makes clear the responsibility on the implementation of the rules and efficiency of competition in the policies development and their implementation. The Competition Authority will act in accordance and in harmony with national strategies, social sector and economic development, in order to increase the welfare of citizens. The activity of the institution will establish credibility for the authenticity of the declarations and decisions, based on ongoing studies and in consideration of the opinions of market actors.

Kosovo Competition Authority should operate on the principle of honesty, drawing and publishing accurate decisions about its activity. To be an institution with integrity the Competition Authority should not establish itself in financial liabilities or other similar activities, which may adversely affect or hinder it in the performance of its major activities (Lianos & Sokol, 2012, 2-6). Kosovo Competition Authority should report each year to the Parliament the financial resources allocated from the state budget, and keep accurate financial reports, which are controlled by the country's General Auditor. The work of the institution is based on the principle of cooperation with all stakeholders and market factors, constitutional institutions, government, regulatory bodies, consumer representatives, regional counterpart institutions, and the institutions of the General Competition of the European Commission.

## Conclusion

The economic system in the Republic of Kosovo is a constitutional category that is based on market economy principles and the freedom of economic activity. The guarantee of this constitution principle is realized through Law on Protection of Competition and though a responsible institution known as the Kosovo Competition Authority. This public institution function not only in the implementation of the law and the policy of the competition but also in the implementation of the norms and best practices of the public administration and of the European right of the competition.

The competition is a social phenomenon that refers to a situation of a free economy of the market, where the enterprises and other business operators, independently, try to gain more consumers in a way to achieve their objectives that are: maximization of profits, sales, market share etc. Competition constitutes the main promoter of competitiveness between enterprises and leads to an economic growth. The competition obligates inefficient operators to leave the market and realizes the redistribution of the production resources from the failed companies to the most powerful competitors (Begovic & Pavic, 2012, 7).

The analysis of this paper showed that the competition field in Kosovo is regulated by the

law for Competition Protection Nr. 03/L - 229 and from four (4) legal acts that regulate the form and the content of legitimacy; the requirements and the conditions of the agreement with smaller value; The manner of application and criteria for determining the concentration of enterprises; and the criteria for releasing or reducing the administrative measures.

The Kosovo Competition Authority is the responsible institution in charge to implement the Law "On Protection of Competition", but is not the only one for its implementation. Implementation of law, the behavior of enterprises and other stakeholders, in accordance with the competition rules of a functioning market economy depend very much on the attitude of central and local institutions, judges, the media, regulators, business and its associations, customers' associations and the general public. The authority is and will be open to fruitful cooperation and interaction with all stakeholders for the realization of a free effective and fair competition.

Competition Commission acts as a permanent structure and has all necessary powers for the decision on its own initiative on issues that restrict, impede or distort competition in the market, for both private and the public enterprises, and to propose necessary measures for the protection of free and effective competition.

Competition Commission reports annually to the Parliament. To properly exercise its legal powers, the Authority has requested enough staff and expertise, and has intended to enable their effective engagement. However, the practice of recent years has shown that, in terms of institutional capacity building, administrative and professional, it is not enough to be designated as a primary task, but it is necessary for them to be applied in daily practice work. The European Commission has drawn attention to the growth and strengthening of the institutional capacity of the Competition Authority, as well as strengthening of real independence in exercising legal functions.

Continuous legal support and encouragement by the Parliament of the Republic of Kosovo and European Commission assistance to the Kosovo Competition Authority should be an important factor for the growth of the institution's performance and for a more competitive economy. The Competition Authority is not realizing its mission as a supervisor of the markets competition and this because of the political influences and its negligence of relevant institution to strengthen this vital segment. Therefore, urgently measures should be taken to increase and ensure the implementation of law through the use of all legal instruments, aiming at the proper functioning of markets as one of the basic conditions of efficient use of economic resources of the country and increase consumer welfare. The improvement and the perfection of the intervention instruments in the market and the increasing of their effectiveness is a continuous challenge of the Authority, considering Kosovo's economy with a lower experience comparing to the long history of developed countries with a free market economy. The optimal combination of the instrument of sanctions against enterprises for the anti competition practices, in the form of the prohibited agreements or the abuse with the dominant position, with the instruments of advocacy and the culture to encourage the competition has been the main characteristic of the competition institution activity. During this period, the Competition Commission has taken very few important decisions. The work to supplement and update the legal framework, in order to harmonize with EU standards - is necessary.

Collaboration with various public institutions is also an important factor that affects the activity of the Kosovo Competition Agency. In this way the cooperation with the Central, Local and especially with Regulatory institutions has a special significance. The creation of a culture to protect the competition in the country should be accompanied also with the awareness of the Ministry of Finances and the Ministry of Economy, specialized agencies like Tax Administration, Custom Administration, municipality institutions, Chamber of Commerce and NGOs.

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### Laws

- Law on competition Nr. 2004/36
- Law for competition protection, nr. 03/L -229
- Law for State Support Nr. 04/L - 024
- Law on Local Self Government Nr. 03/L - 040
- The Customs and Excise Code of Kosovo Nr.03/L - 109

### Subsidiary acts

- Administrative Directive Nr. 06/2012 for the way of presenting the request and the criteria to determine the concentration in the enterprise dated; 11.06.2012
- Administrative Directive Nr. 04/2012 on the form and the content of legitimacy, dated 11.06.2012

- Administrative Directive nr. 07/2012 on the criteria for releasing or reduce the administrative measures.

**Links :**

- Competition Law- Wikipedia, the free encyclopedia,
- <http://www.amchamksv.org/what-is-amcham.html>
- [http://ec.europa.eu/dgs/competition/index\\_en.htm](http://ec.europa.eu/dgs/competition/index_en.htm)
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- <http://www.iccwbo.org/about-icc/policy-commissions/competition/>
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