



VOKSHI & LATA

LAW FIRM



COMPETITION

LEGAL GUIDE TO INVESTING IN KOSOVO



10. COMPETITION

Kosovo has approved Law No 08/L-056 on the Protection of Competition with the goal of fostering a more competitive market, preserving fair competition, and ultimately promoting a more efficient economy. Kosovo's legal framework, through competition regulation, has established a secure market environment that welcomes the participation of small and emerging businesses, ensuring their safety and providing opportunities for them in the marketplace.

The legal framework has prioritized the protection of free competition in the national market, ensuring that businesses can operate freely. Law No 08/L-056 on the Protection of Competition aligns with EU standards.

Law on Protection of Competition applies to all forms of prevention, restriction or distortion of competition by enterprises, inside or outside Kosovo, if their activity affects the market of Kosovo. Competent for the supervision of competition abuse in the market is The Kosovo Competition Authority (KCA) which is the main authority, responsible for preventing anti-competitive practices, including prohibiting cartel agreements, misuse of dominant position and the regulation of concentration.

KCA over the years has been very active by issuing punitive acts for competition violators to protect competition in the market, ensuring loyal competition in the marketplace.

10.1. PROHIBITION OF CARTELS AGREEMENTS

10.1.1. Prohibited Agreements

Agreements that stifle competition or create monopolies are illegal. This includes price-fixing agreements among competitors, market allocation agreements, and agreements that limit the ability of businesses to compete freely.

The Kosovar legal framework protects free competition, so it encourages businesses to operate more efficiently, innovate, and offer better products or services at lower prices.

Law on Protection of Competition prohibits all cartels agreements which aim at preventing, restricting or distorting the competition in the relevant market and in particular those that:

- directly or indirectly impose purchase and sale prices or any other trading conditions;
- limit or control production, market, technical development or investments;
- share markets or sources of supply;
- implement unequal conditions to the same transactions with other commercial enterprises, consequently placing them in an unfavorable competitive position;
- condition the conclusion of the contract with the acceptance of additional obligations by contracting parties that by nature or commercial use are not related to the object of the contract.

If an enterprise or a group of enterprises enters into any prohibited cartel agreements or participates in such agreements, the KCA (Kosovo's Competition Authority) may impose fines. These fines can amount to up to 10% of the total worldwide turnover realized in the last year for which the financial report has been concluded.

10.1.2. Exclusions


Exclusion of agreements overall beneficial for the market and the consumers: Prohibition of cartels does not apply to agreements which, for their entire duration contribute to the improvement of the production or distribution of goods or to the promotion of technical or economic progress and allow consumers a fair share of the benefit. In order to achieve these objectives, the agreement should also not impose unnecessary restrictions on the enterprise and should not enable the enterprise to avoid competition for a significant part of the relevant products.

The Law on Protection of Competition includes provisions for the exclusion of certain agreements from its prohibition. These exclusions are categorized into various types, such as vertical agreements, which involve agreements between enterprises that do not operate at the same level of production or distribution. This category encompasses exclusive distribution agreements, selective distribution agreements, exclusive purchase agreements, and exclusivity agreements.

Additionally, horizontal agreements, which are agreements between enterprises operating at the same level of production or distribution, are considered excluded, especially those related to research, development, and specialization. Furthermore, the law provides exclusions for agreements pertaining to the transfer of technology, distribution, and servicing of vehicles, as well as insurance agreements.

Lastly, agreements between enterprises within the transport sector also fall under this category of exclusions. These exemptions aim to strike a balance between encouraging healthy competition and allowing for specific collaborative arrangements that may benefit the market and consumers.

Exclusion of agreements of minor importance: Should also be excluded from the prohibition agreements for which both the parties and the enterprises they control have an insignificant market position and their common market share does not exceed

- 10%, for horizontal agreement;
 - 15%, for vertical agreement;
 - 10% for agreement with both the characteristics of horizontal and vertical agreements or if it is difficult to determine whether the agreement is vertical or horizontal;
 - 30%, if the agreements between the different participants have a significant effect on the market and the individual participation of each participant does not exceed 5% of each individual market where the effects of the agreement appear.
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10.2. PROHIBITION OF MISUSE OF DOMINANT POSITION

The dominant position is not in itself prohibited, only the misuse of the dominant position is. It's essential for businesses that hold a dominant position in a market to understand the rules and obligations related to competition law to avoid engaging in practices that could lead to breach of law.

10.2.1. Dominant Position

Pursuant to the Law on Protection of Competition, shall be deemed to have a dominant position, the enterprise which can, in the relevant market, operate significantly independently of current or potential competitors, consumers, purchasers or suppliers.

It is especially in dominant position the enterprise which, in the relevant market, has no significant competitors or has substantial power as compared to current or potential competitors (especially, according to the Law on Protection of Competition, in regard to the enterprise participation and position in the market; the enterprise financial strength; its access to supplies or market; its connection with other enterprises; its ability to impose market conditions on its supply or demand; its ability to exclude competitors from the market by orienting them to other enterprises; or the legal or factual barriers of entrance of other enterprises in the market).

Unless proven otherwise by the enterprise, the enterprise with at least 40% of the relevant market is presumed to have a dominant position. Enterprises whose joint market exceeds 60% of the relevant market, if they operate significantly independently from competitors, consumers, purchasers or suppliers and if they operate together in the relevant market are also presumed to have a dominant position. Under the described threshold (40% for one enterprise or 60% for group of enterprises), the KCA have the burden of proving the dominant position.



10.2.2. Misuse of Dominant Position

The misuse of a dominant position, also known as abuse of dominance or monopolistic behavior, refers to anticompetitive practices undertaken by a dominant company in a market. When a single company or a group of companies hold a significant share of a market and use their market power to harm competition, consumers, or other market participants, it can be considered an abuse of dominance.

Misuse of a dominant position is prohibited. Pursuant to the Law on Protection of Competition, an enterprise or group of enterprises shall be considered to misuse its dominant position if it:

- directly or indirectly impose an unfair purchase or sale price or other unfair trading conditions;
- restrict production, markets or technological development to the detriment of consumers;
- applies different conditions for equivalent transactions with other enterprises, putting them at a competitive disadvantage;
- conditions the conclusion of the contract with additional obligations that by nature or commercial use are not related to the object of the contract;
- impose prices or other conditions that have the purpose or effect of preventing the entry into the relevant market or the removal from the relevant market of specific competitors or their products;
- deny other enterprise access, in return for adequate remuneration, to the network or infrastructure, making it impossible for it to act as a competitor.

Misuse of dominant position must be asserted by decision of the KCA, which will determine the measures and fines to be taken.

If any enterprise or group of enterprises misuse their dominant position, the KCA will fine the enterprise up to 10% of the total worldwide turnover realized in the last year for which the financial report has been concluded.

10.3. CONCENTRATION

10.3.1. Definition

Concentration of competition is an important aspect in the field of economics and market competition. This includes several concepts and strategies that companies and organizations can use to gain market advantage and to survive and grow in a competitive environment.

Concentration is defined by the Law on Protection of Competition as a change of control of enterprises, where one or more enterprises acquire direct or indirect control over all or part of other enterprises, in particular by earning shares or gaining the majority of voting rights. Acquisition of control is made especially with:

- transfer of the ownership, or of the right to use whole or part of the assets of enterprises;
- transfer of rights or contracts that have a decisive influence on the composition, voting or decisions of the bodies of enterprises.

The national law does not consider concentrations:

- the purchase of shares, only for resale within 12 months, by a financial, credit or insurance institution;
- the purchase of shares due to internal restructuring;
- the transfer of control of the enterprise to the bankrupt administrator or liquidator;
- establishment by independent enterprises of a joint venture, where one enterprise coordinates the competitive behaviour of the others.

Concentration that may result in a significant distortion of competition, in particular a dominant position, is prohibited.

10.3.2. Obligation of Prior Authorization of KCA

Concentrations are permitted as long as they do not result in anti-competitive practices and actually enhance competitiveness and competition. KCA is authorized by law to monitor and limit market concentration and anti-competitive actions to protect free competition and consumer preferences.

When companies merge or form alliances, it may reduce competition, lead to higher prices, and limit consumer choices. Therefore, KCA reviews proposed concentrations to ensure they comply with the laws and do not harm competition.

To safeguard competition, when the combined turnover of participating enterprises exceeds the legally mandated thresholds, both at the international and domestic levels, they must seek prior authorization from the KCA, for their proposed concentrations.

The concentration must be permitted to the authority for review if the combined worldwide turnover of the participants is over 20 million and one of the participants has a turnover of over 1 million euros in the domestic market, or if at least two of the participants have over 3 million of turnover on the domestic market. The turnover is calculated according to the financial reports of the financial year that precedes the year of concentration. If the participant is a financial institution, it should include its revenue and the revenue of insurance and reinsurance company.

Concentration should be permitted if KCA deems the concentration does not significantly distort competition or if KCA does not draw conclusions within 30 days after receiving the full application for concentration.

If KCA considers that the concentration may impede effective competition, it shall initiate the concentration assessment procedure. During the assessment, if KCA considers that concentration may only be authorized under conditions, it should notify without delay the applicant, which has 30 days to propose the appropriate measures, conditions and deadlines to avoid harmful effects of concentration. Within 60 days from the conclusion for initiating the concentration assessment, KCA should announce the authorization (with or without conditions and deadlines) or declare the concentration prohibited.

In case the concentration is carried out illegally, contrary to the decision prohibiting it or without submitting the above-mentioned application, KCA shall determine the measures, conditions and deadline for resetting the effective competition. KCA may also:

- order the sale or transfer of acquired shares;
- prohibit or restrict the exercise of voting rights in the participating enterprises in the concentration;
- order the termination of the joint venture;
- prohibit other forms of gaining control that led to illegal concentration;
- impose a fine of up to 10% of the total worldwide turnover realized in the last year for which the financial report has been concluded on the enterprise or group of enterprises that participated.

KCA has demonstrated heightened diligence when it comes to reviewing and granting approvals for mergers and acquisitions. Through its practices, it has proven to be effective in safeguarding and promoting fair competition.