

THE COMPETITION POLICY IN WESTERN BALKAN COUNTRIES: HOW FAR THEY HAVE COME ON THE EU ACCESSION “ROAD?”

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Abstract

Competition policy in the Western Balkan countries has recently gained in significance, in parallel with the acceleration of their EU accession process. Competition policy played a central role in the development of the EU, its institutions and in particular the EU internal market. Competition legislation aims to prevent distortions of competition that harm the economy and, at the same time, to assure freedom of choice of economic agents. A competition policy adopted by the government should include both: economic policies that enhance competition in local and national markets, and competition law designed to stop anti-competitive business practices. The goal of this paper is to analyse the recent developments in the area of competition policies in Western Balkan countries i.e. Albania, North Macedonia, Bosnia and Herzegovina, Serbia, Montenegro and Kosovo. In the Western Balkan countries, the progress in this policy area has been generally slower than in other areas of government. This can be explained partly by the complex environment in which competition policies and regulators are set up in any country. However, there could be also some other features at play, which are characteristic of the transition countries. In addition, in the last 20 years there were great efforts by the national governments to fully adhere with the EU competition policy principles and regulations.

Key words: *competition policy, Western Balkan countries, economic policies, competition law*

Introduction

The competition which by definition includes sustaining a balance between supply and demand of goods and services is considered a major mechanism of the market economy. Effective competition is the engine forcing the economic agents to act in the most efficient way. Competitive pressure threatens them with being pushed out or eliminated from the respective market (Penev et al., 2010, p.36). A key characteristic of competitive market conditions is that “sellers and potential sellers are as free as possible to enter and leave the market as they see fit or, in other words, that markets are contestable” (Milberg, 2003, pp. 287-294).

Effective competition means that companies act independently of each other but are subject to market pressures created by their competitors. The European Commission argues: that “competitive markets create downward pressure on prices, encourage quality of goods and services, widen consumers’ choice and stimulate innovation” (EPRS, 2014). Economic evidence suggests that competition increases the productivity or efficiency of enterprises (Holmes & Schmitz, 2010, pp. 619-642; Aghion & Schankerman, 2004, pp. 800-824). It also creates favourable conditions for innovation and growth. Many argue that promoting competition is the best available tool for enhancing consumer well-being (Stucke, 2013, pp.162-197).

Competition policy is a major instrument for building a modern and competitive market economy. Competition law and its enforcement form one pillar of competition policy. Other aspects of a competition policy, essential to build an efficient economy with a strong level of innovation are: “external trade and investment policies, sector regulation, privatization policies, public procurement policies, licensing and concessions, as well as reducing barriers to entry and exit of firms” (UNCTAD, 2011).

Competition law refers to a clear set of enforceable legal rules which are designed to promote a more competitive environment. Competition law addresses commercial tactics, behaviour, and transactions by commercial establishments to restrain competition and attain or independently exercise substantial market power obtained through improper means. On the other hand, competition policy covers all laws, government policies and regulations aimed to achieve economic efficiency to maximize consumer welfare. It is consistent with policies that enhance competition in local and international markets like liberalized trade policy, relaxed foreign direct investment and ownership requirements as well as economic deregulation (Aldaba, 2008).

Competition policy refers to a set of laws and regulations aimed at maintaining a fair degree of competition by eliminating restrictive business practices of private enterprises. Competition policy includes antimonopolies (antitrust) and regulation of State Aid (Graham, 2000, pp. 202-207).

Competition policy played a central role in the development of the European Union (EU), its institutions and in particular in the development of the EU internal market. Accordingly, European competition rules are established to protect competition, prevent distortions in the market and ensure fairness for market participants. The EU uses two categories of measures,

..first, it prohibits the agreements, the contracts for the integration of business entities - companies, prevents the unlawful actions among market participants that can restrict competition on a single market; and second, protects the Member States from discrimination in favouring the national companies or public enterprises and concerns State Aid to public enterprises by adopting anti-competitive measures (Office of Fair Trading, 2004).

The policy in the Western Balkan countries (Albania, Bosnia and Herzegovina, North Macedonia, Kosovo, Montenegro and Serbia) has recently gained in significance, in parallel with the acceleration of their EU accession process. The purpose of this paper is to analyse the harmonization of the national legislation of the Western Balkan countries (WBC) with EU legislation (*acquis communitare*), the progress they made over time and to offer future policy recommendations to relevant stakeholders. After a brief introduction, the paper describes the development of the EU competition law and policy, referring to its major institutions. The next section describes the development of competition law and policy in the Western Balkan countries, their progress and main institutions. The final section concludes the paper and gives recommendations for further developments in the area of competition law and policy harmonization.

Competition policy and competition legislation in the EU

The competition protection policy aims to prevent various harmful forms of connection and action of economic entities, in order to

cause limitation and distortion of competition in the market. Cartelisation and abuse of the dominant position held by market companies cause distortions in the functioning of the free market, in its most important components (information, selection and distribution and right of access), thus causing harmful effects at the expense of consumers, which are manifested in the form of higher prices, less choice and less quality products and services (OECD, 2005). In the long run, these phenomenon lead to a slowdown in technology development, innovation and education development, and as a result, a society's global competitiveness is diminished.

Restrictive, anti-competitive or unfair, business practices are those which may limit other enterprises from entering a market or which regulate supply in a way that is deemed harmful either to other existing or potential producers or to consumers. Such practices include predatory pricing behaviour, collusion, entry-deterrent capacity expansion and competition-reducing mergers and acquisitions. Competition policy is aimed at limiting monopoly in order to encourage competition and its beneficial welfare effects (OECD, 2005-a).

The nature of this complexity of the connection of the law with economic theory and practice requires that the competition protection policy (CPP) be specific, and therefore complex with regards conceptualization, organization, and implementation. Additionally, the CPP must be balanced and flexible due to the changing effects that market participants have on the market, up to the level of contradiction, i.e. to appear when the effects of banned contracts in a given time frame can have positive consequences on the market. The optimization of the application of regulations is the ultimate goal of the CPP, which as a consequence will trigger the development of a free, developmental and competitive economy.

European Union (EU) competition policy is the application of the rules to ensure a market environment in which companies compete with each other, innovate constantly and offer good prices to consumers. Consequently, the system of competition policy developed by the EU is one of the strongest in global terms. Generally, according to literature, competition policy pertains to a wide range of issues, such as: cartels and antitrust, State Aid, market liberalisation, merger examination and international cooperation. More simply stated, it safeguards the common single market from any types of market deviations that might provoke any type of unequal treatment of any enterprise that enters or compete in the market (Szczepański, 2019, p.1). The general objectives pursued by the

European Commission to protect competition on the market as a means to enhance consumer welfare, to support growth, jobs and competitiveness of the EU economy and foster a competition culture fully support its overall Europe 2020 Strategy, and in particular its three mutually reinforcing priorities: smart growth, sustainable growth and inclusive growth (UNCTAD, 2014, pp.1-2).

The primary purpose of the competition law is to remedy some of the situations in which the free market system breaks down. Competition legislation aims to prevent distortions of competition that harm the economy and, at the same time, to assure freedom of choice of economic agents (Gasparikova, 2012, p.26). In a market economy, competition is a process whereby firms fight against each other for securing consumers for their products. A competition policy should include both: economic policies adopted by Government that enhance competition in local and national markets; and competition law designed to stop anti-competitive business practices (Penev et al., 2010, p.36).

EU competition policy was foreseen by the Treaty of Rome establishing a system of protection of free competition in the common market as one of its objectives (European Commission, 1957). The basic rules of competition as they were set out in the Treaty of Rome are:

1. Restrictive - restricted practices (Article 85 of the Treaty of Rome);
2. Abuse of a dominant position (Article 86 of the Treaty of Rome);
3. Integration control - merger (Regulation 4064/89);
4. State monopolies, public support with special or exclusive rights; and
5. Obligations towards public services (Article 90) and State Aid (Articles 92-92) (European Commission, 1957).

At the EU level since the Treaty of Rome, the institutional framework and decision-making with respect to competition has been centralized on a foundation of promoting an open market while strengthening the institutions of the European Community (Penev et al., 2010, p.37). During that period of time, the Commission had exclusive powers. It created policy and decided on competition cases, without any required approvals at the level of the member states or the European Parliament (Warloutzet, 2010, pp.16-19). Following criticisms of unaccountability and inefficiency of the EU in dealing with breaches of competition law, the Commission responded with a reform and strategy to decentralize the implementation of the EU competition rules, which began in the late 1990s. This decentralization strategy was materialized through

EC Regulation 1/2003 supplemented by the modernization package, which entered in force in May, 2004 (Penev et al., 2010, p.38).

Competition law was enriched in the Treaty on the Functioning of the European Union (TFEU) with the major objective of speeding up market integration through a regulatory framework with a centralized enforcement authority. The TFEU is supported by a number of regulations and directives intended to be observed by all member states (Briguglio, 2004, pp.5-7; European Commission, 2012, 88-93). The European Commission, together with the national competition authorities, directly implements EU competition rules, Articles 101-109 of the TFEU, thereby ensuring that EU markets function better by enabling all companies to compete equally and fairly on the basis of their merits (Curtis, 2005). Competition law and policy of the EU are built on two main pillars namely controlling anti-competitive behaviour arising from collusion (Article 101 of the Treaty) and preventing abuse of dominance (monopolization) of the market (Article 102 of the Treaty). Article 3 of the Treaty on European Union (EU) states that the EU “establishes an internal market” on the basis of a “highly competitive social market economy” (EPRS 2014, p.5). Other relevant Articles of the TFEU are 106 and 107. Article 106 states that public undertakings are controlled by the same legal provision as private undertakings. However, some exceptions are allowed in Article 106 when public undertakings are entrusted with the operation of services of general economic interest (water, energy, transport, and telecommunications) so as not to obstruct the particular tasks assigned to them. Nevertheless, the article explicitly states that the development of European trade must not be affected by aid to these undertakings to such an extent as would be contrary to the interests of the Union (European Commission, 2019). Article 107 of the Treaty on the Functioning of the European Union (TFEU) deals with State Aid and provides that, in principle, Member States’ governments should not provide aid and other support, which would distort the competitive environment (OECD, 2010).

The General Directorate for Competition of the European Commission manages the problems of antitrust, mergers, cartels, liberalization, State Aid and the challenges of globalization. In addition, competition law and policy in the EU also covers control of proposed mergers, acquisitions and joint ventures which could significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position. Except for areas such as foreign trade and investment policies, sectorial regulation, public procurement

policies, competition legislation and its implementation are key pillars of the EU competition policy.

Protection of the competition and European integration processes

With the establishment of the European Economic Community (EEC) in 1957 (Treaty of Rome) as a community of free trade of goods and services, the EU competition policy was introduced as one of the fundamental policies on which the single internal market was founded. Initially the EU competition policies were scrupulously legally defined and, with the development of common European policies and with the growth of countries that have joined the Community, the EU competition policy continues to gain increasing importance. The legal basis of the EU competition policy, just like the implementation, is based on two levels: *First*, EU level (founding treaties, regulations, directives, notifications, decisions of the European Commission and the European Court of Justice etc.); and, *Second*, EU Member States level - which have their own national legislation and institutions to implement them (Macedonian Centre for European Training, 2014). The control of the State Aid is in the exclusive competence of the EU, while in the area of competition protection EU shares its competencies with the Member States.

The new countries that have recently become full EU members, the countries that start negotiations or the countries candidates for the EU accession, in accordance with the previously signed Stabilization and Association Agreements (SAA), have assumed the obligation to fully harmonize national legislation with the EU *acquis communautaire*. Therefore, strictly speaking, negotiations between the candidate country and the EU do not really mean negotiating what will be applied (incorporated) in the national legislation, but only the time period over which the provisions will be applied. In other words, a negotiation on the essence of this policy does not depend on the ability of the candidate country to incorporate EU regulations, rather whether and when the necessary legislation will be implemented. As a result of these stringent requirements for the new members, some think that with strengthening the EU integration processes, the EU competition policy should be exclusively within the competence of the Union, as it coincides with the common EU law and the creation of a single European market.

EU Member States have an obligation to harmonize their anti-trust legislation with the Articles of the EU's founding Four Treaties (TFEU). Also, EU Member States have an obligation to harmonize their

anti-trust legislation with the regulations (which are part of the so-called secondary EU law) adopted by the European Commission and the Council of the EU (see Table 1 below).

Table 1. Articles 101 to 106 of the Treaty on the Functioning of the European Union

| | |
|-------------------------|--|
| Article 101 of the TFEU | Prohibition on concluding wrong contracts, decisions and concerted actions |
| Article 102 of the TFEU | Prohibition of abuse of dominant market position |
| Article 106 of the TFEU | For enterprises granted special or exclusive rights |

Source: European Commission. (2012). Treaty on the Functioning of the European Union (TFEU) - Consolidated version. Official Journal of the European Union, C326/47, 47. Retrieved from: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT>

A decentralized arrangement exists for competition law and policy within the EU so that national competition authorities and national courts can ensure compliance with EU law within a particular member state. This is in line with EU Council Regulation 1/2003 (Briguglio, 2004, pp.5-7).^{*} These Articles and Regulations which deals with the rules for enterprises, is so-called first pillar, while Articles 107-109, which govern the rules on the granting of State Aid, regulate the second pillar, which applies to the Member States. What can be noticed from the observation of the legislation only includes five articles, which are very short and precise, a series of regulations, reports, guidelines and opinions, as well as a very important segment as the decisions of the European Commission and the Court of Justice of the European Union (See Table 2 below).

^{*} EU Council Regulation 1/2003 assigned enforcement powers relating to Articles 101 and 102 to competition authorities and national courts of the EU member states.

Table 2. Overview of the regulation of the EU Functioning Treaty

| | |
|---------------------|--|
| Regulation 1/2003 | Implementation of competition rules based on Articles 101 and 102 of the TFEU |
| Regulation 139/2004 | To control the Association of enterprises |
| Regulation 773/2004 | On the manner in which the Commission operates the procedures, concerning Articles 101 and 102 of the TFEU |

Source: European Commission. (2012). Treaty on the Functioning of the European Union (TFEU) - Consolidated version. Official Journal of the European Union, C326/47, 47. Retrieved from: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT>

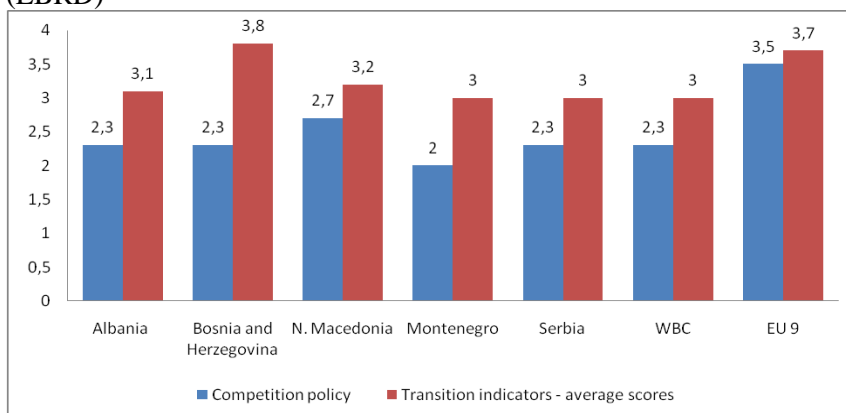
The institutional structure for implementation of the EU competition rules consists of many complex institutional networks, including: the national competition authorities (NCAs) that since 2003 alongside the European Commission are applying the competition rules within the national boundaries. On the other hand, European Commission monitors the policy implementation, receives complaints, investigates and acts upon every illegal action. Initially, the Commissioner for Competition prepares proposals the so-called College of all the Commissioners decides and adopts the final decisions or documents that will be submitted as official proposals to the Council. In any case, in practice these decisions are implemented by the Directorate-General (DG) for Competition. Finally, Commission's decisions can be challenged or disputed in the European Court of Justice (Szczepański, 2019, pp.2-5). There are many other institutions that are directly or indirectly involved in competition policy, such as: European Court of Auditors, the European Central Bank, The European Economic and Social Committee's Single Market Production and Consumption (INT) section, the Advisory Committee on Restrictive Practices and Dominant Positions, the European Ombudsman etc.

Competition policy in Western Balkan countries in general

In the Western Balkan countries, the progress in the competition policy area has been generally slower compared to other transition indicators (See Figure 1 below). This can be explained partly by the complex environment in which competition policies and regulators are set up in any country, but there should be also some other features at play,

which are characteristic to the transition countries (Sanfey, Milatović, & Krešić, 2016, pp.7-13).

Figure 1. Western Balkan countries' competition policy and transition indicators under the European Bank for Reconstruction and Development (EBRD)



Source: Sanfey, P., Milatović, J., & Krešić, A. (2016). How the Western Balkans can catch up? European Bank for Reconstruction and Development- EBRD: Working Paper No. 186. Retrieved from www.ebrd.com/documents/occe/pdf-working-paper-186.pdf

The explanation of the data in the Graphic above is the following: Ranging from minimum i.e.1 = no or little progress to maximum 4,3 = standards of advanced industrial economies.

- 1- No competition legislation and institutions;
- 2- Competition policy legislation and institutions are set up. There is some reduction of entry restrictions or enforcement action on dominant firms;
- 3- Some enforcement actions aimed to reduce the abuse of market power and to promote a competitive environment; and
- 4- Significant enforcement actions aimed to reduce the abuse of market power and to promote a competitive environment.

The main pillars of the EU competition policy are 1. fighting against anti-competitive agreements (cartels) and abuses of dominant position (anti-trust policy), 2. market liberalization and 3. merger control. The EU competition policy is regulated by Articles 101-109 of the Treaty on the Functioning of the EU (TFEU), and also by secondary legislation. All Western Balkan countries have established both a legal and

institutional framework in the area of competition based on the aforementioned pillars. The first country in the region that enacted a law on competition was Albania in 1995, followed by Macedonia, Montenegro and Serbia in 1999 and finally Bosnia and Herzegovina in 2001 (Penev et al., 2010, pp. 14-15). All these laws had certain deficiencies and they did not cover all the competition policy areas. The following section will give a brief overview of the chronology of legislation harmonization related to competition policy in each of the Western Balkan countries.

Competition policy in Albania

The Albanian Law on Competition from 1995 established the basis of competition policy in Albania regulating dominant position, as well as prohibited restrictive agreements. However, it did not cover concentrations and the prescribed fines did not deter anti competitive behaviour, considering that, they set a low bar. In addition, the implementation of this law was very weak and inefficient.

The Albanian new Law on Protection of Competition adopted in 2003 regulated all relevant competition areas, including concentrations (Official Gazette, 2003, no. 9121). It introduced some new provisions, such as provisions on block exemptions and leniency policy. This law also represented essential progress in approximation with the EU legislation. This law was amended in 2010 by introducing leniency policy and obtaining further progress in approximation with the EU legislation.

Competition policy in Bosnia and Herzegovina

The Law on Competition of Bosnia and Herzegovina from 2001 regulated restrictive agreements as well as the dominant position and its abuse, though it did not regulate concentrations. Implementation of the law was weak and inefficient, due in particular to the lack of harmonization of this law with other relevant laws on the State and entities level.

The Law on Competition of Bosnia and Herzegovina from 2005 also regulated all relevant competition areas, including concentrations, block exemptions, and individual exemptions (Official Gazette, 2005, no.48/05). This law achieved further progress in compliance with the EU legislation in comparison to the previous law. The law was further amended in 2007 and 2009, whereby the time limits for issuance of

decisions of the competition authority were reduced from six to three months, and more precise definition of undertakings, as well as concentrations, was regulated.

Competition policy in North Macedonia

The law against Limiting Competition in the country was adopted in 1999 and defined monopolistic agreements (horizontal and vertical), abuse of dominant position and business concentrations. This law was, however, not harmonized with other relevant laws in the country, and it did not set clear procedural rules that would facilitate its implementation.

While the new Macedonian Law on Protection of Competition adopted in 2005 achieved a more advanced level of compliance with the EU legislation, it still contained some weaknesses, such as the lack of leniency provisions and too low a threshold for concentrations. A new Law on Protection of Competition was enacted in 2010, which introduced detailed leniency provisions and expertise for conducting a search of anti-trust legislation from the Competition Regulators' site which means further alignment this area with the EU legislation (Official Gazette, 2010, no. 145/2010; Svetlicini, 2012, pp. 16-18).

Competition policy in Montenegro

The Law on Competition Protection in Montenegro, adopted in 2006 is the first law adopted in this area, which establishes and regulates the basic institutes of competition law and the institutional framework for their implementation (Official Gazette, 2007, no. 37/07). The law was largely in line with EU legislation, the competitiveness standards are set out in Articles 101, 102 and 106 of the Consolidated Agreement on the European Union and the TFEU, as well as key EU regulations and directives in this area and assumed more rigorous fines for violating the provisions. The remaining weaknesses are the incomplete provisions on restricted contracts, as well as a low threshold for mandatory concentration reporting.

A new Law on Protection of Competition was enacted in 2012, which introduced detailed leniency provisions. The Directorate for Protection of Competition is an operationally independent body for the protection of competition. Within the framework of the aforementioned legislation and institutional framework, in June 2008, the Ministry of Economy prepared a Strategy for Competition Policy, which defines the

situation in the field of competition, the goals, priorities and means for achieving them, as well as the resources needed for effective implementation of the competition rules. Looking ahead, Montenegro should focus on competition policy and economic and monetary policy (European Commission, 2016).

Competition policy in Serbia

The Anti-Monopoly Law of Serbia and Montenegro was first adopted in 1996 and defined abuse of dominant position and monopolistic position, while it did not regulate concentrations. As in the case of the previously mentioned countries, implementation of the law was weak and inefficient. However, the Law on Protection of Competition of Serbia adopted in 2005 represented a significant improvement compared to the previous law. This law regulated all competition areas. It prescribed rigorous fines for violating the provision of the law. This law achieved an advanced level of harmonization with EU legislation.

The remaining weaknesses of the law are related to restrictive agreements which remained insufficiently regulated, as well as the lack of powers of the competition authority to impose sanctions. A new Law on Protection of Competition was enacted in 2009 and after that in 2013 (Official Gazette of the Republic of Serbia, no. 51/2009; Official Gazette of the Republic of Serbia, no. 95/2013) which introduced detailed leniency provisions enabled the competition authority to directly issue sanctions and raised the concentration notification thresholds. The new law is also more aligned with the EU legislation.

Competition policy in Kosovo

The experience of transition in Kosovo, as in the other countries of the region, shows that the more progress is made in the transition (structural) reforms, the more important competition law and competition policy become. The first law on competition was approved in September 2004 (UNMIK Regulation, 2004, no. 2004/44). This Regulation was then followed by the new Law on the Protection of competition from October, 2010 (Official Gazette no. 88/25, 2010). The Law on Competition of Kosovo from 2004 defined restrictive agreements and abuse of dominant positions, while it did not regulate concentrations and it did not introduce provisions on leniency policy. A new Law on Protection of Competition was enacted in 2010 and all three main pillars of competition protection

were included, such as prohibited agreements and concerted practices, abuse of dominant position, and concentrations. The Law also included provisions on concentrations and introduced leniency provisions. Thus, the law achieved further progress in the harmonization with the EU legislation.

The Competition Authority of Kosovo is an institution directly responsible for the implementation of the Competition Law. However, the implementation of these provisions requires greater efforts by the competent authority and all other institutions involved in the preparation and implementation of the key provisions.

In sum: Western Balkan countries transitional development in legislation and institutional network in support of the competition policy

In the period 2003-2006, all Western Balkan countries enacted new, more comprehensive competition laws which encompassed all the relevant competition areas and were substantially aligned with the EU legal framework in this area. In this period, the EU competition legal framework was modernized through the enactment of Regulation 1/2003. Aiming at further harmonization with the EU competition framework, all the countries of the region have amended the existing laws or enacted new competition laws in the period 2009-2012 (See Table 3 below).

Table 3. Chronology of legislation related to competition policy in Western Balkan Countries

| Albania | BiH | N.Macedonia | Montenegro | Serbia | Kosovo |
|--|---|--|---|---|--|
| Competition Law No. 8044 from 1995 | Competition Law from 2001 | Law on Prevention of Competition from 1999, 2005 and 2010 (145/10) | Antitrust law from 2006 | Antitrust law from 1996 | Competition Law 2004/36 |
| Law on Protection of Competition from 2003 | Amendment to the Competition Law from 2007 and 2009 | Amendment to the Law on Protection of Competition 136/11 | Law on Protection of Competition from 2006 and 2012 | Law on Protection of Competition from 2005 and 2009 | Law on Protection of Competition on 03 / L-229 from 2005 |
| Amendment to the Law on | | | | | Amendment to the Law on |

The competition policy in Western Balkan countries: How far they...

| | | | | | |
|--|--|--|--|--|-------------------------------------|
| Protection of Competition (2006-No. 9499 and 2010-No. 10317) | | | | | Protection of Competition from 2013 |
|--|--|--|--|--|-------------------------------------|

Source: Author's analysis and systematization of the time frame of the adopted competition policy legislation in Western Balkan countries

In addition, Table 4 below presents the key regulatory bodies of the competition policy within each of the Western Balkan countries. Generally, in each of these countries, those bodies are organized as commissions, councils, and agencies for competition protection and providing state aid.

Table 4: Overview of the Competition Policy Regulatory Bodies in the Western Balkan Countries

| | | |
|------------------------|--|--|
| Albania | Competition Protection Body | State Aid Commission |
| BiH | Competition Protection Council | State Aid Council |
| North Macedonia | Commission for Protection of Competition | Commission for Protection of Competition |
| Montenegro | Competition Protection Agency | State Aid Control Commission |
| Serbia | Commission for Protection of Competition | State Aid Control Commission |
| Kosovo | Competition Protection Body | State Aid Commission |

Source: Author's analysis and systematization of the competition policy regulatory bodies in the Western Balkan Countries

Additionally, in Table 5 and Table 6 below present the level of harmonization of the competition laws of the Western Balkan countries with the EU legislation and the institutional and administrative capacity needed for implementation of the EU legislation in the area of competition policy in Western Balkan Countries (European Commission, 2016). (See Table 5 and Table 6 below).

Table 5. Level of harmonization of the competition laws of the Western Balkan countries with the EU legislation

| | Albania | Bosnia and Herzegovina | North Macedonia | Montenegro | Serbia | Kosovo |
|------------------------------|---------|------------------------|-----------------|------------|--------|--------|
| Fully harmonized | | | • | | | |
| Greatly aligned | • | • | | • | • | • |
| Partially aligned | | | | | | |
| An early phase of compliance | | | | | | |

Source: Penev, 2012, p.89

Table 6. Institutional and administrative capacity needed for implementation of the EU legislation in the area of competition policy in Western Balkan Countries

| | Albania | Bosnia and Herzegovina | North Macedonia | Montenegro | Serbia | Kosovo |
|------------------------------------|---------|------------------------|-----------------|------------|--------|--------|
| Functional | | | | | | |
| Reinforcement is needed | | | • | | | |
| Significant strengthening required | • | • | | • | • | |
| Inappropriate | | | | | | • |

Source: Penev, 2012, p.89.

This means that the approaches of the Western Balkan countries in the area of competition policy are generally on the right track. As highlighted by the European Commission further legislative adjustments are needed, as only in North Macedonia are such legislative preparations labelled as advanced, moderately advanced in Serbia and Montenegro,

while in Bosnia and Herzegovina “remain at an early stage” (European Commission, 2016). On the other hand, the institutional and administrative capacity needed for implementation of the EU legislation in the area of competition policy was assessed as “reinforcement is needed” in the case of North Macedonia, “significant strengthening required” in the case of Albania, Bosnia and Herzegovina, Montenegro and Serbia. Finally, only Kosovo was assessed as “inappropriate” regarding institutional and administrative capacities for successful implementation.

Although the level of harmonization of laws in most countries in the region is significant, their implementation and upgrading significantly lag behind due to the institutional weaknesses of the competition authorities, lack of rule of law and the inefficient judiciary.

Conclusions and future recommendations

Since the Western Balkans entered into negotiations for integration into the EU, the EU standards in competition policy have become particularly and increasingly important for the market institutional reforms in these countries. The approximation of the competition policy (legislation and its implementation) is a dynamic process, very important in order to: first, have a functional free market in the country; second, fulfil the conditions of the Stabilization and Association Agreement with the EU, and third prepare the country to apply the EU legislation in the field when the EU membership is acquired.

Based on the current assessment of the level of legislative alignment and institutional set-up, there are still major challenges for the competition law and policy in the Western Balkan countries. One of the main challenges for achieving compliance in competition policy is the need to develop and strengthen the enforcement capacity of the competent authorities for the protection of competition and for the monitoring and control of the State Aid. State Aid should be distributed transparently and activities should be prioritized. There is a need to strengthen the instruments for parliamentary oversight of competition policy and State Aid. It is necessary to build independent, well-staffed, capable, professional and organized regulatory bodies and institutions that will implement the policy. There is a need to raise awareness of the need and the general benefit of the implementation of the competition policy in all parts of society. Only a responsible society based on the development of democracy and a market economy is able to devise and implement this

type of sophisticated policy and benefit from it in the form of citizen welfare and conditions for further development. Candidate countries need to consider the best practices related to their CEFTA membership (Czékus, 2014, pp. 35-61).

Protection of competition is a legal issue that is constantly being amended and supplemented in the European Union, hence the monitoring and adapting of the North Macedonia legislation to the EU legislation is a continuous process, until the accession to the EU. The second, no less important task of the Commission for Protection of the Competition is the application and enforcement of the rules adopted in such a way as to enable the establishment of a market economy in which the same rules apply to all economic entities on the Macedonian market, regardless of their economic power. An independent, well-equipped, capable, educated, organized and well-motivated team to implement the policy needs to be built. It should also be emphasized the essential need for a national consensus on building professional, non-political institutions and respecting the system as a whole. There is a need to raise awareness of the need and general benefit of the implementation of the regulations in all parts of society.

All the above should be implemented in the Western Balkan countries own interest since the earlier and stricter their harmonization follows European conceptions on competition policy the more benefits they could potentially exploit from the forthcoming common market. In other words, an early legislative action would probably result in short term unfavourable effects (the current costs of transition), but an effective and efficient economic structure with longer tradition would compensate these sacrifices in the long run. Decreasing the lags noticed in legislation and improving the immature institutional system can result in an optimal regulatory framework for the future. The sixty-year European integration and the practices of the other post-socialist Central and Eastern European countries should serve as a template for building the institutional framework. EU membership would undoubtedly lead to further market liberalization through enhanced competition. In the long term, this could spur the sound economic development of the Western Balkans. On the other hand, institutional reforms have to be supplemented with country-specific solutions on economic governance and economic incentives. This dual approach would lead to a unity in diversity - even if it takes some sacrifices in present. However, the Western Balkan countries antitrust approach is generally on a good path considering their national interests for European future.

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