

IMPROVEMENT OF THE KOSOVO MARKET THROUGH IMPLEMENTATION OF THE COMPETITION LEGAL FRAMEWORK

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Abstract: *Competition shall be a state priority and not merely to be foreseen by the Constitution and a special law for its protection. It is crucial establishment of competent institutions for implementation of legal framework in practice based on state common interest, consumers' interest and on interest of various types of business organizations in the country. Competition is not only beneficial to businesses protecting them to be equal in the market, but it also protects consumers providing them with better quality products that are more competitive in the market and more reasonably priced. Competition is the opposite of monopoly as there is no monopoly where there is fair competition. Furthermore, fair competition requires to have no dominant positions, abuse of such positions as well as no anti-competition agreements.*

Keywords: *competition, monopolies, dominant positions, abuse of dominant positions, prohibited agreements*

1. INTRODUCTION

Every democratic state shall set a high priority on the legal and economic development of the country, by stimulating and supporting as much as possible establishment, registration and operation of many domestic businesses in the market, always in the interest of open competition. Further the state should make the competition factual prescribed by the constitution and special law which must be in full adherence with the constitution of the country and the European competition law which derives mostly from articles 101 to 109 of the Treaty on the Functioning of the European Union (TFEU). If the law is drafted on the basis of these standards, it should be supplemented with bylaws and administrative instructions in order to be complete as much as possible. Once it is entered into force, a competent institution shall be established for protection of competition, both inside and outside the country. In order to establish the institution which is competent for the practical implementation of the Law on Protection of Competition, if foreseen by law, the board or council of that institution must first be elected, then the founding act be drafted, the statute of that institution regulated, with civil servants, inspectors, and so on. For the proper functioning of competition in the country inclusion of legal and human resource is not sufficient but it requires establishment of a competent institution for protection of competition in accordance with the Law on Protection of Competition in order to ensure equality for all business entities operating in the market. Competent institution for protection of competition should develop action strategies in order to show concrete results of competition protection in the country. More competition in the country increases interest for setting up businesses to create quality products at very favourable prices for consumers. Business entities, consumers and the state will benefit from the

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competition among business entities in line with the required standards. The state by managing to establish a good standard of respect for competition from businesses, will achieve the goal of their operation not only in the domestic market but also in the international one. The more local businesses respect competition in the country, the shorter is their path to operating in the international market. It is well understood that the role of the state is not only to draft laws and rules for businesses but also to make the businesses aware on how to apply those laws and rules which are mandatory and not optional. The state, through competent institutions, should facilitate businesses by always limiting their possibility of market abuse. Competition is the opposite of monopoly. In order to have competition, the monopoly must be eliminated having no dominant positions and abuse of dominant positions as well as anti-competitive agreements.

2. THE AIM AND IMPORTANCE OF MARKET COMPETITION

The first and foremost aim of competition protection is to create benefits for consumers and to provide equal conditions for all businesses in the market, which by abiding to the existing rules and competing in the market with product qualities, prices and innovations, and their services contribute to the overall development of the economy.¹ The main aim of competition policies rests upon the creation of effective rules, which in turn lead to a proper functioning of the market, by promoting better quality, lower prices, enhanced innovation and wider variety for consumers.² Competition is not an end to its means in itself, but it is an instrument of market economy that positively impacts the improvement of the economic performance of a country, opening opportunities for enterprises to operate freely in the market and reducing the price of provided goods or services.³ Competition creates an economic environment where firms can act freely to achieve these objectives, while consumers, in turn, benefit from prices based on the interaction between demand and supply forces.⁴ Competition between manufacturer and service provider helps to improve quality and reduce price.⁵ Improvement in product quality and price reduction occur only when there is genuine competition in the market. In order to ensure the proper functioning of the domestic market, it is not only sufficient to ensure freedom of competition but also to preserve this freedom, so that the effects normally derived from such freedom are not distorted by measures – whether of public or private origin – favour-

¹ KOSOVO COMPETITION AUTHORITY. 2018 Work Report. In: *Kosovo Competition Authority* [online]. 2018 [2020-07-10]. Available at: <[https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20punes/Raporti%20Punes%20i%20AKK-s%C3%AB%202018%20\(FINAL\).pdf](https://ak.rks-gov.net/assets/cms/uploads/files/Raporti%20punes/Raporti%20Punes%20i%20AKK-s%C3%AB%202018%20(FINAL).pdf)>. p. 9.

² PULA, E., ELSHANI, D. The (Un) equal: A Story on Competition in Kosovo. In: *Group for Legal and Political Studies* [online]. 2018 [2020-07-10]. Available at: <<http://www.legalpoliticalstudies.org/wp-content/uploads/2018/09/GLPS-Policy-Report-04-2018.pdf>>. p. 5.

³ KRAJA, A. Concentrations of Enterprises under Competition Law: Theoretical and Practical Issues. In: *Universiteti Europian i Tiranës* [online]. 2017 [2020-07-17]. Available at: <http://uet.edu.al/images/doktoratura/Ardvin_Kraja.pdf>. p. 11.

⁴ National Competition Policy. In: *Competition Authority of Albania* [online]. 28. 12. 2006 [2020-07-10] Available at: <http://caa.gov.al/uploads/publications/POLITIKA_aca.pdf>. p. 7.

⁵ HASANI, E., ČUKALOVIĆ, I. *Commentary, The Constitution of the Republic of Kosovo*. Issue (I). Prishtina, 2013, p. 51.

ing or penalizing some enterprises to the detriment of others.⁶ The state should treat public and private enterprises equally and do their checking in the market in terms of competition by treating and monitoring them all equally. The state must create a free and competitive market by drafting the national law on Protection of Competition based on the practices of the developed European countries. Free market is the cornerstone of the European construction process already introduced in the Treaty of Rome in 1957, thus current EU institutions put a substantial emphasis on the field to prospective member states.⁷ The foundations of EU competition law are as relevant today as they were when the Treaty of Rome was signed more than 60 years ago.⁸ European competition rules enable businesses of all sizes to have a fair chance to compete and help European consumers obtain a fair deal in the internal market.⁹ Given that Western Balkan (WB) countries have been committed towards the European integration path through the Stabilization and Association Process (SAP), competition policy, amongst others, also became crucial to achieve trade liberalization between WB and EU countries.¹⁰ Therefore, the state should draft a law based on European standards and implement it well in practice so that local enterprises can more easily operate in the European market.

3. LEGAL FRAMEWORK OF COMPETITION AND COMPETENT INSTITUTION FOR PROTECTION OF COMPETITION IN KOSOVO

The Kosovo Competition Authority was established by the Assembly of the Republic of Kosovo on 07 November 2008, pursuant to the Law No. 2004/36 on Competition.¹¹ The Authority is a legal entity with public authorizations that autonomously and independently carries out its activities based on the provisions¹² of the Constitution of the Republic of Kosovo,¹³ and the provisions of Law No. 03/L-229 on Protection of Competition,¹⁴ Law No. 04/L-226 on amending and supplementing the Law No. 03/L-229 on Protection of Competition,¹⁵ and Statute of the Kosovo Competition Authority No. 04-V-312. In the

⁶ ZHEZHA, V. Competition Policy Analysis in the European Union. In: *University of Tirana* [online]. 2016 [2020-07-14]. Available at:

<http://www.doktoratura.unitir.edu.al/wp-content/uploads/2016/10/Vaeld-Zhezha_tesi.pdf>.

⁷ PULA, E., ELSHANI, D. *The (Un) equal: A Story on Competition in Kosovo*, p. 5.

⁸ Report from the Commission to the European Parliament, the Council, the European Economic and social Committee and the Committee the Regions. Report on Competition Policy 2019. In: *European Commission* [online]. 2020-07-09 [2020-07-22]. Available at:

<https://ec.europa.eu/competition/publications/annual_report/2019/part1_en.pdf>. p. 1.

⁹ *Ibid.*, p. 1.

¹⁰ PULA, E., ELSHANI, D. *The (Un) Equal: A Story on Competition in Kosovo*, p. 5.

¹¹ KOSOVO COMPETITION AUTHORITY. *2018 Work Report*, p. 9.

¹² *Ibid.*, p. 9.

¹³ Article 119 paragraph 3 of the Constitution of the Republic of Kosovo. In: *Official Gazette of the Republic of Kosovo* [online]. 2008 [2020-07-10]. Available at: <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>>.

¹⁴ Law on Protection of Competition in Kosovo. In: *Official Gazette of the Republic of Kosovo* [online]. 2010 [2020-07-10]. Available at: <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2727>>.

¹⁵ Law No. 04/L-226 on Amending and Supplementing the Law No. 03/L-229 on Protection of Competition. In: *Official Gazette of the Republic of Kosovo* [online]. [2020-07-10]. Available at: <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2727>>.

Republic of Kosovo, Competition is regulated by Article 119, paragraph 3 of the 2008 Constitution of the Republic of Kosovo, which states: “Actions limiting free competition through the establishment or abuse of a dominant position or practices restricting competition are prohibited, unless explicitly allowed by law”. Then, in accordance with the constitution, Law No. 03/L-229 on Protection of Competition and Law No. 04/L-226 on amending and supplementing Law No. 03/L-229 on Protection of Competition, harmonizing it with the member states of the European Union. And then, based on the law in question, a competent institution for the protection of competition was established under the name of the Kosovo Competition Authority,¹⁶ where the Commission for the Protection of Competition was initially established as a panel body managing the work of the Authority consisting of five members,¹⁷ who have drafted the Statute of the Kosovo Competition Authority, together with local and international experts, and have sent it to the Kosovo Assembly for approval, which after approval by the members of parliament of the Republic of Kosovo, entered into force and the Kosovo Competition Authority. Since then, has been practicing its professional activity in the field of competition protection in the country. All other bylaws have been compiled by the Kosovo Competition Authority in accordance with the law and the Statute in question, such as: Administrative Instructions,¹⁸

¹⁶ The official website of the Kosovo Competition Authority is available at <https://ak.rks-gov.net/en/ballina>.

¹⁷ Article 25 paragraph 1 of the Law on Protection of Competition in Kosovo. In: *Official Gazette of the Republic of Kosovo* [online]. 2010 [2020-07-10]. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2727>.

¹⁸ Administrative Instruction No. 01/2018 on the Criteria for Imposing the Measure of Administrative Sanctions. In: *Kosovo Competition Authority* [online]. 16. 11. 2018 [2020-07-15]. Available at: <https://ak.rks-gov.net/assets/cms/uploads/files/U.A/UD%20P%C3%8BR%20KRITERET%20E%20SHQIPTIMIT%20T%C3%8B%20MASAVE%20ND%C3%8B%20ADMINISTRATIVE%20-%20FINAL.pdf>; Administrative Instruction No. 02/2018 on the Manner and Criteria for Ascertainning the Relevant-Respective Market. In: *Kosovo Competition Authority* [online]. 10. 12. 2018 [2020-07-15]. Available at: <https://ak.rks-gov.net/assets/cms/uploads/files/U.A/UA%20P%C3%8BR%20M%C3%8BNYR%C3%8BN%20E%20P%C3%8BR%20TREGUT%20RELEVANT.pdf>; Administrative Instruction No. 02-2017 on Group Exemptions of Horizontal Agreements between Entrepreneurs. In: *Kosovo Competition Authority* [online]. 21. 11. 2017 [2020-07-15]. Available at: <https://ak.rks-gov.net/assets/cms/uploads/files/U.A/U.A.%20NR.02-2017%20P%C3%8BR%20P%C3%8BRJASHTIMIN%20GRUPOR%20T%C3%8B%20MARR%C3%8BVESHJEVE%20HORISTONALE.pdf>; Administrative Instruction No. 03-2017 on Group Exemptions of Vertical Agreements between Entrepreneurs. In: *Kosovo Competition Authority* [online]. 21. 11. 2017 [2020-07-15]. Available at: <https://ak.rks-gov.net/assets/cms/uploads/files/U.A/U.A.%20NR.03-2017%20MBI%20P%C3%8BRJASHTIMET%20GRUPORE%20T%C3%8B%20MARR%C3%8BVESHJEVE%20VERTIKALE%20T%C3%8B%20ND%C3%8BRMARR%C3%8BSVE.pdf>; Administrative Instruction No. 04/2012 on the Form and Content of Legitimacy. In: *Kosovo Competition Authority* [online]. 2012 [2020-07-15]. Available at: <https://ak.rks-gov.net/assets/cms/uploads/files/4.%20U.A.%20NR.%2004-2012%20P%C3%8BR%20FORM%C3%8BN%20DHE%20P%C3%8BRMBAJTJ%C3%8BN%20E%20LEGJITIMACIONIT.pdf>; Administrative Instruction No. 04-2017 on Group Exemptions of Agreements in the Transport Sector. In: *Kosovo Competition Authority* [online]. 21. 11. 2017 [2020-07-15]. Available at: <https://ak.rks-gov.net/assets/cms/uploads/files/U.A/U.A.%20NR.%2004-2017-P%C3%8BR%20P%C3%8BRJASHTIMET%20GRUPORE%20T%C3%8B%20MARR%C3%8BVESHJEVE%20N%C3%8B%20SEKTORIN%20E%20TRANSPORTIT.pdf>; Administrative Instruction No. 05/2012 on Criteria and Terms for Determining Agreements of Low Value. In: *Kosovo Competition Authority* [online]. 2012 [2020-07-15]. Available at: <https://ak.rks-gov.net/assets/cms/uploads/files/5.%20U.A.%20NR.%2005-2012%20P%C3%8BR%20KRITERET%20DHE%20KUSHTET%20P%C3%8BR%20CAKTIMIN%20E%20MARR%C3%8BVESHJEVE%20M>

Code of Conduct and Regulations issued by the mentioned institution itself.¹⁹ Based on its legal competencies, the Kosovo Competition Authority has signed several Agreements (Memorandums) of Understanding with several local institutions and competition protection institutions of different countries.²⁰ All these Agreements (Memorandums) of

- E%20VLER%C3%8B%20T%C3%8B%20VOG%C3%8BL.pdf>; Administrative Instruction No. 05-2017 on Group Exemptions of Agreements in the Insurance Sector. In: *Kosovo Competition Authority* [online]. 21. 11. 2017 [2020-07-15]. Available at: <<https://ak.rks-gov.net/assets/cms/uploads/files/U.A/U.A.%20NR.%2005-2017%20P%C3%ABr%20p%C3%ABrjashitim%20grupore%20t%C3%AB%20marr%C3%ABveshjeve%20n%C3%AB%20sektorin%20e%20sigurimeve.pdf>>; Administrative Instruction No. 06/2012 on Forms of Submitting Requests and Criteria for Determining Concentration of Enterprises. In: *Kosovo Competition Authority* [online]. 2012 [2020-07-15]. Available at: <<https://ak.rks-gov.net/assets/cms/uploads/files/6.%20U.A.%20NR.%2006-2012%20P%C3%8BR%20M%C3%8BNYR%C3%8BN%20E%20PARAQITJES%20S%C3%8B%20P%C3%8BRQENDRIMIT%20T%C3%8B%20ND%C3%8BMARRJEVE.pdf>>; Administrative Instruction No. 06-2017 on Group Exemptions of Agreements on Motor Vehicle Distribution and Service. In: *Kosovo Competition Authority* [online]. 21. 11. 2017 [2020-07-15]. Available at: <<https://ak.rks-gov.net/assets/cms/uploads/files/U.A/U.A.%20NR.06-2017%20P%C3%8BR%20P%C3%8BRJASHTIMIN%20GRUPOR%20T%C3%8B%20MARR%C3%8BVESHJES%20P%C3%8BR%20DISTRIBUJIMIN%20DHE%20SERVISIMIN%20E%20AUTOMJETEVE%20MOTORIKE.pdf>>; Administrative Instruction No. 07/2012 on Criteria to Reduce or Release Administrative Measure. In: *Kosovo Competition Authority* [online]. 2012 [2020-07-15]. Available at: <<https://ak.rks-gov.net/assets/cms/uploads/files/7.%20U.A.%20NR.%2007-2012%20MBI%20KRITERET%20P%C3%8BR%20LIRIMIN%20OSE%20ULJEN%20E%20MAS%C3%8BS%20ADMINISTRATIVE.pdf>>.
- ¹⁹ Code of Conduct No. 01/2018 of KCA. In: *Kosovo Competition Authority* [online]. 10. 1. 2018 [2020-07-15]. Available at: <<https://ak.rks-gov.net/assets/cms/uploads/files/Kodi%20i%20Miresjelljes%20i%20Autoritetit%20Kosovar%20t%C3%AB%20Konkurrenc%C3%ABs%20-%2001-%202018.pdf>>; Regulation No. 04/2018 of the work of the Kosovo Competition Authority Commission. In: *Kosovo Competition Authority* [online]. 2018 [2020-07-15]. Available at: <<https://ak.rks-gov.net/assets/cms/uploads/files/Rreguloret/Rregullore%20nr.04.2018%20e%20punes%20se%20Komisionit%20e%20AKK-se.pdf>>; Regulation No. 03/2018 on Internal Organization and Systematization of Jobs: Prot. No. 207/18 – 02/13, dated 25.05.2018; Regulation No. 01-2017 on the KCA Investigative Procedure. In: *Kosovo Competition Authority* [online]. 2017 [2020-07-15]. Available at: <<https://ak.rks-gov.net/assets/cms/uploads/files/Rregullore%20Nr.01-2017%20p%C3%ABr%20proceduren%20hetimore%20e%20AKK-s%C3%AB.pdf>>; Regulation No. 01/2019 on Some Categories of Research and Development Agreements. In: *Kosovo Competition Authority* [online]. 14. 11. 2019 [2020-07-15]. Available at: <https://ak.rks-gov.net/assets/cms/uploads/files/Rreguloret/RREGULLORE%20P%C3%8BR%20DISA%20KATEGORI%20T%C3%8B%20MARR%C3%8BVESHJEVE%20T%C3%8B%20K%C3%8BRKIMIT%20DHE%20ZHVILLIMIT_V2.pdf>; Regulation No. 02/2019 on Categories of Specialization Agreements. In: *Kosovo Competition Authority* [online]. 14. 11. 2019 [2020-07-15]. Available at: <<https://ak.rks-gov.net/assets/cms/uploads/files/Rreguloret/Rregullore%20p%C3%ABr%20KATEGORIT%C3%8B%20E%20MARR%C3%8BVESHJEVE%20T%C3%8B%20SPECIALIZIMIT.pdf>>.
- ²⁰ Memorandum of Understanding with the Central Bank of Kosovo. In: *Kosovo Competition Authority* [online]. 2011 [2020-07-15]. Available at: <<https://ak.rks-gov.net/assets/cms/uploads/files/BQK.PDF>>; Memorandum of Understanding with Kosovo Chamber of Commerce. In: *Kosovo Competition Authority* [online]. 16. 10. 2017 [2020-07-15]. Available at: <<https://ak.rks-gov.net/assets/cms/uploads/files/ODA%20E%20AFARIZMIT%20TE%20KOSOVES.PDF>>; Memorandum of Understanding with the Austrian Competition Authority. In: *Kosovo Competition Authority* [online]. 21. 2. 2019 [2020-07-15]. Available at: <<https://ak.rks-gov.net/assets/cms/uploads/files/AUSTRIA.PDF>>; Memorandum of Understanding with the Bulgarian Competition Authority. In: *Kosovo Competition Authority* [online]. [2020-07-15]. Available at: <<https://ak.rks-gov.net/assets/cms/uploads/files/BULLGARIA.PDF>>; Memorandum of Understanding with the Turkish Competition Authority. In: *Kosovo Competition Authority* [online]. 19. 4. 2018 [2020-07-15]. Available at: <<https://ak.rks-gov.net/assets/cms/uploads/files/TURQIA.PDF>>; Memorandum of Understanding with the Croatian Competition Authority. In: *Kosovo Competition Authority* [online]. 6. 7. 2018 [2020-07-15]. Available at: <<https://ak.rks-gov.net/assets/cms/uploads/files/KROVATIA.PDF>>.

Understanding have been signed by the Kosovo Competition Authority in order to further contribute to the advancement of competition in the country. Through these memorandums is aimed reciprocity and transfer of mutual practices about the most genuine competition. The Kosovo Competition Authority has named some of them Agreements of Understanding and some of them Memorandums of Understanding; it is advisable that the naming be unique and the points of agreement (memorandum) be result of the parties' will. It is better that in future the Kosovo Competition Authority signs as many as possible Agreements (Memorandums) of Understanding with different countries in order to contribute to a stable and productive competition for the local market. Sharing of best practice is possible only through agreements and cooperation reached between competition institutions from different countries.

4. COMPETITION, THE OPPOSITE OF MONOPOLY

For a genuine competition a country shall have many companies competing for the same product in the market, providing better quality products, offering more realistic prices and more consumer interests. In order to avoid monopoly in the country, there must be perfect and stable competition between traders in the market. Perfect competition is an ideal model of competition whereby production costs are reduced as a result of selling prices, making this form of market as the most favourable to consumers.²¹ Competition forces inefficient firms out of the market and redistributes production resources from failed firms to stronger competitors.²² In a place where competition is perfect, if enterprises that are competitive do not produce quality products in line with consumer demands, they are forced out of the market because they cannot withstand the perfect competition in line with their competitors. This is good because consumers are not supplied products without quality in the market. However, in a country where there is perfect competition, the state should not allow competing enterprises to get forced out of the market only as a result of not having advanced technology, as the state should create equal conveniences so that they can invest in competitive technology because if many enterprises get closed, competition fades away. The state should aim to have as many as possible competing enterprises in the country by always taking into account the good quality and the most competitive prices of what those enterprises supply. As long as there is more competition, there are better quality products, more realistic prices in the market, and ever-changing consumer demands are met. Contrary to this, we have a monopoly. Monopoly is harmful for the state if it allows only a certain company is given a market with monopoly, such state will lack quality products, real prices and will contradict with demands and interests of consumers in the market. Full and proper

gov.net/assets/cms/uploads/files/KROACIA.PDF>; Memorandum of Understanding with the Albanian Competition Authority. In: *Kosovo Competition Authority* [online]. 15. 9. 2009 [2020-07-15]. Available at: <<https://ak.rks-gov.net/assets/cms/uploads/files/MOU/Memorandum%20ne%20mes%20AKK-%20dhe%20Autoritetit%20te%20Shqiperise.PDF>>.

²¹ ZHEZHA, V. *Competition Policy Analysis in the European Union*. p. 19.

²² National Competition Policy. In: *Competition Authority of Albania* [online]. 28. 12. 2006 [2020-07-10] Available at: <http://caa.gov.al/uploads/publications/POLITIKA_aca.pdf>. p. 7.

demands cannot be met having only one company in the market. Such company may produce products on quantity equal to consumers' demands, such products may not be qualitative, with unreal prices and are always disproportional with consumers' demands and interest. Having only one company in the market will aim to increase producing low quality products given that consumers have no other alternative but to buy what is available. Moreover, services are not efficient and direct as they are with proper competition. The state may easily eradicate the monopoly if there is political will, and no group interests of certain individuals. A particular enterprise with monopoly exists in a country only because there are interests of certain individuals and groups. Article 119 paragraph 3 of the Constitution of the Republic of Kosovo and Law No. 03/L-229 on Protection of Competition and Law No. 04/L-226 on amending and supplementing Law No. 03/L-229 on Protection of Competition must be implemented. Excuse that there is no economic power to turn the monopoly into genuine competition is unacceptable. Kosovo is required to create legal protection, good business environment and proper conditions for foreign investors. No personal or group favours from foreign investors may be sought in order to allow or approve their investments in Kosovo.

5. DOMINANT POSITIONS

The competition policy aims at preventing the market stakeholders from abusing with their dominant position, to enter into agreements which have as a consequence the setting of prices or establishing a market structure where the competitors join each other (through concentration), thus distorting the future competition in the market.²³ The European Commission and European jurisprudence state that "An enterprise with a dominant position is considered to be one that is likely to benefit from rising prices above the competitive level".²⁴ This is used as a strategy in which competition indicators - such as prices, products, innovations, variety or quality of goods and services - can influence the profitability of the dominant enterprise.²⁵

According to Article 10, par. 1.1 and par. 1.2 sub-par. 1.2.1 to 1.2.6 of the Law on Protection of Competition in Kosovo of 2010, it is stated that: "*An enterprise has a dominant position if, as a supplier or purchaser of several certain types of goods or services: is not subject to fair competition on the market; it has important power in the market compared to its existing or potential competitors, therefore, it is particularly taken into consideration: his participation and position on the corresponding market, his financial power; his approach towards supplies or markets; his connections with other enterprises; legal or factual obstacles of other enterprises on the market; current or potential competition with enterprises established inside or outside Kosovo*". 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*". However, this provision was amended in 2014, where

²³ Ibid., p. 8.

²⁴ ZHEZHA, V. *Competition Policy Analysis in the European Union*, p. 57.

²⁵ Ibid., p. 57.

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. 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)”.

Since its establishment, the Kosovo Competition Authority has not dealt with cases promptly and has not shown any results that have influenced others to consider respecting competition in the country. Until 2017, it has not published any report on which companies are in dominant position. At the end of 2017, the Authority produced a report highlighting key findings regarding the market structure of enterprises and their Dominant Position in 14 different sectors/markets, including telecommunications, energy, insurance, petroleum products, pharmaceuticals, transportation, media and cinematography, procurement, banking, fiscal equipment, gambling, mining, waste management and water supply.²⁷ The report also provides recommendations for relevant institutions and independent agencies for these 14 sectors/markets.²⁸ After 2017, the Kosovo Competition Authority has also drafted and published the report for 2018,²⁹ in order that all their work be transparent to the whole public.

6. ABUSE OF DOMINANT POSITIONS

According to Article 11, paragraph 1 and sub-paragraphs 1.1 to 1.6 of the Law on Protection of Competition in Kosovo of 2010 it is stated that: “Abuse of a dominant position by one or more enterprises on the corresponding market is prohibited, in particular if: direct or indirect setting of unreal purchase or sale prices and other unfair trade conditions, respectively; limitation of production, markets or technological development to the prejudice of consumers; implementation of different conditions for similar duties with other enterprises thereby placing them in a disadvantageous competitive position; agreeing on contracts under condition that other contracting parties accept additional obligations; 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; 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

²⁶ Article 6 par. 1 of Law No. 04/L-226 on Amending and Supplementing the Law No. 03/L-229 on Protection of Competition. In: *Official Gazette of the Republic of Kosovo* [online]. [2020-07-10]. Available at: <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2727>>.

²⁷ PULA, E., ELSHANI, D. *The (Un) equal: A Story on Competition in Kosovo*, p. 11.

²⁸ *Ibid.*, p. 11. See also KOSOVO COMPETITION AUTHORITY. Report on Performance of Duties Deriving from the European Reform Agenda. In: *Kosovo Competition Authority* [online]. 20. 12. 2017 [2020-07-15]. Available at: <<https://ak.rks-gov.net/assets/cms/uploads/files/Report%20on%20ERA.pdf>>.

²⁹ KOSOVO COMPETITION AUTHORITY. *2018 Work Report*.

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

Article 102 of the Treaty on the Functioning of the European Union (TFEU) provides that “Any abuse by one or more undertakings of a dominant position within the internal market ... in so far as it may affect trade between Member States”.³⁰ 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”.³¹ It is important to note two categories of abusive behaviours by enterprises, which can be called exploitative abuses by enterprises and exclusionary abuses by enterprises. Exploitative abuses are the efforts of a dominant enterprise which uses its strength and power in the market which directly harm consumers through setting excessive pricing, unfair trading and conditions as provided in Article 102 (a) of TFEU.³² For this reason, each country, in national aspect, in addition to the legal infrastructure that should be designed based on good practices of developed European countries, should also establish competent institutions to monitor competition, so that enterprises in a dominant position do not use their position to abuse the market by harming competitors. *Exclusion abuses* can result in the exclusion of one or more enterprises from the market, which will then reflect on and harm for a long time the consumers whose right of choice in the market will be reduced and the risk of abusive exploiting behaviour will increase.³³ If the market is not well monitored by the competent institution of competition protection, then the companies abuse the position and power they have in the market by excluding a part of the competitor enterprises, in order to have a non-competitive market, and this adversely affects consumers because they have less choice. Consumer demands are met only when there are many choices and many companies supplying the same product, and as a result the products are of better quality, with more realistic prices in the market, and the services are very efficient, because as a result of competition, companies try to provide those services that meet consumer demands.

7. PROHIBITED AGREEMENTS

Prohibited are all agreements between two or more independent enterprises, decisions made by business associations and coordinated practices that aim or may

³⁰ EU Competition Law Rules Applicable to Antitrust Enforcement. Volume I: General Rules. Situation as at 1st of July 2013, p. 11.

³¹ *Ibid.*, p. 11.

³² KAZANI, J. Legal aspects of competition law and competition in the Albanian electric power system. Tirana, 2015, Doctoral dissertation. In: *University of Tirana* [online]. 2015 [2020-07-17]. Available at: <<http://www.doktoratura.unitir.edu.al/wp-content/uploads/2016/01/Doktoratura-Jonid-Kazani-Instituti-Studimeve-Europiane.pdf>>. pp. 71–72.

³³ *Ibid.*, p. 72.

significantly influence on disturbance of market competition in relevant market, and in particular the ones that:³⁴ *“directly or indirectly impose purchase or sale price or any other condition in trade; limit or control production, market, technological development and investments; share markets or supply sources; implement unequal conditions for similar transactions with other enterprises, consequently placing them in an unfavourable competitive position; apply conditions for agreements on contracts to rely on other contracting subjects, through other supplementing conditions that do not have any natural or common trade practice connection to the object of such contract”*.³⁵ The Kosovo Competition Authority, as a competition monitoring institution in the country, should maintain genuine competition in the country and as a result should not allow companies in the market to sign prohibited agreements or otherwise called unlawful agreements because if prohibited agreements are allowed, they put the competitor companies in an unequal and unfavourable position. 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. 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. This kind of agreement is allowed if there are ten competing companies in the market and one wanting to buy the other is allowed because there is no violation of genuine competition in the country. Kosovo Competition Authority based on the provisions of Law No. 03/L-229 on Protection of Competition in Kosovo has issued some conclusions, decisions on prohibited agreements that have taken place in Kosovo which are available on the website of the Kosovo Competition Authority.³⁶ From all decisions and conclusions rendered by the Kosovo Competition Authority, the following is a final conclusion issued by the Kosovo Competition Authority: Conclusion following the review of the situation in the relevant market where we consider that there is a coordinated practice among owners of enterprises transporting passengers from one municipality of Kosovo to another that have reached unlawful agreements to increase the ticket price per passenger from 0.50 € to 0.70 €, but the Kosovo Competition Authority, after receiving complaints from natural persons, has abrogated the prohibited agreement. Following the cancellation of the agreement, the companies have returned the price to 0.50 €. ³⁷

³⁴ Article 4 paragraph 1 of the Law on Protection of Competition in Kosovo. In: *Official Gazette of the Republic of Kosovo* [online]. 2010 [2020-07-10]. Available at: <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2727>>.

³⁵ Article 4 subparagraphs: 1.1, 1.2, 1.3, 1.4, 1.5 of the Law on Protection of Competition in Kosovo. In: *Official Gazette of the Republic of Kosovo* [online]. 2010 [2020-07-10]. Available at: <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2727>>.

³⁶ Conclusions, Decisions issued by the Kosovo Competition Authority. In: *Kosovo Competition Authority* [online]. [2020-07-10]. Available at: <<https://ak.rks-gov.net/vendimet>>.

³⁷ Conclusion with Prot. no: 358/19-02/D, 1/3. In: *Kosovo Competition Authority* [online]. 21. 11. 2019 [2020-07-10]. Available at: <<https://ak.rks-gov.net/assets/cms/uploads/files/Kartelet/Konkluzion%2002-19.PDF>>.

8. AWARENESS OF ENTERPRISES ON LOCAL COMPETITION IS THE ONLY WAY FOR THEM TO MORE EASILY COMPLY WITH THE INTERNATIONAL MARKET

Domestic enterprises become aware only when the competent institutions for overseeing their work, such as the Kosovo Competition Authority compel them to be accountable in terms of competition and monitor them strictly by imposing opinions and punitive measures under applicable law and other acts drafted in accordance with the law. In those countries with strict control and monitoring of the competition, all enterprises are treated equally, their activity in the national market is ensured and at the same time consumers are helped where as a result of competition, enterprises produce products with better quality and more favourable prices. Enterprises that have been complying with national competition are much more aware and prepared to comply with the international market because the products they produce are as qualitative as those of other competing companies operating in the international market.

9. CONCLUSIONS

Kosovo needs to render development policies on competition in the country in order to establish institutional cooperation for the benefit of respecting competition in it. The Kosovo Competition Authority institution has concluded several cooperation agreements with some institutions in the country and other states. However, there is still a need to create better cooperation of competition in the country and with domestic and foreign institutions. It would be good to draft an information Manual for all types/forms of business organizations in Kosovo in order to understand more easily and better the competition in the country, as well as to understand their rights and obligations deriving from the Law on Protection of Competition in Kosovo. The Kosovo Competition Authority should request from local and international institutions that support this institution to draft a commentary on the Law on Protection of Competition that will eliminate uncertainties about the application of competition in the country. Joint meetings with all types/forms of business organizations in the country should be held so as not to violate competition, organizing professional awareness training on competition.

There should be frequent cooperation with the consumer protection management established as a result of the Law on Consumer Protection in the country. Together, they will draft a consumer information handbook/manual in order to be informative and cooperative on the violations that occur with regard to competition in the country.

The Kosovo Competition Authority should seek cooperation with state institutions in drafting laws dealing with the strengthening of competition and somebody who will represent the Kosovo Competition Authority shall be involved in order to avoid conflicting laws on competition or merely not to harm the competition. Furthermore, they should continue to analyse the laws in force that, by their implementation in practice, will affect the competition in the country. Representatives of the Kosovo Competition Authority should be the initiators of numerous cooperation with other institutions and even by doing voluntary work in the interest of competition. They should conduct research and if their contribution aids to genuine competition certain actions ought to be undertaken.