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## Competition Policy in the Western Balkan Countries

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**Abstract:**

**Purpose:** In this paper, we lay out the analysis and provide an overview of the functions carried out by the national competition authorities in the Western Balkan countries and demonstrate their compliance with EU rules. We deal with the level of implementation of competition rules on prohibited agreements, abuse of dominant position, notification of concentration and state aid.

**Design/Methodology/Approach:** We provide an overview of the stage these countries have arrived at in fulfilling their obligation on competition issues based on the Stabilisation and Association Agreement, which is a step forward for EU integration. We do this by carrying out a comparative analysis of the data collected from both primary and secondary sources, in order to demonstrate the current situation on competition in the Western Balkan countries and determine the most appropriate means to build strong and efficient National Competition Authorities.

**Findings:** Findings show that competition in Balkan countries is still in a phase of development and more needs to be done in order to create an adequate competition regime.

**Practical Implications:** We propose measures in order to ensure the effective implementation of the law on the protection of competition and the market economy.

**Originality/Value:** When going through a phase of transformation, political change and integration, it is important to refer to other experiences, especially when trying to form part of the EU integration.

**Keywords:** Effective competition, market economy, antitrust policy, Competition Authority.

**JEL Codes:** D41, F12.

**Paper type:** Research article.

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## **1. Introduction**

Although each country passes through specific and unique experiences when going through a phase of transformation, political change and integration, it is still important to refer to other experiences. In addition, this is important since the Balkan Countries are trying to form part of the EU integration and therefore the functioning of the internal market and the development and protection of competition is of special importance (Dutz and Vagliasindi, 2002). The Western Balkan countries are still in the initial phase of development and protection of competition from economic violations (EU reports, 2018). These countries formed competition authorities after the 2000s and they are still facing a large number of different problems (Asllani, 2016).

Protection and development of economic competition is a requirement for Balkan countries that aim to be part of the European Union. In fact, they are required to send progress reports to the EU (D.G, Competition EU). A very important segment for the Western Balkan countries is the creation of a market economy, which should be followed by increasing its productivity and competitiveness (Dutz and Hayri 1999). Market opening and establishment of opportunities for free market entry is vital for state sustainable economic development (Monti, 2002).

To ensure this, there is a need for decision-makers to create economic policies adopted in legislation that will ensure economic growth through a competitive market and on the other hand eliminate actions that damage the free market (Gavil, Kovacić & Baker, 2002). Protection of development of competition through the implementation of the law on competition by Competition Authorities and certain suitable competition (anti-trust) policies in order to promote competitive market, increase competitiveness is a continuous job, which benefits all market players (Asllani, 2012).

It can be said that the protection and development of competition is realized through its two main pillars: Competition Policies and Competition Law (UNCTAD, 2010) (the National authorities for protection and development of economic competition in enforcement protection laws of competition and development of anti-trust policies, face difficulties in detecting cases of damage of competition). The main pillars of the EU competition policy (the EU Directives, articles 81, 82 and 87 amendment with article 101, 102 and 107 of the Treaty on the Functioning of the European Union (TFEU) defining competition rules) are: anticompetitive agreements (cartels), abuses of dominant position, merger control and state aid control (D.G. Competition).

Our objective with this article is to demonstrate the current situation on competition in the Western Balkan countries and lay out our findings of the most appropriate means to build strong and efficient National Competition Authorities. Moreover, in doing this we propose measures in order to ensure the effective

implementation of the law on the protection of competition and the market economy.

## **2. Literature review**

According to standard economic theory, competition is defined as a market situation in which suppliers strive for consumers in a way that induces them to become more efficient and capable of offering a wide variety of products and services at lower prices. Competition policy is an instrument to achieve an efficient allocation of resources, technical progress, and consumer welfare and to regulate the concentration of economic power, which is a detriment to the competition. This is a vital part of the market economy.

In this contest, for the state, it is very important to have adequate competition authorities which are responsible for developing and protecting competition (Buccirosi and Ciari, 2018). The competition policy pursued by state authorities aims at the development of efficient competition on the common market, exerting an active influence on its functioning (D.G competition). Competition is the main driver of competitiveness among firms and leads to a country's economic growth (Dutz and Hayri, 1999). The effectiveness of the competition and consumer protection system depends on the efficient operation of competition authorities in terms of the implementation of the EU law (Bergh and Camesasca, 2001).

Experience from many countries show that the effectiveness of a Competition Authority fluctuates with the quality of the Authority's leadership (Mehta, 2002). This market regulator contributes to the development of the economy of a state and market efficiency (Swora, 2012). The independence of national competition authorities boosts the trust on the part of investors in regulated undertakings based on the objective and transparent regulation of the authority (Szydło, 2013). An independent and impartial court can ensure the implementation of the fair competition rule and contribute to the development of the state in the long-run (Decker, 2009).

For the correct operation of competition protection, authorities need to engage in prevention. That is a broad range of measures aimed at preventing unwanted practices (Olszewski, 2004). Establishing the proper relationship between the competition agency and regulators is a significant and ongoing challenge in most countries (Aşçıoğlu Öz, 2006). In fact, a competition law regime can be seen as consisting of substantive legal rules for protecting competition on one hand and an enforcement system on the other hand (Kerber, 2011).

## **3. Methodology and Data**

For the purpose of this article and to define the level of development of economic competition in the Balkan countries, we carried out a comparative analysis, using

primary data and other secondary sources, such as the reports provided to the national competition authorities, the progress reports provided to the EU, laws for protection of economic competitions and other available statistical data.

#### 4. Empirical Analysis

To give a clearer picture of the current situation in the Balkan region, we list below the important features, such as the dates of legislation, investigated cases, human resources, tariffs and other competition issues, which apply to the National Competition Authorities of Balkan Region.

**Table 1. General Information About Competition Authorities**

Competition Authorities	The first Competition Act	Year of Constitution	Annual budget (2018)	Number of Staff
Kosovo	2004	2009	€332,409	23
Bosnia and Herzegovina	2001	2004	€699,447	26
Serbia	2005	2005	€1,000,000	47
North Macedonia	2005	2005	€357,000	29
Albania	2003	2003	€531,522	39
Montenegro	2012	2016	€482,000,	19

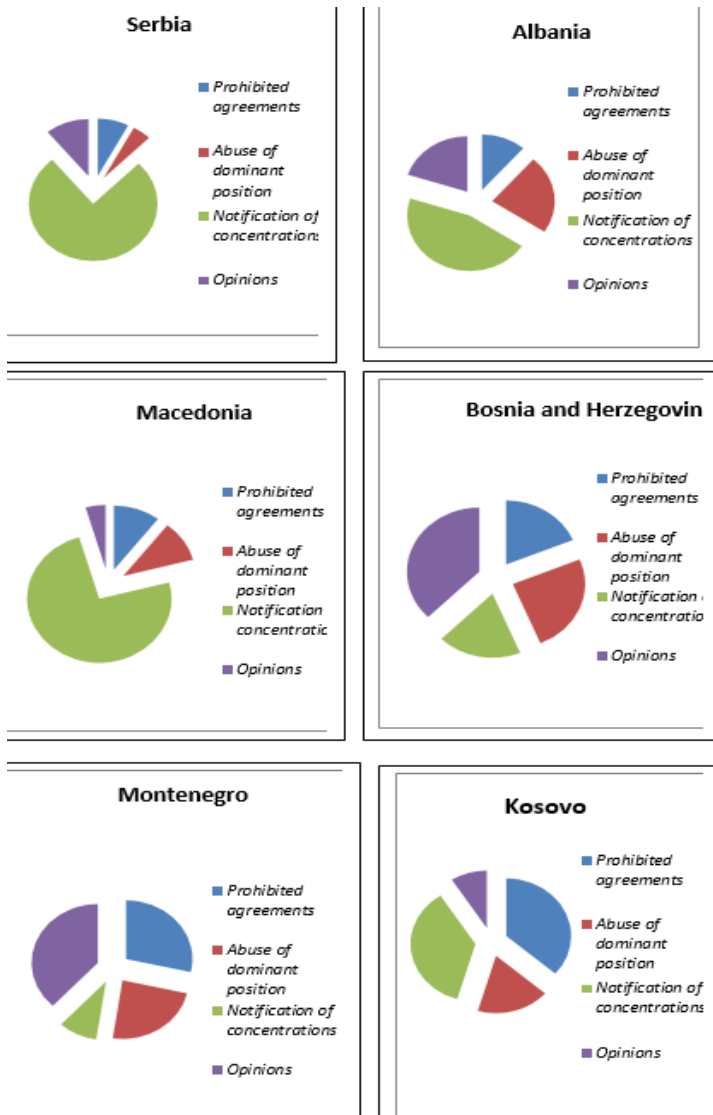
*Source: Reports from National Competition Authorities.*

**Table 2. Statistical Data About Competition Cases**

2018	Kosovo	Bosnia and Herzegovina	North Macedonia	Albania	Serbia	Montenegro
Prohibited agreements	4	6	7	2	5	6
Abuse of dominant position	2	8	7	2	3	5
Notification of concentrations	4	12	50	13	49	2
Opinions	1	6	3	21	7	8
Total	11	32	67	38	64	21

*Source: Reports from National Competition Authorities.*

**Figure 1.** Graph of Cases for Prohibited Agreement, Abuse of Dominant Position, Notification of Concentration And Opinions



Source: Reports from National Competition Authorities for 2018.

**Table 3. Turnover-Obligations to Notify Concentration and Tariffs**

<b>Juris dictio n</b>	<b>Text of jurisdiction- Mergers</b>	<b>Tariffs</b>
Kosovo	a) Determined incomes of all participating enterprises together, in the international market, exceed one hundred (100) million Euros; b) General incomes of at least two (2) participants in concentration in Kosovo domestic market, exceeds three (3) million Euros based on financial reports preceding the year of concentration.	Filing fee: EUR 100, Clearance fee: EUR 3000, (fee for temporary authorization: EUR 2000)
North Macedonia	a) The aggregate turnover of all undertakings participants, generated by sale of goods and/or services on the world market, amounts to at least 10 million euro in denar in the Republic of Macedonia, and/or b) The aggregate turnover of all undertakings participants, generated by sale of goods and/or services in the Republic of Macedonia, amounts to at least 2.5 million euro in denar and c) The market share of one of the participants amounts to more than 40% or the total market share of the participants in the concentration amounts to more than 60% in the year preceding the concentration.	Filing fee- 100 EUR, Clearance fee - 500 EUR
Bosnia Herzegovina and	a) Total annual turnover of all participants to the concentration earned through the sale of goods and/or services in the world market amounts to 100.000.000 KM in the final account in the year preceding the concentration; and ". b) In item b) number " 5.000.000 KM" is replaced with "8.000.000 KM " approximately 4 million euro.	Filing fee BAM 200 (approx. EUR 100). Clearance fee: BAM 2,000 (approx. EUR 1,000)
Montenegro	a) The combined aggregate annual turnover of at least two parties to the concentration achieved in the market of Montenegro exceeds 5 million euros in the preceding financial year; or b) - The combined aggregate annual worldwide turnover of the parties to the concentration achieved in the preceding financial year exceeds 20 million euros, if at least one party to the concentration achieved one million euros in the territory of Montenegro in the same period.	Filing fee: No, Clearance fee - 0.03% of the total annual income realized by the entities that are merging, to a maximum of 15.000 EURO

Albania	a) The aggregate worldwide turnover of all the participating undertakings exceeds ALL 7 billion, and the individual turnover in Albania of at least one of the participating undertakings exceeds ALL 200 million; or: b) The aggregate turnover in Albania of all the participating undertakings exceeds ALL 400 million, and the individual turnover of at least one of the participating undertakings on the domestic market is over ALL 200 million.	Filing fee: - ALL 7500 (around EUR 53.5) for undertakings with a yearly turnover in Albania of ALL 200 million (about EUR 1.43 million) up to ALL 1 billion (about EUR 7.143 million). - ALL 15000 (around EUR 107) for undertakings with yearly turnover more than ALL 1 billion (about EUR 7.143 million) Clearance (authorisation) fee: a) ALL 250000 (about EUR 1786) for undertakings with a yearly turnover in Albania of ALL 200 million (about EUR 14.3 million) up to ALL 1 billion (about EUR 7.143 million) and b) ALL 500000 (about EUR 3571) for undertakings with yearly turnover more than ALL 1 billion (about EUR 7.143 million)
Serbia	a) Worldwide turnover in the preceding year above EUR 100 million, provided that at least one undertaking's turnover realized on the market of Serbia exceeds €10 million. b) All undertakings concerned have a local Serbian turnover exceeding EUR 20 million, provided that at least two undertakings have a local Serbian turnover exceeding €1 million each.	Filing fee: No. Clearance fee - 0.03% of the total annual income realized by the entities that are merging, to a maximum of 25.000 EUR

*Source: Competitions Laws of Balkan Countries.*

## 5. Stabilization and Association Agreement (SAA)

Stabilization and Association Agreement constitutes the framework between the candidate state with member states and EU institutions for the implementation of the Stabilization and Association Process (SAP) until full EU membership. Regarding the scope, besides political issues and legal obligations (including those affecting the domestic legal order), SAA covers all spheres of government. It contains main chapters or headings, appendices, protocols, and joint statements. Very important chapters of the SAA are: Chapters for Free Movement of Goods; Establishment, Supply of Services and Capital and: Approximation of laws to the EU Acquis, law enforcement and competition rules. The majority of SAA is based on EU acquis, respectively the entirety of legal norms that are applicable within its territory and by all member states as legal entities, covering all policy areas.

Therefore, Balkan countries, that aim to join the EU, should until the accession, process and adopt all *acquis* and make it an integral part of its domestic legislation. EU signed the Stabilization and Association Agreement with Serbia in 2008, Albania in 2006, while candidate status was received in 2014, Bosnia and Herzegovina in 2008, Montenegro in 2007, Macedonia in 2001, and Republic of Kosovo in 2016. Croatia has signed this agreement in 2001, and in 2013 became the 28<sup>th</sup> state of the EU. Albania, Serbia, Montenegro, North Macedonia, Bosnia and Herzegovina and the Republic of Kosovo are potential candidate countries for EU membership.

The Stabilization and Association Agreement (SAA) between the EU and Balkan countries are the first formal contractual relationship linking the EU and Balkan countries. It offers Balkan countries opportunities and incentives to strengthen good governance and the rule of law and promote economic growth and employment. It ensures the gradual development of a free trade zone with the EU, can help attract foreign and domestic investment, and improve the business environment.

The National Competition Authority will cooperate with the responsible Ministries to align Competition Policies with those of the European Union. The collaboration will concentrate on the approximation of Legislation, meeting the obligations arising from the SAA, providing technical assistance and EU projects. Regarding competition policies, the provisions of the SAA require the Balkan countries to enforce competition rules and to gradually align its legislation with EU legislation. The agreement affects the gradual approximation of Balkan countries legislation with *Acquis* and the effective implementation, as well as the provision of monitoring and transparency mechanisms compatible with EU rules.

## **6. European Progress Report on Western Balkan Countries (2018) – Competition**

*Montenegro progress report* – Montenegro has some level of preparation/is moderately prepared in this area. Some progress was registered, in particular concerning the independence of the State Aid Authority - in February 2018, Montenegro adopted a law, which serves as the legal basis to transfer the State Aid Authority into the Agency for Protection of Competition. As regards alignment with State aid rules, Montenegro has a good level of preparation, but further significant efforts are needed for their enforcement. Montenegro has a good level of preparation as regards alignment with the rules on antitrust and mergers. However, the implementation of these rules continues to demonstrate some weaknesses.

*Kosovo progress report* – Kosovo is at an early stage of the competition. Some progress was made by adopting the Law on State Aid and by adopting secondary legislation in competition law. However, most of last year's recommendations have



not been addressed. The agencies responsible for competition and state aid face substantial challenges in their investigative and decision-making capacity. Significant efforts are needed to improve legislative alignment and enforcement.

*Bosnia and Herzegovina progress report* – Bosnia and Herzegovina has made some progress but are still at an early stage in achieving the capacity to cope with competitive pressure and market forces within the Union.

*Albanian progress report* - Albania has some level of preparation / is moderately prepared with regards to the competition policy. There was some progress on legislative alignment during the reporting period. However, significant efforts are needed to further improve legislative alignment and enforcement in the area of State aid. In the coming year, the country should in particular: ensure the operational independence of the State Aid Commission (SAC) and strengthen the capacity of the State Aid Unit by stepping up the efforts to improve its enforcement record in the area of State aid control.

*North Macedonian progress report* – The country is moderately prepared in the area of competition policy. No progress has been made in this field during the reporting period. Significant efforts are needed on enforcement. In the coming year, the country should pay particular attention to, step up efforts to strengthen the enforcement record of the Commission for the Protection of Competition (CPC) and increase the transparency of State aid granted by the government.

*Serbian progress report* – Serbia has some level of preparation / is moderately prepared in the area of competition policy. No progress has been made in the field of legislative alignment and enforcement of state aid rules. Serbia should pay particular attention in the coming year to, make significant progress in the alignment of its legislation on state aid, in particular to repeal the exemption of enterprises in the process of privatisation from state aid control, in line with its obligations under the Stabilisation and Association Agreement and step up its efforts to make the Commission for State Aid Control more independent and effective.

In summary, based on these Progress Reports for EU for Western Balkan countries, it clearly shows that these authorities should work harder to be able to overcome the key challenges in implementing the competition rules and ensuring effective enforcement of competition law, creating strong and efficient national authorities with budget support and increased human capacity.

Their institutional independence is necessary in order to take a decision, which is independent of political influences and conflict of interest. General findings from these annual and previous reports indicate modest progress by these Western Balkan countries during the last 15 years in creating regulatory capacity and implementing EU legislation. However, although the overall impression is good

and shows some progress, more effort is needed to ensure competition enforcement.

**Table 4.** Findings from Progress Report 2018, for National Competition Authorities

Nr.	Countries	Stage of competition	Adaption of Law	Enforcement Capacity	State Aid
1	Montenegro	Moderate preparation	Some progress	Inefficient and inadequate	Partly aligned with EU
2	Kosovo	Early stage	Some progress	Inefficient	Limited
3	Bosnia and Herzegovina	Early stage	/	/	/
4	Albania	Moderate preparation	Some progress	Adequate	Inefficient
5	North Macedonia	Moderate preparation	No progress	Level of expertise inadequate	Inadequate
6	Serbia	Moderate preparation	Some progress	Inefficient	No progress

*Source: Progress Report 2018, EU.*

## 7. The Global Competitiveness Index 2017–2018

The Global Competitiveness Index 2017–2018 measures national competitiveness—defined as the set of institutions, policies and factors that determine the level of productivity. The report covers 137 economies. From the report, we can see that four Balkan Country have moderate ratings when compared to other countries. Kosovo and North Macedonia aren't including in Global Competitiveness Index.

**Table 5.** Global Competitiveness Index 2017-2018.

Country	Rank/137	Good market efficiency	The extent of market dominance	Evidence of antimonopoly policies	Market size
Albania	75	57	115	102	105
Serbia	78	110	112	114	74
Montenegro	77	65	84	75	128
Bosnia and Herzegovina	103	126	107	88	97
North Macedonia	/	/	/	/	/
Kosovo	/	/	/	/	/

*Source: The Global Competitiveness Report 2017–2018.*

**Table 6. Questioner for Competition Regime**

<b>National Competition Authorities</b>	<b>Response</b>
1. Are there any plans to reform the competition law?	Yes = 3; No = 3
2. Do you have a separate economics team?	Yes = 3; No = 3
3. Has the authority imposed penalties on officers or directors of companies for offences committed by the company?	Yes = 1; No = 5
4. Do any industry-specific regulators have competition powers?	Yes = 3; No = 3
5. Government-separated budget is sufficient for carrying competition activities?	Yes = 4; No = 2
6. Does the competition authority have cooperation with other market regulators?	Yes = 6; No = 0
7. May politicians overrule or disregard authority's decisions?	Yes = 0; No = 6
9. Does the authority conduct criminal investigations and prosecutions for cartel activity?	Yes = 0; No = 6
10. Are there any restrictions on investments that involve less than a majority stake in the business?	Yes = 0; No = 6
11. Has the authority ever pursued a company based outside your jurisdiction for a cartel offence?	Yes = 0; No = 6
12. Do you operate a leniency programme?	Yes = 2; No = 4
13. Has the authority conducted a dawn raid?	Yes = 2; No = 4
14. Has the authority ever imposed conditions on a proposed merger?	Yes = 4; No = 2
15. Decisions of Competition Authorities are subject to appeal at the Court?	Yes = 6; No = 0

*Source: The Handbook of Competition Enforcement Agencies 2018. A Global Competition Review Special Report.*

## 8. Conclusions

To create a sustainable competition regime, competitive protection and development needs to focus on addressing issues relating to barred agreements, abuse of dominant position, controlling concentrations; validation and implementation of laws and other sub-legal acts which can create certain favors and monopolies; enforcement of human resources, improvement of market analysis and expertise and budget support.

It is necessary that the protective competition authority cooperate regularly with economic regulators (the regulator for energy, telecommunications, media, procurement and others) in order to create fair competition. The Competition Authority needs to co-operate with the regulated entities and use the best expertise when reviewing cases to ensure that legislation is respected. Particularly, it is important to promote the importance of competition and the recognition of competition law protection and to prepare secondary legislation in this field.

Also, in order to strengthen the effectiveness of law enforcement in specific cases, the authority needs to enforce administrative measures against the infringement of

competition, effectively using sanctions and giving fines in cases of abuses such as for example, in cases of cartels and concentration control.

All these actions will create a suitable environment for the further development of free competition and its protection as one of the fundamental conditions for sustainable economic development and consumers health protection.

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