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| **The Republic of Kosovo** | | | | | | | | | | | |
| **Competition Framework** | | | | | | | | | | | |
| Competition Law | The Kosovo Law on Protection of Competition (KLPC) was enacted on October 7, 2010.  *[Please Introduce the name of the laws constituting the National Competition Law Regime. Include the year of enaction and the corresponding amendments as well]* | | | | | | | | | | |
| Competition Authority | The Competition Authority of the Republic of Kosovo (KCA) (https://ak.rks-gov.net/en/ballina) was established by the KLPC in 2010.  *[Please introduce here the name of the competition authorities that are part of the enforcement process of the laws mentioned in the previous question. In that regard, please specify the norms that established those agencies, the year in which they started operation, and their website. Include tribunals only if they have a role in the process of founding guilt and imposing sanctions. This point specifically excludes judicial authorities that only have judicial review powers]* | | | | | | | | | | |
| **Policy-Making Agents**  **-Diversification-** | | | | | | | | | | | |
| How many agencies are responsible for competition enforcement? | | | | | | | KCA was established by Article 24 of the KLPC. Under Article 24, the KCA is a public and independent institution responsible to execute the KLPC.  According to Article 25, within KCA, the Kosovo Commission for Protection of Competition (KCC) is a five-member collegial organ that manages the work of KCA.  Under Article 28, the KCC’s duties and responsibilities include: make decision on KCA’s investigation; pronounces punitive measures for violation of the KLPC; promotes knowledge for market competition; gives opinions on the compatibility of the KLPC with other laws; defines regulations and measures for protection of competition; upon request of the government or legislature, provides professional opinion on issues related to competition law; cooperates with international institutions or organizations in the field of competition law; and submit annual report of the KCA’s work to the legislature.  *[Please mention how many authorities have a general mandate to enforce competition in your jurisdiction. Include a brief reference on their duties e.g.: if they impose criminal, civil or administrative liability. The purpose is that readers can quickly understand, which are the agencies charged with competition enforcement in the jurisdiction, the difference between them, and if they have concurrent, overlapping, or exclusionary authority. Include the relevant provisions on which their powers are based. Exclude in this point sector regulators or enforcers]* | | | | |
| Do sector regulators have a competition policy enforcement mandate? | | | | | | | According to a secondary source, the Energy Regulatory Office (ERO), the Kosovo Railways Regulators, the Waster Service Regulatory Authority, the Central Bank of Kosovo, and Public Procurement Regulators has some authority in regulating competition in each of their own sector. However, no sector regulation is mentioned in the KLPC.  *[Please introduce the name agencies that have powers to enforce any aspect of competition law, including merger control, in specific sectors. Introduce the relevant provisions on which their powers are based]* | | | | |
| Have the Competition Authority and other agencies signed protocols or memoranda of understanding with sector regulators? | | | | | | | Yes. However, no interagency protocol is mentioned in the KLPC. A memorandum of understanding and cooperation was signed between KCA and the Energy Regulatory Office. (<https://ak.rks-gov.net/en/lajmi_single/1890/>)  *[Please mention here any provision or interinstitutional agreement that allows the competition authorities to coordinate behavior to effectively enforce competition law]* | | | | |
| **Disaggregated Functions—Prosecutorial Model** | | | | | | | | | | | |
| Are there different authorities or agencies that make the decision to investigate and the final ruling in the cases? | | | | | No | | | *[If the answer is yes, please explain briefly the enforcement process, and include the relevant provisions. The purpose of this question is to understand the enforcement model of the jurisdiction and establish how many independent authorities are involved in the enforcement process and what are their functions]* | | | |
| Are disputes presented for decision to judiciary authorities? | | | | | No | | | *[If the answer to your question is “yes”, please introduce the name of the judiciary authorities that are involved and their role until the final decision in the process is achieved; exclude from this question judiciary authorities whose role in the process is the judicial review of administrative decisions]* | | | |
| Do private rights of action to challenge competition law infringements exist in your jurisdiction | | | | | No | | | *[If the answer is “yes”, please explain briefly the process and who are the persons entitled to exercise those rights; mention the relevant provisions]* | | | |
| **\* Please fill the next sections for each of the authorities mentioned in the prior sections excluding sector regulators** | | | | | | | | | | | |
| **The Commission for the Protection of Competition**  **(CPC)** | | | | | | | | | | | |
| **Status of the Competition Authority** | | | | | | | | | | | |
| **Accountability** | | Please, answer “Yes” in the boxes of this line if any of the duties on the right column apply to the authority, and “No” if they do not. | | | | Answer with X/√ as it applies | | | | | Please, in the boxes of this line mention the relevant provisions in which the obligations are based. |
| Does the Competition Authority have obligations before the executive? | | Yes | | | | X | | Obligations to report to the executive on on-going investigations upon request. | | |  |
| X | | The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch. m | | |  |
| X | | The authority has to report on an annual basis to the executive. | | |  |
| Does the Competition Authority have obligations before the legislature? | | Yes | | | | √ | | Obligation to publish an annual report on its activities. | | | Article 28 (1.13): the KCA must submit an annual report of its work to the Assembly of Kosovo before March 31 of the coming year. |
| X | | Obligation to stand before parliament and to respond to congressmen on an annual basis. | | | *[Introduce the relevant provisions]* |
| X | | Its activities are monitored by an independent auditor or by oversight committees. | | | *[Introduce the relevant provisions]* |
| Does the Competition Authority have obligations before the judiciary or independent agencies? | | Yes | | | | √ | | Decisions of the Competition Authority are subject to judicial review. | | | Article 61(1): the KCA is obliged to cooperate with competent judicial institutions that involve disturbance of market competition in the territory of Kosovo  *[Aside from the relevant provisions please mention the judicial authority charged with the review]* |
| X | | Decisions of the Competition Authority are subject to review or control of an independent authority different than the judiciary? | | | *[Aside from the relevant provisions, please mention the authority charged with the review]* |
| **Other obligations/comments:** Please introduce any other obligation or comment that you consider relevant.  *[Introduce any comment that you consider relevant regarding the status of accountability of accountability of the competition authority]* | | | | | |
| **Independence** | | Please, answer “Yes” or “No | | | |  | | | | | |
| Are the criteria for appointment and removal of the head/board members clear and transparent? | | Yes | | | | According to Article 25(4), the President and members of the KCC shall be selected by the government through an open announcement and the Assembly of Kosovo must approve the nomination.  Under Article 26(3), a person cannot become a member if she (1). Has ownership interest or contractual relationship with a Kosovo enterprise; (2). Is a managing or supervising board member or has been a such member one year ago in an enterprise that could lead to a conflict of interests; (3) is convicted of a crime with imprisonment up to six months.  Under Article 27, the Assembly of Kosovo, upon the request of the government, may dismiss the President or a member of the KCC if she (1). Submits resignation; (2). Is sentenced for a crime; (3). Is not physically or mentally capable to perform duties for more than three months; (4). Violates the Article 26 of the KLPC.  *[Please introduce the relevant provisions, and if the answer to this question is “no”, explain briefly why in your opinion the criteria are not clear or transparent]* | | | | | |
| Does the executive have powers to decide on  specific cases based on public interest? | | No | | | | *[Please introduce the relevant provisions, and if the answer to the question is “yes”, explain in which cases the executive can decide on public interest bases]* | | | | | |
| Does the executive retain decision-making powers over the Competition Authority? | | No | | | |  | | | | | |
| Is the Competition Authority obliged to publish reasoned decisions to ensure transparency? | | Yes | | | | According to Article 55(3) and (4), the KCA’s decision of an investigation shall be published in the Official Gazette and on the KCA’s official website.  *[Please introduce the relevant provisions]* | | | | | |
| Is there a provision of the national budget allocated by law to the Competition Authority to  ensure its proper functioning? | | Yes | | | | Under Article 24(5), financing of the KCA is secured by the consolidated budget of the Republic of Kosovo.  *[Please introduce the relevant provisions and the budget assigned to the authority for the current year and the next if it is already approved]* | | | | | |
| Can the Competition Authority be financed by its own means (notification fees, fines, etc.)? | | No | | | | *[Please introduce the relevant provisions and mention the means by which the authority can be financed on its own]* | | | | | |
| **Governance of the Competition Authority** | | | | | | | | | | | |
| Is the Competition Authority governed by a single chairman or by a collegiate body? | | Collegiate body. Under Article 25(1), the KCC is composed of five members, one of which is the President.  *[Answer “single chairman” if the directive organ of the authority is composed of one person. Answer “collegiate body” if the authority's directive organ is composed of two or more members, regardless if this organ is directed or presided by a chairman or president. Also mention how many board members or directors are part of the Direction Body]* | | | | | | | | | |
| How are the members of the Authority’s directive organ chosen? | | According to Article 25(4), the President and other members of the KCC shall be selected by the government through an open announcement and submits the nomination to the Assembly of Kosovo for approval.  *[Please describe the electing process for choosing the members of the directive organ. Include relevant provisions; mention the branch government involved in this process]* | | | | | | | | | |
| Is there a fixed period during which removal is prohibited? | | No | | | | *[If your answer is “yes”, please introduce the duration of the tenure and the relevant provisions. If the answer is no, please refer if there are specific and restricted grounds under which the members of the Directive body can be removed; mention if they are elected for a term and introduce the relevant provisions]* | | | | | |
| Is the tenure of the heads renewable? | | Yes | | | | According to Article 26(2), the President and members of the KCC is appointed for a five-year term and may only be reappointed for one additional term.  *[Please, introduce the relevant provisions]* | | | | | |
| Are the heads required by law to have certain minimum qualifications (degree in law or economics, age,  experience)? | | Yes | | | | Under Article 26(1), the President and members of the KCC must be a citizen of Kosovo who has senior qualification in the field of law, economy, or any equivalent field with seven years of professional experience.  *[If your answer is “yes”, please make reference to the qualifications required by law and the relevant provisions]* | | | | | |
| **ArchitectureA** | | | | | | | | | | | |
| Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a ministry? | | Stand-alone | | | | *[If your answer is “part of a bigger entity”, please explain briefly how the bigger entity is organized]* | | | | | |
| **Policy Duties** | | | | | | | | | | | |
| Does the Competition Authority have an exclusive mandate on competition or multiple mandates? | | | Exclusive | | | | | | X | Concurrent consumer protection mandate. | |
| X | Concurrent IP mandate. | |
| *[Other mandates: Include any other mandates entrusted to the Competition Authority]* | | |
| **Portfolio Instruments** | | | | | | | | | | | |
| **Law Enforcement** | | | | | | | | | | | |
| Does the Competition Authority have powers to investigate cartels? | | | Yes | | | | | | According to Article 4, price fixing is defined as agreements between two or more independent enterprises and decisions made by business associations that aim or may significantly influence on market competition in relevant market. Price fixing includes: (1). Directly or indirectly impose purchase or sale price or any other condition in trade; (2). Limit or control production, market, technological development and investments; (3). Share markets or supply sources; (4). Implement unequal conditions for similar transactions with other enterprises, placing them in an unfavorable competitive position; (5). Apply conditions for agreements to reply on other contracting subjects that do not have any natural or common trade practice connection.  According to Article 56(1.1), the KCA may assign punitive damage for making prohibited agreements.  *[If the answer is “yes”, please mention the type of liability that the actions of the agency seek: civil, criminal, administrative. Introduce the relevant provisions; briefly explain if the powers of the authority are limited to certain types of cartels and what kind of sanctions can be imposed]* | | |
| Does the Competition Authority have powers to investigate unilateral Conduct? | | | Yes | | | | | | Article 10(1) and (2) defines an enterprise that has a dominant position as: (1). Not subject to fair competition in the market; (2). Has important power in the market compared to existing or potential competitors; (3). Has more than 40% presence in the market.  Article 11 defines abuse of a dominant position as: (1). Directly or indirectly setting unreal purchase or sale price; (2). Limiting production, markets, or technological development; (3). Implementing different conditions for similar duties and placing other enterprises in disadvantageous competitive position; (4). Forcing contracting parties to accept additional obligations; (5). Setting prices or conditions to prevent entering or excluding certain competitors or their products; (6). Giving compensation to competitors and keep them from entering a market.  According to Article 56(1.2), the KCA may assign punitive damage for abuse of dominant position.  *[If the answer is “yes”, please mention briefly if the competition authority is invested with the power to pursue exploitative and exclusionary effects, also make reference to relevant provisions, the type of liability that the actions of the authority seek, and what kind of sanctions can be imposed]* | | |
| Does the Competition Authority have the powers to conduct *ex-ante* merger review? | | | Yes | | | | | | According to Article 13(1), concentration is defined as (1) the merging of two or more independent enterprises or parts of these enterprises; and (2). Direct or indirect control or influence on the dominating position of one or more enterprises or parts of enterprises.  Article 14 prohibits concentrations that may significantly damage competition, especially when such concentration results in strengthening of current dominant position or creating a new dominant position.  Article 15 requires that concentration participants must submit to the KCA the objective of concentration when: (1). The incomes of all participating enterprises exceed 100 million Euros and at least one participant is located within Kosovo; or (2). Incomes of at least two participants exceeds three million Euros in Kosovo domestic market.  Article 19 states that the KCA will review the concentration once receive the complete notification from participants. The KCA will publish a notification on its website that requests public comments from all interested parties.  Article 20(1) states that if the KCA determines the concentration is not prohibited, within 30 days from the date which it receives the notification from participants, the concentration is approved with the KCA issuing written certification. Article 20(3) states that if the KCA determines the concentration may significantly affect competition, it will issue a conclusion that also begins the assessment procedure.  Under Article 20(4), the KCA may request the participants to propose appropriate measures or conditions that would eliminate the negative effects on competition. Participants must reply within 30 days from the date which they receive the request from the KCA.  According to Article 20(8), within 60 days from the date of assessment procedure, the KCA may: (1). Allow the concentration; (2). Allow the concentration with certain conditions and measures; or (3). Prohibit the concentration.  *[If the answer is “yes”, please explain briefly the process and which are the remedies that authority can seek or impose and mention the relevant provisions]* | | |
| Is the notification of merger transactions mandatory? | | | Yes | | | | | | Under Article 15(1), all concentration which (1). Incomes of all participating enterprises exceeds 100 million Euros; or (2) income of at least two participants in Kosovo exceeds three million Euros must be notified the KCA.  *[If the answer is “yes”, please explain whether all the transactions shall be notified or if there is a threshold; mention relevant provisions]* | | |
| Can the parties close the transaction before the final decision of the Authority (suspensory effect of merger notification)? | | | No | | | | | | According to Article 22(1) and (2), if the concentration is proceeded in contradiction to the KCA’s decision, the KCA may (1) encourage sale or transfer of acquired shares or business parts or (2) prohibit or restrict voting rights or order cessation of joint ventures. Additionally, Article 22(3) authorizes the KCA to issue punitive damage to violating parties.  *[Please mention the relevant provisions and add any explanation that you deem necessary]* | | |
| Does the Competition Authority have the power to carry out *ex-post* merger investigations? | | | No | | | | | | *[Please mention relevant provisions]* | | |
| Does the Competition Authority have the power to impose remedies on *ex-post* merger investigations? | | | No | | | | | | *[If the answer is yes, please mention the remedies that the Authority can impose; mention relevant provisions]* | | |
| Does the Competition Authority have powers to conduct dawn raids at premises? | | | Yes | | | | | | Article 39(1) states that once obtain a warrant from a district court, the KCA can conduct unannounced inspection of business premises, checking and obtaining necessary records, and requesting verbal or written statements.  [*If the answer is “yes”, please mention whether the dawn raids shall be authorized by a judge, and mention the relevant provisions]* | | |
| Can the Competition Authority investigate *ex officio* cases? | | | Yes | | | | | | Under Article 35(1), the investigation on prohibited agreements and abuse of dominant position shall be initiated by the KCA according to its official duty.  *[Please, mention the relevant provisions]* | | |
| Does the Competition Authority have powers to accept leniency applications? | | | Yes | | | | | | Under Article 60(1), the KCA may release participant of cartels from punitive administrative measures when she is the first to notify the KCA about the cartel and provides data, facts, and evidence which enable the initiation of the investigation. If the KCA already starts the investigation, leniency program will be available to the first participant in the cartel who provides evidence which allows for ascertainment of the violation.  Under Article 60(3), the KCA may assign the smallest punitive administrative measure to cartel members who does not meet the criteria in Article 60(1) but provide additional valuable evidence which proved to be decisive for the conclusion to ascertain the cartel.  *[If the answer is “yes”, please mention if there is any limitation for the applicants, what are the benefits, and mention the relevant provisions. Include any commentary that you consider relevant about the leniency program]* | | |
| Does the Competition Authority have powers to accept seek criminal punishment? | | | No | | | | | | *[If the answer is “yes”, please mention the different kinds of sanctions that the agency can impose]* | | |
| **Advocacy** | | | | | | | | | | | |
| Can the Competition Authority issue opinions on draft legislation? | | | Yes | | | | | | Under Article 23, by the request of the Kosovo Parliament, the KCA may provide professional opinion on competition law, regulation, and other bylaw.  *[if the answer is yes, please specify if there is any kind of limitation to the agency’s authority to issue opinions, include relevant provisions]* | | |
| Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact  competition? | | | No | | | | | | *[if the answer is yes, include relevant provisions]* | | |
| **Rulemaking** | | | | | | | | | | | |
| Can the Competition Authority issue guidelines? | | | No | | | | | | X | Guidelines on the calculation of fines. | |
| X | Guidelines on merger control. | |
| X | Guidelines on the economic analysis of abuse of dominance cases. | |
| Can the Competition Authority issue binding regulation on competition? | | | | No | | | | | *[Please, explain which kind of regulation and mention the relevant provision on which the powers are based]* | | |
| **Research & Reporting** | | | | | | | | | | | |
| Can the Competition Authority carry out market studies? | | | Yes | | | | | | Under Article 28(1.9), the KCC may propose methodological basis to research market competition through administrative direction.  *[If the answer is “yes”, include relevant provisions]* | | |
| Can the Competition Authority report to the legislature on the results of market studies? | | | Yes | | | | | | Under Article 28 (1.11), by the request of the Assembly, the KCC may provide professional opinion on issues related to competition law.  *[If the answer is “yes”, include relevant provisions]* | | |
| **Decision-Making Functions** | | | | | | | | | | | |
| **Aggregated Functions** | | | | | | | | | | | |
| Does the Competition Authority make the decision to investigate and make guilty findings? | | | Yes | | | | | | Under Article 34(1), the request for investigation may be submitted to the KCA by any natural or legal person, professional or economic association, enterprise, chambers, consumer association, the government, and any public, central, and local administration bodies. Article 33(4) states that the KCA would make a decision on whether to investigate within 30 day from the day of receiving the request.  Article 54 authorizes the KCA to make decision on the investigation of prohibited agreements, abuse of dominant position, and concentration.  *[If the answer is “yes”, include relevant provisions]* | | |
| Does the Competition Authority impose punishments? | | | Yes | | | | | | Article 56 allows the KCA to impose punitive damage on violations that amount up to 10% of the total incomes of the enterprise realized during the last year for which the final report has been completed. This punitive damage applies to prohibited agreements, abuse of dominant position, concentration, and non-compliance of the KCA’s decision.  Article 57 allows the KCA to impose punitive damage on minor violations that amount up to 2% of the total incomes of the enterprise in the last year for which the final report has been completed.  Article 59(1) limits that the highest amount of punitive measure shall not exceed 10% of the total income realized by the enterprise during the last three year for which it has completed the financial report.  *[If the answer is “yes”, please mention the different kinds of sanctions that the agency can impose]* | | |
| Is there a single body that carries out the investigation and the guilty findings within the Competition Authority? | | | Yes | | | | | | Under Article 34(1), the request for investigation may be submitted to the KCA by any natural or legal person, professional or economic association, enterprise, chambers, consumer association, the government, and any public, central, and local administration bodies. Article 33(4) states that the KCA would make a decision on whether to investigate within 30 day from the day of receiving the request.  Under Article 35(1) and (2), the KCA may start to investigate prohibited agreements, abuse of dominant position, and concentration in its official capacity. Under Article 35(7), if the KCA decides not to investigate, it is obliged to specify the reason why there is no public interest to initiate the investigation or why there are no conditions to initiate the investigation.  Under Article 37(1), the KCA shall deliver a copy of the decision to investigate to the party being investigated.  Article 38(1) authorizes the KCA to request all necessary written or verbal information, to access all business premises, books, and database, and to execute other actions deemed necessary for ascertainment of all relevant facts. Article 37(1) also allows the KCA to hold hearing sessions for the investigation.  Article 54 authorizes the KCA to make decision on the investigation of prohibited agreements, abuse of dominant position, and concentration.  *[Regardless of the answer please explain briefly the enforcement process until the final decision is issued, include relevant provisions, and if the answer is “No” mention how the head of the body that carries out the investigation is elected and removed. The main idea of this last point is to establish whether the investigation authority is, in fact, independent from the decision-making body]* | | |
| Can the Competition Authority’s decisions be  appealed to a court? | | | No | | | | | | Under Article 62, while the law does not allow parties to appeal the KCA’s decision, however, it allows parties to initiate an administrative lawsuit at a competent court of Kosovo within 30 days after the publication of the KCA’s decision.  *[Please, mention the judicial authority who is charged with the review, make reference to the relevant provisions, and if there is any requirement to exercise the right of the judicial review]* | | |
| Please add commentaries or information that you consider relevant and were not covered in any of the previous sections and questions. | | | |  | | | | | | | |