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# COMPETITION LAW IN REPUBLIC OF NORTH MACEDONIA

## 20 years of Competition law in Republic of North Macedonia

*Summary:* This article examines the laws in the Republic of North Macedonia (hereinafter RNM), that prohibit agreements among competitors to fix prices, divide markets or in other ways avoid or undermine market competition, otherwise known as competition laws. It explores the conditions and challenges in implementing Macedonian competition laws, as well as the role of the state (regulatory) authorities, the degree to which the competition laws comply with the European Union's competition laws, and finally, the degree to which competition laws are effective and beneficial for the Macedonian economy. Properly implemented competition laws hold much promise. The enactment of competition laws is fundamental for the benefits of a market economy to be achieved. This encompasses economic growth, innovation, lower prices and higher quality of goods and services. The enactment of competition laws since the independence of the Republic of Macedonia<sup>1</sup> is furthermore important. This is due to Macedonian obligations to meet the requirements for EU accession. Additionally, adoption of competition law and competition by-laws in RNM, positively affects on the work of authorities for the protection of competition. What is most important, this competition legal regime represents a base for reducing the abuse of the state authorities and theirs incompetent behaviors. At the end, the article contains conclusions, opinions and suggestions from the conducted research, which hopefully will be beneficial for the relevant auditorium.

*The analytical-descriptive method, the comparative method, the method of analysis and synthesis, and the method of induction and deduction were used to analyze the subject matter for this article.*

*Keywords:* antitrust, concentrations, small market, dominant position, horizontal and vertical constraints

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<sup>1</sup> September 8-th 1991, Republic of Macedonia becomes independent, sovereign and democratic state.

# 1. THE DEVELOPMENT OF COMPETITION LAW IN REPUBLIC OF NORTH MACEDONIA

## 1.1. LEGAL FRAMEWORK IN MACEDONIAN COMPETITION LAW

Competition laws were enacted in the RNM when it became an independent and sovereign state. In 1991 the Constitution of the Republic of Macedonia provided for “free market and entrepreneurship” and “equal treatment of market participants.” Article 55 specifically states that “[t]he freedom of the market and entrepreneurship is guaranteed.”<sup>2</sup> Likewise, in this article, the drafters of the Constitution ensured that “the Republic guarantees an equal legal position to all parties on the market” and that “[t]he Republic takes measures against monopolistic positions and monopolistic conduct on the market. The freedom of the market and entrepreneurship can be restricted by law, only for reasons of the defense of the Republic, protection of the natural and living environment or public health.”

Additionally to article 55 from the Constitution, the prohibition of the monopolistic behavior is also anticipated by the Macedonian 1995 Law for Trade. The 1995 Law for Trade sets forth the required conditions for doing business in RNM. This Law actually bans the agreements which undermine market competition and prohibits damage to the environment and human health. The same law extends to public procurements, including the state government and the municipalities, the City of Skopje, and for the legal entities and individuals that perform public authorizations.<sup>3</sup>

In 1999 the Republic of Macedonia enacted the Law against Restrictions of Competition.<sup>4</sup> This law was repealed and superseded by the Law on Protection of Competition from 2005 (hereinafter 2005 LPC).<sup>5</sup> Even though 1999 Law against Restrictions on Competition was *de facto* unenforced act, it shows off the intention of Macedonian government to adopt a competition law and it is perceived as a first step of the Macedonian government in fighting unfair competition.

With the enactment of 2005 LPC, Macedonia shaped competition law grounded on the existing EU competition law. This was expected reaction, due to its obligation from the Stabilization and Association agreement between the European Communities and their Member States and Republic of Macedonia (hereinafter SAA).<sup>6</sup> The 2005 LPC strived to harmonization

2 Constitution of the RNM, article 8, paragraph 1, p. 7, available from: <https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx>. Accessed on 5 March, 2019.

3 Law for trade, “Official Gazette of the Republic of Macedonia” No 16/2004, 128/2006, 63/2007, 88/2008, 159/2008, 20/2009, 99/2009, 105/2009, 115/2010, 158/2010, 36/2011, 53/2011, 148/2013, 164/2013, 97/2015, 129/2015, 53/2016 and 120/2018). See: Articles 4 and 5 from LT. Full text is available from: <http://www.slvesnik.com.mk/>, Issues/B459615769DA4C1EA3D6CFA8A895CDD4.pdf. Accessed on 1 March, 2019.

4 Huge criticism from the expert and scientific public was address to the Law against Restrictions of Competition. This law was characterized as unclear and inconsistent with other laws, and not suitable for the Macedonian conditions of doing business. See more: Annual report of the Macedonian Commission for the protection of competition from 2006, published in March 2007.

5 Official Gazette 07-4575/1 14 December 1999, Skopje. Available from: <http://www.slvesnik.com.mk/Issues/41A2FBE6EB6E4D6DB339B47DD61D5104.pdf>. Accessed on 1 March, 2019.

6 The Agreement entered into a force in April 2004. The full text of the SAA available from: [https://cdn4-eeas.fpfis.tech.ec.europa.eu/cdn/farfuture/DofFDcjfS2Cr3jkBhvUfbsJN6VEXNo-U7tWuULX4Bc/mtime:1478596\\_4\\_22/sites/eeas/files/saa03-01-en.pdf](https://cdn4-eeas.fpfis.tech.ec.europa.eu/cdn/farfuture/DofFDcjfS2Cr3jkBhvUfbsJN6VEXNo-U7tWuULX4Bc/mtime:1478596_4_22/sites/eeas/files/saa03-01-en.pdf). Accessed on 3 March, 2019.

Macedonia's competition laws with articles 81, 82 and 86 of the European Union Treaty, which are European pillars for protection of competition.<sup>7</sup> However, considering the changes to EU competition law made in 2006 and 2007,<sup>8</sup> the Macedonian 2005 LPC was revised. Even these law changes, Macedonian competition law was not able to respond to new European market trends. Therefore, in 2010 a new LPC was adopted (hereinafter 2010 LPC).<sup>9</sup> The main intend of shaping this act was to eliminate the flaws of the 2005 LPC and achieve a better compliance with EU competition law.

To ensure harmonization with the European legislation, values and principles,<sup>10</sup> the 2010LPC has been amended several times.<sup>11</sup> Following the changes by EU member states, in 2011 the law on amending and supplementing the 2010 LPC was adopted (Official Gazette No. 136/2011). These amendments were only from procedural character and provisions for material issues were not include in these changes. The main purpose of these law changes was to provide an easier and more reliable approach to protection of competition law. In 2014, new amendments of the 2010LPC were adopted (Official Gazette No. 41/2014). These changes referred to the election of the president of the Commission for protection of competition (hereinafter CPC), with intention to boost the professionalism and competence of the CPC. In 2016, the Law on amending and supplementing 2010 LPC was adopted (Official Gazette 53/2016). These law changes improved the accountability of officials and administrative capacity of the CPC, and ensured a more secure and efficient administrative procedure. In 2018, changes were made in order to improve the degree of knowledge of foreign language of the president and the members of the CPC.

Alongside law changes, the competition law in the RNM was enhanced by the adoption of several regulations and guidelines. Bearing in mind the suggestions by the CPC, in 2005 the Macedonian Government adopted eight (8) regulations and fifteen (15) guidelines for the work of CPC. In 2012, these regulations were revised, in order to achieve compliance with EU legislation.<sup>12</sup>

The enactment of these regulations and guidelines was crucial for the EU harmonization process. In concrete, CPC adopted several guidelines that regulate individual aspects of the

7 With the adoption of the LPC from 2005, the Monopoly Administration within the Ministry of Economy was abolished, and the Commission for protection of competition was established. The latter was anticipated on the base of other member states, and states from the region that were in more advance position regarding the EU integration.

8 See more about this at: <https://ec.europa.eu/competition/antitrust/legislation/handbook-vol-3-en.pdf>. Accessed on 25 December, 2019.

9 Law on Protection of Competition ("Official Gazette of the Republic of Macedonia" No. 145/2010, 136/2011).

10 The process of harmonization refers to the changes and additions in national laws, in order to ensure uniformity of the EU legal regime, and procure equal legal standards in the EU market.

11 The amendments and supplements to the LPC from 2010 are published in the "Official Gazette of the Republic of Macedonia" nos. 145/2010, 136/2011, 41/2014, 53/2016 and 83/2018.

12 Regulation on agreement of minor importance; Regulation on the form and the content of the notification and criteria on concentrations' evaluation; Regulation on block exemption granted to agreements in the Insurance sector; Regulation on block exemption granted to horizontal specialization agreements; Regulation on block exemption granted to technology transfer agreements, license or know-how; Regulation on block exemption granted to vertical agreements; Regulation on block exemption granted to agreements on distribution and servicing of motor vehicles; Regulation on block exemption granted to horizontal research and development agreements; Regulation for close terms and procedure under which the Commission on misdemeanor decides to release or reduce the fine. Available form: <http://www.slvesnik.com.mk/Issues/8B02EA05EA22AE4C822BC7359C3A45DD.pdf>. Accessed on 2 March, 2019.

administrative and misdemeanor procedure.<sup>13</sup> In 2012, these guidelines were supplemented with three new ones,<sup>14</sup> with intention to ensure “free market” for competitors and simultaneously, to protect consumers in daily b2c contracts. In its work, it is important to emphasize that Macedonian CPC follows the principal of “territorial effects of the law”, grounded in 2010 LPC. This means that 2010 LPC with all its amendments shall apply to the all forms of prevention, restriction or distortion of competition that produce an effect on the territory of the Republic of Macedonia, even in the cases where they arise from actions and activities carried out or taken outside of the territory of the Republic of Macedonia.”<sup>15</sup>

## 2. THE IMPACT OF EUROPEAN LAW VALUES AND PRINCIPLES ON THE COMPETITION LAW IN REPUBLIC OF NORTH MACEDONIA

### 2.1. EUROPEAN CONCEPTS FOR PROTECTION OF COMPETITION IN MACEDONIAN COMPETITION LAW

The impact of the EU law on the competition law in RNM can be seen in almost all laws, guidelines, policies and strategies for the protection of market. The intention to align with EU competition law dates back to 2001.<sup>16</sup> Namely, with the signing of the Stabilization and Association agreement between the European Communities and their Member States and Republic of Macedonia, among other commitments, RNM come into an obligation to harmonize Macedonian competition law with EU competition law. The SAA between the European Communities and their Member States and Republic of Macedonia was signed on April 2001.

RNM (then Former Yugoslav Republic of Macedonia/FYROM) was the first country in the South of East Europe/SEE region which signed the SAA. With the articles 68 and 69 from the SAA, RNM clearly expressed its interest in aligning with the competition legal regime in the EU. According to article 69 paragraph 1 from the SAA, titled as “Competition and other economic provisions”, “[t]he following are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and the FYROM: (i) all

13 Guidelines for the method of determining the fine imposed in accordance with the LPC; Guidelines for the release or reduction of the fine; Guidelines for defining a relevant market for the purposes of the LPC; Guidelines on the manner of drafting a unreliable version of the Commission’s decisions; Guidelines for the application of Article 7 of the *lpc* for horizontal cooperation agreements; Directions for vertical constraints; Guidelines for the application of Article 7 paragraph (3) of the LPC; Guidelines on the manner of submitting and filling in the notification for concentration; Guidelines for possible changes and assumption of obligations in relation to the reported concentrations acceptable to the Commission in accordance with the LPC; Guidelines on constraining’s directly related and necessary for the implementation of the concentration; Guidelines for assessing horizontal concentrations for the objectives of the LPC; Guidelines for assessment of vertical and conglomerate concentrations; Guidelines for the notion of concentration; Guide to detecting unlawful agreement in the procedures for awarding public procurement contracts.

14 Guidelines for the application of Article 7 paragraph (3) of the Law on Protection of Competition (March 2012); Guidelines for the notion – concentration (March 2012); Guidelines for determining cases in which when assessing concentrations the Commission for Protection of Competition brings solution in abbreviated form (June 2012).

15 See more: Karova, R.; Botta, M., *Five Years enforcement of the Competition Law in Republic of Macedonia – Time for an Assessment*, Mediterranean Competition Bulletin, 2010, pp. 56–72.

16 Jashari, A.; Metaj-Stojanov, A., *The Developments of the Competition Law in Macedonia (2014 until Today)*, Intellectual Property Rights, 2016, pp. 1–8.

agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition; (ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of the former Yugoslav Republic of Macedonia as a whole or in a substantial part thereof; (iii) any public aid which distorts or threatens to distort competition by favoring certain undertakings or certain products. Under paragraph 2, “Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 81, 82 and 87 of the Treaty establishing the European Community.”

The importance of the Macedonian competition law for EU integration also derives from the article 68 from SAA. According to this article, competition law is a legal branch with priority in the EU approximation process. SAA explicitly stipulated a proper time-frame for the alignment of Macedonian with EU competition law. According to the formulation in article 68, paragraph 1 from SAA, “[s]tarting on the date of signing of the agreement and lasting as explained in article 5 from SAA, the approximation of laws shall extend to certain fundamental elements of the Internal Market *acquis*, as well as to other trade related areas, along a programme to be defined in coordination with the Commission of the European Communities. The Former Yugoslav Republic of Macedonia will also define, in coordination with the Commission of the European Communities, the modalities for the monitoring of the implementation of approximation of legislation and law enforcement actions to be taken, including reform of the judiciary. Paragraph 3 states that” deadlines will be set for competition law, intellectual property law, standards and certification law, public procurement law and data protection law. Legal approximation in other sectors of the internal market will be an obligation to be met at the end of the transition period.”

The EU’s impact on the Macedonian competition law undoubtedly derived from the fact that almost all amendments and supplements of the Macedonian competition law are grounded on EU legislation. Accordingly, the Macedonian competition law is fully harmonized with the EU’s primary competition laws. Yet, the EU practices, values and principles are hardly incorporated into RNM’s system. Since the adoption of 2005 LPC, RNM has made several changes of competition law. All of them were made in order to achieve greater harmonization. For example, in 2006 the Law on Amending and supplementing the 2005 LPC was adopted, with intention to increase the number of resources serving in the CPC and improved procedural efficiency, e.g., a notification of concentration requirement.

In 2007 the 2005 LPC was revised again. This was made in order to align the existing provisions in 2005 LPC, with XX and XXI amendments from the Macedonian Constitution.<sup>17</sup> In concrete, these changes were made in order to transform the status of the CPC and provide it as a misdemeanor body. According to the 2007 annual report of the CPC,<sup>18</sup> all the changes

17 Constitution of RNM, Amendments XX and XXI: For offences determined by law, sanction may be imposed, by a state administration body, organization and any other institution carrying public mandates. Court protection is guaranteed against final verdict for an offence, under conditions and procedure determined by law. The right to appeal against verdicts in first instance proceedings by a court is guaranteed. The right to appeal or any other legal protection against individual legal acts adopted in first instance proceedings by an administration body, organization and any other institution carrying public mandates shall be determined by law.

18 See more: Annual report of the CPC, 2007, p. 9.

were in accordance with Action plan for European partnership of the Government of RNM.<sup>19</sup> Simultaneously, law changes in were made in others areas such as criminal law,<sup>20</sup> administrative law, system of misdemeanor procedures, etc. All of these law changes affected on Macedonia's competition law.

Considering the amendments and supplements of the Macedonian competition rules, the most significant change was the implementation of "leniency program"<sup>21</sup> The leniency program is a widely accepted concept of rewarding co-operation with the Commission in the process of fighting and discovering secret cartels.<sup>22</sup> It basically permits self-reporting and provides for the "Commission Notice on Immunity from fines and reduction of fines in cartel cases."<sup>23</sup> RNM was one of the many states that accepted the "leniency program".<sup>24</sup> According to article 65 from 2010 LCP "with the aim of detecting cartels that constitute misdemeanors, referred to in Article 59 paragraph (1) point 1 of this Law, the Misdemeanor Commission on a request of the undertaking having admitted its participation in a cartels, shall grant full immunity from the fine which, as a rule, would otherwise be imposed on that undertaking."

Article 65 from 2010 LPC anticipate that to obtain full immunity from the fine, the undertakings should: 1) presents evidence enabling the Misdemeanor Commission to initiate a misdemeanor procedure or 2) presents evidence enabling the Misdemeanor Commission to complete the already initiated misdemeanor procedure with a decision establishing the existence of a misdemeanor if the existence of the misdemeanor could not be established without such evidence (paragraph 1)."Furthermore, according to paragraph 2, if the undertaking that has admitted its participation in a cartel that constitutes a misdemeanor, fails to meet the requirements for full immunity from the fine (referred to in paragraph 1), shall be reduced the fine which, as a rule, would otherwise be imposed if it submits additional relevant evidence being of decisive importance for adoption of a decision establishing the existence of a misdemeanor to the Misdemeanor Commission."<sup>25</sup>

The Macedonian system of protection of competition includes the European concept of "block exemption" too. 2010 LPC clearly expresses the European system of exemption. The EU justifies this system by highlighting the benefits from some contracts in economical, technical

19 See more about the goals of the competition law in RNM since 2005, in the Action plan for European partnership, p. 12, Available from: [https://www.sobranie.mk/WBStorage/Files/Akciski-plan-za-Evropsko-partnerstvo-2005\(1\)%2008.02.06.PDF](https://www.sobranie.mk/WBStorage/Files/Akciski-plan-za-Evropsko-partnerstvo-2005(1)%2008.02.06.PDF). Accessed on 3 March, 2019.

20 Criminal Code("Official Gazette of the Republic of Macedonia" nos. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014,96/2015, 226/2015, 97/2017 and 248/2018).

21 See: <http://ec.europa.eu/competition/cartels/leniency/leniency.html>. Accessed on 6 March, 2019.

22 4CPIAntitrustChronicleJanuary2019,25YearsOfLeniency,Wheredothingsstand?https://www.competitionpolicyinternational.com/wp-content/uploads/2019/01/AC-January-2019-2.pdf. Accessed on 10 March, 2019.

23 Commission Notice on Immunity from fines and reduction of fines in cartel cases, 2006/C 298/11, available from: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52006XC1208%2804%29>, [accessed on 2 March, 2019]. In 2015 through the Amendments to the Commission Notice on Immunity from fines and reduction of fines in cartel cases, this Notice has undergone some changes. See more: (2015/C 256/01),<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C-2015.256.01.0001.01.ENG>. Accessed on 10 March, 2019.

24 Ysewyn, J.; Boudet, J., *Leniency and competition law: An overview of EU and national case law*, e-Competitions Antitrust Case Laws e-Bulletin, e-Competition Special I Issue Leniency, 2018, pp. 1–22.

25 See more: Macedonia: Cartels & Leniency 2019. <https://iclg.com/practice-areas/cartels-and-lenieny-laws-and-regulations/macedonia>. Accessed on 10 March, 2019.

and consumer sector.<sup>26</sup> Following the same common sense, 2010 LPC contains special provisions regarding “block exemption” (article 9, 2010 LCP).

RNM has also incorporated EU concept of protection from abuse of the monopoly position. Through the formulation of articles 10 and 11 of the 2010 LPC, Macedonian competition law is fully compliant with Article 102 from TFEU, which refers to the notion of “dominant position” and “abuse of a dominant position.” The implementation of article 102 of the TFEU, essentially contributed to the enhancement of the effectiveness of the CPC. In this regard, since the adoption of the LPC in January 2005 until the end of 2007, the CPC has prosecuted thirty-nine (39) cases. Twelve (12) of them were based on the abuse of a dominant position, five (5) cases refer to the assessment of contracts between undertakings and in twenty-two (22) cases the CPC was deciding on the assessment of concentrations between undertakings.

In 2007, the CPC prosecuted twenty-two (22) cases, fifteen (15) of these cases were based on concentrations, six (6) referred to the abuse of a dominant position, one (1) for the existence of a prohibited agreement or decision. Since 2010, the CPC is mainly concerned with concentration cases.

Table 1. Procedures in front of the CPC (2010)<sup>27</sup>

Administrative procedure	Prohibited contracts	Abuse of dominant position	Concentration	Total
Number of initiated procedures	2	1	22	25
Number of finished procedure	4	1	21	26

### 3. THE HARMONIZATION OF THE MACEDONIAN COMPETITION LAW WITH THE EUROPEAN LAW

Studying the Macedonian competition law, the annual reports of the CPC,<sup>28</sup> the annual reports of the European Commission,<sup>29</sup> the author concludes that for the most part Macedonian competition law is harmonized with EU competition law. In 2018, the European Commission concluded that “[t]he country [Republic of Macedonia] is moderately prepared in the area of competition policy.”<sup>30</sup> In this report, the Commission also stressed that “No progress has been made in this field during the reporting period.” The EU’s conclusions regarding Macedonian competition law are troublesome. From the EU report clearly derive that RNM has not been entirely successful in this field. Of course the report takes in account the real situation on the

26 Themaat, W. V.; Reuder, B., *European competition law, a case commentary* Cheltenham; Northampton, MA: Edward Elgar, 2018, p. 78.

27 The date is downloaded from the Annual report of the CPC from 2010.

28 See: <http://kzk.gov.mk/mak/aboutus-C.asp>. Accessed on 3 March, 2019.

29 Annual Report for 2018, available from: <https://www.sobranie.mk/content/republic-of-macedonia-report%2017.4.18.pdf>. Accessed on 3 March, 2019.

30 The whole report available from: <https://www.sobranie.mk/content/republic-of-macedonia-report%2017.4.18.pdf>. Accessed on 11 March, 2019.

market, not just the situation in the legislation. As we mentioned 2010 LPC is completely aligned with articles 101, 102, 106, and 107 from TFEU. In the first chapter of the 2010 LPC, article 7 paragraph 1 provides that “all agreements concluded between undertakings, decisions of associations of undertakings and concerted practices which have as their object or effect the distortion of competition shall be prohibited, and in particular those which:

- 1) Directly or indirectly fix the purchase or selling prices or any other trading conditions;
- 2) Limit or control the production, market, technical development or investments;
- 3) share the market or the sources of supply;
- 4) Apply dissimilar conditions to equivalent or similar transactions with other trading partners, thereby placing them in less favorable competitive position, or
- 5) Make the conclusion of the agreements subject to acceptance of supplementary obligations by the other contractual parties, which by their nature or according to the commercial customs are not connected with the subject of the agreement”. Additionally, article 10 of the 2010 LPC, regulates dominant positions in the market, i.e., the abuse. So, an undertaking shall have a dominant position on the relevant market if, as a potential seller or purchaser of certain kinds of goods and/or services:

- 1) it does not have competitors on the relevant market, or
- 2) compared to its competitors, it has a leading position on the relevant market, and especially in relation to: the market share and position and/or; the financial power; and/or the access to sources of supply or the market and/or the connection with other undertakings and/or; the legal or factual barriers for entry of other undertakings to the market and/or; the ability to dictate the market conditions taking into consideration its supply or demand, and/or; the ability to exclude the other competitors from the market by directing towards other undertakings.

Under Macedonian law, an undertaking has a dominant position if it is share on the relevant market<sup>31</sup> is more than 40%, unless the undertaking proves the opposite. It shall be presumed that two or more legally independent undertakings have a joint dominant position on a relevant market if they act or participate jointly on the relevant market (article 10, paragraph 2 from 2010 LPC). Only the abuse of the dominant position is prohibited. So, any abuse of the dominant position by one or more undertakings on the relevant market or its substantial part shall be prohibited. The abuse shall be presumed to exist when:

- 1) direct or indirect imposition of unfair purchase or selling prices or other unfair trading conditions;
- 2) limitation of the production, markets or technical development to the detriment of consumers;
- 3) application of different conditions for equivalent or similar legal activities with other commercial partners, thereby placing them in a less favorable competitive position;

<sup>31</sup> According to 2010 LCP, “relevant market” is any relevant product market and any relevant geographical market. “Relevant geographic market” is any market in the area in which the undertakings concerned are involved in the supply and demand of goods and/or services, in which the conditions for competition are sufficiently homogenous and can be distinguished from the neighboring areas, according to the conditions for competition which are considerably different in those areas.

- 4) tying the conclusion of agreements subject to acceptance of additional obligations by the other contractual parties which, by their nature or according to the commercial customs, are not connected with the subject of the agreement;
- 5) unjustified refusal to trade or encouraging and requesting from the other undertakings or associations of undertakings not to purchase or sell goods and/or services to a certain undertaking, with an intention to harm that undertaking in a dishonest manner, and
- 6) unjustified refusal to allow another undertaking access to its own network or other infrastructure facilities of another undertaking for an adequate compensation, provided that the other undertaking, without such concurrent use, due to legal or factual reasons, is hindered to act as a competitor on a particular relevant market (LCP, article 11).

To accomplish the required degree of harmonization, the Government of RNM enacted several regulations, all proposed by the CPC. Commission notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (*de minimis*1) (2001/C 368/07) is enforced, through the adoption of Regulation on agreement of minor importance (Official Gazette Number 44/12).<sup>32</sup> The CPC notice regulation appears to regulate the same subject matter as the *lpc* and, therefore, appears to be redundant.<sup>33</sup> There are other redundancies too. The overlap of the solutions from 2010 LCP and the Regulations of the Government also exist in the part of market concentration too, i.e., merger, acquisition, and joint ventures. Specifically, this refers to the obligation to notify in accordance with the conditions sets forth in article 15 from 2010 LPC.<sup>34</sup> On the EU level, this question is covered by Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.<sup>35</sup> The most important part of the Commission Regulation No 802/2004, is the part that refers to the “[o]bligation for notification of concentration. In this part the Government RNM adopted the Regulation on the form and the content of the notification and criteria on concentrations’ evaluation.”

Under the LPC, “(...) the participants in the concentration shall be obliged to submit a notification to the Commission for Protection of Competition prior to its implementation and following the conclusion of the merger agreement that is the announcement of the public bid for purchase or acquisition of majority participation in the basic capital of the undertaking.”<sup>36</sup> In last few years, the CPC practice has experienced an increase in merger notifications, as opposed to cases of prevention, distortions and constraining of competition. In order to enforce

32 Available from: [https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52001XC1222\(03\):EN:HTML](https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52001XC1222(03):EN:HTML). Accessed on 3 March, 2019.

33 Colomo, P. I.; Govaere I., *De minimis rule in competition law: An overview of EU and national case law*, 2015, pp.1–13.

34 The participants in the concentration shall be obliged to submit a notification to the Commission for Protection of Competition prior to its implementation and following the conclusion of the merger agreement, that is, the announcement of the public bid for purchase or acquisition of majority participation in the basic capital of the undertaking. (4) The following shall be mandatorily attached to the concentration notification: 1) an original of the legal act which is the basis for the concentration or a verified copy; 2) a financial report for the participants in the concentration for the business year preceding the concentration, an original or a verified copy; 3) an excerpt from the trade register or other register of legal entities containing data about the business name, the head office, and the scope of operation of the participants, an original or a verified copy, and 4) data regarding the participation in the market of the participants in the concentration, as well their competitors.

35 Available from: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004R0802>. Accessed on 1 March, 2019.

36 LPC, article 15, paragraph 1.

the EU policy of leniency in the prevention of cartels and anti-competitive agreements, the Government enacted the Regulation for close terms and procedure under which the Commission on misdemeanor decides to release or reduces the fine (44/12). The basis for this Regulation is Commission Notice on Immunity covers the leniency program (2006/C 298/11).<sup>37</sup> The importance of the leniency program derives also from the 2010 LCP. Article 65 from the 2010 LCP, titled as “Granting of immunity or reduction of fine (leniency)”, emphasizes that the “(...) aim of detecting cartels that constitute misdemeanors referred to in Article 59 paragraph (1) point 1 of this Law, the Misdemeanor Commission on a request of the undertaking having admitted its participation in a cartel shall grant full immunity from the fine which, as a rule, would otherwise be imposed on that undertaking if it: 1) first presents evidence enabling the Misdemeanor Commission to initiate a misdemeanor procedure or 2) first presents evidence enabling the Misdemeanor Commission to complete the already initiated misdemeanor procedure with a decision establishing the existence of a misdemeanor if the existence of the misdemeanor could not be established without such evidence.”

The leniency program exists in the Macedonian criminal code too (hereinafter *cc*).<sup>38</sup> In order to ensure effectiveness of this program, and achieve the desired objective, the *cc* imposes legal liability for the responsible party in the legal entity who limits or undermines market competition. However, it authorizes a reduction of the fine under certain limited circumstances.<sup>39</sup>

Guided by the EU concept of protection of competition, RNM paid special attention on the concept of “group exemption”. In 2012 the Government of RNM adopted the regulation on the detailed conditions for group exemption of certain types of research and development contracts (“Official Gazette of the Republic of Macedonia” No. 41/2012). In general, this regulation implemented the Commission Regulation (EU) No 1217/2010 of 14 December 2010 on the application of Article 101 (3) of the TFEU to certain categories of research and development agreements. Likewise, the LPC implemented the notion of “group exemption” and it provides, in pertinent part, that the “provisions referring to “prohibited agreements, decisions and concerted practices” shall not apply to agreements, decisions of associations of undertakings and concerted practices which contribute to the improvement of the production or distribution of goods or services or to the (1) to impose restrictions which are not necessary for the attainment of these objectives on the undertakings concerned, and 2) do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the concerned products or services (LPC, article 7).”

37 Available form: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52006XC1208\(04\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52006XC1208(04)). Accessed on 5 March, 2019.

38 Criminal Code (“Official Gazette of the Republic of Macedonia” nos. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015, 226/2015, 97/2017 and 248/2018).

39 CC, article 283, paragraph 1 and 2, The responsible person in the legal entity who shall conclude an agreement or shall participate in the concluding of an agreement, decision or agreed behavior, prohibited by law, and aiming to prevent, limit or cause competition disorder, and thus the legal entity obtains property benefit of greater extent or causes damage of greater extent, shall be sentenced to imprisonment of one to ten years. The responsible person in the legal entity shall be released from the punishment, provided that he discovered or has contributed considerably in the discovery of the conclusion of the agreement, the adopted decision or the agreed behavior prohibited by law, resulting in determination, that is, reduction of the fine for the legal entity by the competent body for protection of competition in the procedure for determination of cartel existence, in accordance with the rules for protection of competition.

Also, the European concept of group exemption has been extended to the contracts for distribution and servicing of motor vehicles. Specifically, the regulation on group exemption of certain types of agreements for distribution and servicing of motor vehicles was adopted in 2012 (“Official Gazette of the Republic of Macedonia” No. 41/2012). Through the enactment of this regulation, RNM procure transposition of Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101 (3) of the TFEU.

Additionally, the concept of group exemptions and implementation of article 101, paragraph 3 from TFEU, has been extended under Macedonian law, by enactment of the Regulation on block exemption granted to vertical agreements (“Official Gazette of the Republic of Macedonia” No. 41/2012). This Regulation in RNM implements Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of article 101(3) of the TFEU to categories of vertical agreements and concerted practices.<sup>40</sup> Specialization agreements are also affected. Macedonian competition law has been influenced by EU Commission Regulation (EU) No 1218/2010 of 14 December 2010 on the application of article 101(3) of the TFEU to certain categories of specialization agreements.<sup>41</sup> The enactment of this Regulation on EU level, contributed to several legal developments and the adoption of a separate regulation on block exemption granted to horizontal specialization agreements (“Official Gazette of the Republic of Macedonia” No. 41/2012). The block exemption was applied to technology transfer agreements, license or know-how agreements (“Official Gazette of the Republic of Macedonia” No. 41/2012). This regulation implements the EU Commission Regulation (EC) No 772/2004 of 27 April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements.<sup>42</sup>

These regulations are intended to harmonize RNM’s competition laws with the EU. To improve the implementation of these regulations and its enforcement and effectiveness, the *cpc* in *rnm* introduced several guidelines. In 2015, the *cpc* enacted:

- Guidelines on the manner of submitting and completing the notification of concentration;
- Guidelines for possible changes and assumption of obligations regarding the notified concentrations acceptable to the Commission for Protection of Competition in accordance with the Law on Protection of Competition;
- Guidance for assessment of vertical and conglomerate concentration;
- Guidelines for assessing horizontal concentrations for the purposes of the Law on Protection of Competition;
- Guidelines for applying Article 7 of the Law on Protection of Competition for horizontal cooperation agreements;
- Guidelines on Vertical Restraints.

The guidelines are in accordance with EU competition law and are enacted on the base of several EC Regulations, such as:

<sup>40</sup> Available from: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010R0330>. Accessed on 1 March, 2019.

<sup>41</sup> Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R1218>. Accessed on 1 March, 2019.

<sup>42</sup> This regulation is not in force.

- Commission Regulation No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings),<sup>43</sup>
- Commission Notice on remedies acceptable under the Council Regulation (EC) No 139/2004 and under Commission Regulation (ec) No 802/2004 Official Journal C 267, 22. 10. 2008);
- Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings Official Journal C 265 of 18/10/2008);
- Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings Official Journal C 31, 05. 02. 2004);
- Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal cooperation agreements, OJ C 11, 14.01.2011, Commission notice –Guidelines on Vertical Restraints, Official Journal C 130, 19. 05. 2010.

After the enactment of these regulations and guidelines, adaptation of the 2010 LPC, RNM fully harmonized its competition law with the EU' sprimary competition law. In one way this is a great support about the CPC and the courts, but, the reality is that the practice still faced many problems regarding cartels, abuse of dominant position, especially by concentration. Despite this, the success of the competition law in RNM, as in many other states, is conditioned by its enforcement. In this context, the role of the CPC is decisive. So, other important question that logically arises is that of the capacity and competence of the CPC, to deal with fixing the purchase or selling prices, limiting the production or establish sales quotas, sharing the markets, making arrangements for participation in tenders etc. In the most part, this issue reflects the real market situation in RNM.

#### 4. THE ROLE OF COMMISSION ON PROTECTION OF COMPETITION IN REPUBLIC OF NORTH MACEDONIA

In accordance with the 2010 LPC, the Macedonian CPC has the primary role in protecting market competition in RNM. The subjects-matter under the jurisdiction of CPC depends upon the degree and dynamic of the entrepreneurial spirit, the scope and dynamic of mergers, acquisition, joint ventures of undertakings, the level of corporate culture, the state strategy for protection of competition established in the state. Analyzing the cases reviewed by the CPC since 2005, we conclude that the subjects-matter of the cases under CPC jurisdiction is changing. Namely, in 2005, when the CPC was formed, it was mainly engaged with cases about abuse of dominant position of the undertakings. Starting from 2008, this practice has changed. In the last couple of years, CPC is focused on "merger control". The tables below statistically show off the situation.

43 This act has been changed. Latest consolidated version: 01/01/2014, Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02004R0802-20140101>. Accessed on 1 December, 2019.

Table 1. Taken by the annual report of the CPC (2008)

Numbers of submitted notifications	29
Enacted solutions – Total	28
• Approved concentration	26
• Conditionally approved concentrations	1
• Prohibited concentrations (not according with <i>lcp</i> )	/
• Concentrations which does not fall under the provisions of Law	1

The effectiveness of the CPC has been varied and is influenced by many different factors, some internal and some external. Each year, the CPC struggles to hire competent staff, obtain bigger financial support and improve the overall working conditions. For the most part, its success depends on the government support. Yet, in some cases the work of the CPC was a subject of great critics from the professional and scientific public (the allowance of merger of VIP and ONE in telecommunication sector, see below).

The effectiveness of the CPC has been improved with the enactment of 2010 LPC. This is due to the solution for merging of the administrative and misdemeanor procedures in front of the CPC. Before the enactment of 2010 LPC, the time-frame from the moment of infringement of the LPC, to the moment when the declared fine was enforced was too long. Actually, according to the previous 2005 LCP, the administrative and misdemeanor procedures were separated. In the first phase the administrative procedure had to be carried out, and after that the misdemeanor procedure followed for the same factual situation. In the administrative procedure CPC had to decide if there is an infringement of the LCP, and then in the separate misdemeanor procedure, to declare the fine for the infringement of LPC. Against all these decisions (decisions declared in administrative and misdemeanor procedures), 2005 LPC anticipated right to lawsuit in front of Administrative Court, and after that right to appeal these decisions in front of the Supreme Court. This solution was completely ineffective. So, the law changes from 2010 LPC, enhanced the effectiveness of the procedure.

Table 2. Taken by annual report of the *cpc* (2009)

Procedures	Prohibited contracts	Abuse of dominant position	Concentrations	Total
Number of submitted procedures	3	2	17	22
Number of finished procedures	1	2	17	20

Table 3. Taken by annual report of the *cpc* (2010)

Administrative procedures	Prohibited contracts	Abuse of dominant position	Concentrations	Total
Number of submitted procedures	2	1	22	25
Number of finished procedure	4	1	21	26

In 2011, the CPC *ex officio* initiated 1 misdemeanor procedure for the prohibited agreement. In the same period, the Commission *ex officio* declared two (2) decisions in an admin-

istrative procedure, also for prohibited agreements. On the basis of the abuse of a dominant position, in 2011 the CPC initiated and finished three (3) misdemeanor procedures. CPC also enacted five (5) misdemeanor decisions for committed abuse of dominant position. In 2011, twenty-two (22) notifications of concentrations were submitted to the CPC and eighteen (18) decisions were declared.

In 2012, the CPC enacted two (2) decisions in an administrative procedure, by which penalized two (2) prohibited agreements. The separate Commission for misdemeanor matters that works within the CPC initiated six (6) misdemeanor procedures for the prohibited agreements and enacted three (3) decisions in a misdemeanor procedure. In 2012, the CPC enacted one (1) decision in an administrative procedure for abuse of a dominant position.

Table 4. Taken by annual report of the CPC (2012)

Number of submitted notifications	23
Enacted solutions	22
• Approved concentration ( is accordance with the paper)	22
• Conditionally approved concentrations	/
• Prohibited concentrations (not according with <i>lcp</i> )	/
• Concentrations which does not fall under the provisions of <i>rnm</i> 's competition law	/

In 2013, most of the cases in front of the CPC were connected with concentrations. This year, eighteen (18) notifications for concentration were submitted.

Table 5. Taken by the annual report of the *cpc* (2013)

Number of submitted notifications	18
Enacted solutions	18
• Approved concentration ( is accordance with the paper)	17
• Conditionally approved concentrations	/
• Prohibited concentrations (not according with <i>lcp</i> )	/
• Concentrations which does not fall under the provisions of Law	1

During 2014, the CPC declared ten (10) decisions in a misdemeanor procedure and imposed a total fine of 3797236.53 Euro's, for breaking competition law rules by undertakings in RNM. In four of the declared decisions of the CPC, existence of prohibited agreements was confirmed (cartels for public procurement of medicines and sale of electricity). About this infringement of the LPC, the CPC imposed a total fine of 3750795.073 Euros. In four (4) other decisions the CPC ascertained abuse of dominant position of the public utility companies and imposed a total fine in the amount of 24441, 46 Euros. In the last two (2) cases, CPC found a misdemeanor for failure to submit a notification of concentration and imposed a total fine in the amount of 22.000,00 Euros. In 2015, in the most part CPC works on concentrations.

Table 6. Taken by the annual report of the CPC (2015)

Number of submitted notifications	42
Enacted solutions	42
• Approved concentration ( is accordance with the paper)	40
• Conditionally approved concentrations	1
• Prohibited concentrations (not according with <i>lcp</i> )	/
• Concentrations which does not fall under the provisions of Law	/
• annulled decisions with which previously concentration has been approved	1

In 2016, Commission for misdemeanor matters within the CPC, declared a total of seven (7) decisions in a misdemeanor procedure and imposed total fines in amount of 296502, 8617886179 Euros. In three (3) of the decisions, the CPC declare fine in the amount of 158601.626016 Euros, punishing the undertakings that stipulate prohibited agreements. In two (2) decisions, the CPC ascertained abuse of dominant position and imposed total fine in the amount of 136.005.3 Euros, while in two (2) other decisions CPC identify the existence of minor offenses and imposed a total fine in the amount of 1.895.934 Euros. During 2017, the CPC enacted fifty-seven (57) decisions in an administrative procedure. Fifty (50) decisions of them referred to concentrations.<sup>44</sup>

Table 7. The procedures for concentrations from 2000 up to 2017 in RNM

Ex officio	On the demand of the party	Total	Approved concentrations	Prohibited concentration	Concentrations which does not fall under the provisions of Law	The notification is not complete and CPC reject it	Total finished procedure
Total 11	288	299 – 1 = 298	266 + 2 = 268	3	6	2	279

Analyzing the role of the CPC in protection of competition in RNM, we also dig into the relationship between the CPC and the Administrative Court. We actually wanted to found out how many of the CPC's decisions were confirmed by the Administrative Court, as a second instance; how many of them were rejected and finally, how many CPC decisions were returned for re-examination. The data that we had on disposal for researching were modest. From the work of the CPC in 2010, we know the issue in 22 subjects. In 16 of them, the Administrative Court confirmed the decision of CPC, and in the rest, the decisions were rejected. In 2011, the Administrative Court confirmed the CPC's decision in ten (10) cases, and rejected in one (1) case. In 2012, in all 7 cases the Court confirmed the opinion of CPC.

The statistics presented in the tables display the subject-matter and the scope of cases the CPC has deal with since its establishment. In the most part CPC deals with subject from

44 According to the LCL, the CPC has an obligation to submitted annual report till 31 March each year. Up to day, the annual report of the CPC for 2018 has not been verified by the Macedonian assembly due to the president election. So it was not available for us to use this data.

pharmaceutical industry, energy sector, telecommunications, utilities, insurance, gas and oil etc. This is very logical bearing in mind the scope and characteristics of the Macedonian market and its structure. Among the most popular decisions for the protection of competition in RNM, the professional and scientific public perceived the CPC's decision, by which the Commission imposed fine in total amount of 5570.146,00 Euros on two crucial wholesalers. One of cases is known as Alkaloid Cons and Dr. Panovski case. In this case the CPC declared fine for concerted practices, during the submission of bids for the generic drug Etoposide.

The concerted practices was ascertained in the tender procedure announced by the PHI University Radiotherapy and Oncology Clinic Skopje, PHI University Clinic of Pediatric Diseases, Skopje, PHI University Clinic. Trifun Panovski "Bitolain" 2011. Namely, in the purchase made by hospitals, Alkaloid Cons and Dr. Panovski provided identical prices for the generic drug Etoposide (injections / vials of 100 mg, 100 ml, 100 mg / 5 ml and 20 mg / ml). The bids submitted with the said drugs coincided completely up to 2 decimals. Such matching of the offered prices exists only in the case of concerted practice. Pursuant to Article 59 (1) and in conjunction with article 7 (1) of the Law on Protection of Competition, concerted practice is forbidden.<sup>45</sup> In 2012, on the same grounds, with a fine of € 770,000,00 these two participants were penalized for concerted practice in public procurement bid for Docetaxel.<sup>46</sup>

The practice revealed that these two CPC solutions have influenced other pharmaceutical companies, as prevention for further potential bargaining and concerted practice. Alkaloid is one of the biggest pharmaceutical companies in RNM; hence this decision cannot be ignored in the pharmaceutical industry. In 2007, with decision no.07-56/9, CPC ascertained concentration in when Zegin DOO Skopje acquired ownership of PHO Pharmacies Skopje, purchasing o25% of the shares of this company, contrary to LPC. According to CPC, this acquisition will result with distortion of the market of medicines and auxiliary products, used in human medicine on the territory of the City of Skopje. This will be achieved by strengthening the dominant position of Zeginfarm DOO Skopje on this market.<sup>47</sup>

In 2007, CPC was active in protection of competition in telecommunication sector. Namely, in this context, the decision no.07-7/2 of CPC deserves attention. In this case, CPC ascertained abuse of dominant position of the mobile operator COSMOFON AD. The operator breach the Law on protection of competition in such a way that charging for a caller to a Cosmofon AD subscriber, who has activated the "voicemail" service, starts from the moment the voicemail is opened, with the voicemail notification of part of the service being subject to a chargeable interval. Article 14 paragraph 2 item 1 of the LPC prohibits this behavior. Macedonian CPC ascertained this situation as direct imposition of "unfair" selling prices, which is contrary to LPC. This decision was appealed to the Administrative Court, which upheld the

45 The case was downloaded from the official website of the Commission for protection of competition. See: <http://kzk.gov.mk/wp-content/uploads/2019/03/Globa-za-lekot-etoposide.pdf>. Accessed on 1 December, 2019.

46 See the full text of the case at the official website of the CPC: <http://kzk.gov.mk/%d1%83%d1%81-%d0%ba%d0%be%d0%bc%d0%b8%d1%81%d0%b8%d1%98%d0%b0%d1%82%d0%b0-%d0%bf%d1%80%d0%be%d1%82%d0%b8%d0%b2-%d0%bc%d0%b0%d0%ba%d0%b5%d0%b4%d0%be%d0%bd%d1%81%d0%ba%d0%b8-%d1%82%d0%b5%d0%bb%d0%b5/>. Accessed on 1 December, 2019.

47 The full text of the case is available at official website of the CPC: <http://kzk.gov.mk/wp-content/uploads/2019/06/%D0%A3%D0%A1-%D0%9A%D0%BE%D0%BC%D0%B8%D1%81%D0%B8%D1%98%D0%B0%D1%82%D0%B0-%D0%BF%D1%80%D0%BE%D1%82%D0%B8%D0%B2-%D0%97%D0%B5%D0%B3%D0%B8%D0%BD-%D0%94%D0%9E%D0%9E-%D0%A1%D0%BA%D0%BE%D0%BF%D1%98%D0%B5.pdf>. Accessed on 1 December, 2019.

CPC's decision, and also to the Supreme Court, which stated that the impugned judgment was correct and lawful.<sup>48</sup> In 2009, the CPC penalized T-Mobile Macedonia on the same legal basis.<sup>49</sup>

In 2007, the CPC sanctioned the abuse of dominant position of Macedonian Telecommunications – Skopje, because Macedonia On-line and UN NET as providers of public telecommunications data transmission services, refused to allow the use of an asymmetric digital subscriber line – ADSL, for internet access and appropriate fee charging in the monthly bill of the end users of realized traffic including telephone traffic through the distinctive non-geographical number 055.

Starting from the ban on the holders and operators of telecommunications networks and facilities, to carry out any work that distorts competition (Article 8 paragraph 2 of the Telecommunications Act), the CPC imposes a fine.<sup>50</sup>

In the field of electricity, it's worth noting the decision 07/51/1 from 2009, where the CPC found that EVN Macedonia AD Skopje, in the period 2005-2008, abused the dominant position of the relevant market in a way that the tariff consumers retailers, in their monthly electricity bill, calculated and charged a manipulative expense in the fixed amount of 6 denars, which is the imposition of unfair trading conditions prohibited by the Law. According to the CPC, such conduct constituted an offense within the meaning of Article 47 of the LPC. This decision was upheld by the Administrative and Supreme Court too.<sup>51</sup>

In this sector, in 2014, the CPC recognized prohibited concerted practice of electricity traders, while participating in the public procurement procedure of AD ELEM Skopje. The purpose of the traders' pre-agreed quantities and prices was to fix the price and divide the electricity supply market to the tariff consumers. The Commission for Misdemeanors within the Commission for Protection of Competition ascertained that the company for production, trade and services EFT Macedonia Limited liability company- Skopje, the Company for electricity trade EZPADA LLC Skopje, the Company for electricity trade RUDNAP LLC Skopje, Company for trade and sale of electricity GEN-I LLC Skopje participated in concerted practice in the period from 18. 10. 2011 to 29. 02. 2012 in 11 occasions, while GEN-I trading in electricity energy LLC, Krsko, Slovenia participated in concerted practice between 28. 10. 2011 and 29. 02. 2012 in 4 occasions. For this participation in forbidden behavior, the abovementioned companies were fined by the Commission for misdemeanor in the amount of approximately 3.000.000

48 The full text of the case is available at the official website of the CPC: <http://kzk.gov.mk/%d0%b2%d1%81-%d0%ba%d0%be%d0%bc%d0%b8%d1%81%d0%b8%d1%98%d0%b0%d1%82%d0%b0-%d0%bf%d1%80%d0%be%d1%82%d0%b8%d0%b2-%d0%ba%d0%be%d1%81%d0%bc%d0%be%d1%84%d0%be%d0%bd-%d0%b0%d0%b4-%d1%81%d0%ba%d0%be%d0%bf/>. Accessed on 1 December, 2019.

49 The case is available at the official website of the CPC: <http://kzk.gov.mk/%d0%ba%d0%be%d0%bc%d0%b8%d1%81%d0%b8%d1%98%d0%b0-%d0%bf%d1%80%d0%be%d1%82%d0%b8%d0%b2-%d1%82-%d0%bc%d0%be%d0%b1%d0%b8%d0%bb%d0%b5-%d0%bc%d0%b0%d0%ba%d0%b5%d0%b4%d0%be%d0%bd%d0%b8%d1%98/>. Accessed on 28 November, 2019.

50 The full text f the case is available at the official website of the CPC: <http://kzk.gov.mk/%d1%83%d1%81-%d0%ba%d0%be%d0%bc%d0%b8%d1%81%d0%b8%d1%98%d0%b0%d1%82%d0%b0-%d0%bf%d1%80%d0%be%d1%82%d0%b8%d0%b2-%d0%bc%d0%b0%d0%ba%d0%b5%d0%b4%d0%be%d0%bd%d1%81%d0%ba%d0%b8-%d1%82%d0%b5%d0%bb%d0%b5/>. Accessed on 1 December, 2019.

51 The full text of the case is available at the official website of the CPC: <http://kzk.gov.mk/wp-content/uploads/2019/06/%D0%9A%D0%B8%D0%BC%D0%B8%D1%81%D0%B8%D1%98%D0%B0%D1%82%D0%B0-%D0%BF%D1%80%D0%BE%D1%82%D0%B8%D0%B2-%D0%95%D0%92%D0%9D-%D0%9C%D0%B0%D0%BA%D0%B5%D0%B4%D0%BE%D0%BD%D0%B8%D1%98%D0%B0-%D0%90%D0%94.pdf>. Accessed on 1 December, 2019.

Euros. The CPC also demonstrated its role and importance in disrupting the competitive market for goods and services by adopting a € 5.8 million fine for Skopje Brewery AD and a € 2.7 million fine for Prilep Brewery restricting distributors to determine the selling price to end-users, which substantially distorts competition in this market.<sup>52</sup>

## 5. OVERALL EFFECTIVENESS IN THE IMPLEMENTATION OF MACEDONIAN COMPETITION LAW

The effectiveness of competition protection in each national legal system is conditioned by a few factors: liberalization of the market for goods and services, government policies and strategies for the protection of competition, the work of the competition authorities, the legal regime applicable in the area of competition etc. From a legal standpoint, the relevant legal framework plays a crucial role in the efficiency of combating unfair competition. According to the opinion of many experts in this field, when it comes to this issue, the lawmakers must be very cautious. Under the influence of the globalization, liberalization of the market of goods and services, the process of harmonization and unification of the legal regime in European and world context, took a very important place in almost all segments of the society.

In almost each area of law, the tendency of unification of the legal regime was on the top of the European agenda. In this context, special attention should be paid on the applicability of identical legal regimes of competition law, to economies with different scope, scale and characteristics, or more precisely, to small versus large economies.

This practice might be very dangerous and destructive for competition, and in the last couple of decades, this issue has been on the agenda of many conferences and subject-matter of many professional and scientific considerations. Regarding this topic, one of the most authoritative analyses belongs to Gal M. According to Gal, “applying an identical legal regime to protect the competition of small and large market countries is a mistake in combating unfair competition. The market characteristics of large and small economies cannot be the same, so it is impossible to apply the same legal regime when fighting unfair competition”.<sup>53</sup>

RNM is a state with a small economy. This is a case regardless of what criteria are taken into account for defining Macedonian economy and market of goods and services (population size, population dispersion, openness to trade etc.).<sup>54</sup> As a small economy, it entails market situation where few undertakings share the market and sources of supply in the crucial industries (energy, telecommunication, postal services, carriage of goods (railway branch), pharmacy, oil and gas market etc. More precisely defined, it creates market situation of monopoly and

52 See the full text of the case is available at the official website of the CPC: [file:///C:/Users/User/Downloads/%D0%A0%D0%B5%D1%88%D0%B5%D0%BD%D0%B8%D0%B5-%D0%9F%D1%80%D0%B8%D0%BB%D0%B5%D0%BF%D1%81%D0%BA%D0%B0-%D0%9F%D0%B8%D0%B2%D0%B0%D1%80%D0%BD%D0%B8%D1%86%D0%B0-%D0%90%D0%94-%D0%9F%D1%80%D0%B8%D0%BB%D0%B5%D0%BF%20\(1\).pdf](file:///C:/Users/User/Downloads/%D0%A0%D0%B5%D1%88%D0%B5%D0%BD%D0%B8%D0%B5-%D0%9F%D1%80%D0%B8%D0%BB%D0%B5%D0%BF%D1%81%D0%BA%D0%B0-%D0%9F%D0%B8%D0%B2%D0%B0%D1%80%D0%BD%D0%B8%D1%86%D0%B0-%D0%90%D0%94-%D0%9F%D1%80%D0%B8%D0%BB%D0%B5%D0%BF%20(1).pdf). Accessed on 25 November, 2019.

53 Gal. M. S., *Competition policy for small Market Economies*, Institute of Developing, Economics, Japan External Trade organization, Vol.42, n.1, 2004, pp.113–118.

54 According to Gal, market size of an economy is influenced by three main factors: population size, population dispersion and openness to trade.

oligopoly, high barriers for penetration on the Macedonian market of goods and services, high tendency for creation of concentration via merger and acquisition,<sup>55</sup> single-firm dominance, and finally, high potential for abuse of dominant position on the market.

All these characteristics are typical for any small economy such as Israel, New Zealand, Malta, Cyprus etc. They all create monopolies or oligopoly in the substantive sectors for the growth of the economy, which is a case in RNM too. According to world distinguished experts, these market characteristics represent a serious potential threat for competition, and the economic efficiency of the business sector.<sup>56</sup> This situation also brings additional risk of disrespectful behavior of the undertakings, regarding competition rules. Hence, the governments must pay special attention on choosing proper legal measures, actions, policies and strategies for protection of competition and ensuring economic growth. Highly respected experts in this field suggest implementation of some of the well-known models of adaption of the small economies, to commonly established system of competition protection. For example, regarding the market control policy, Hui suggest implementation of the “voluntary notification system”; SIEC test; extraterritorial powers to access international mergers that might have impact on domestic market etc.<sup>57</sup> Still, in practice, all of these models displayed deficiencies too.

According to Galthis is an expected situation in small economies. Bearing in mind the main characteristics of small economies, Gal’s opinion is that special attention should be paid on the implementation on the concept of “minimum effect scale”.<sup>58</sup> Yet, under her opinion, this concept can find its place and be effective only in industrial sectors where the production takes place at less than the “minimum effect scale”.<sup>59</sup> So, in reality, the conditions for implementation of this concept in small economies are rarely met. This is due to the fact that in small economies very rarely the production of goods and services is less than the “minimum effect scale”. The existence of few undertakings in crucial sectors of the industry, impose high industrial concentration on the market, high entry barriers and tendency for production of goods and services above the “minimum efficient scale”.

Gal explains this concept by a simplified example. Namely, “suppose a firm has to produce at least 10,000 units to achieve lowest costs and domestic demand is 50,000; then the market can economically support five efficiently sized firms. If demand is only 10,000, the market can support only one efficiently sized firm. Hence, her conclusion that “limited demand in small economies implies that the number of MES firms that the domestic market can support will be smaller than that supported by large economies” So, the problem of high industrial con-

55 According to LPC, article 12, paragraph 1, “Concentration shall be created by the change of the control on a long-term basis, and as a result of: 1) merger of two or more previously independent undertakings or parts of undertakings or; 2) acquisition of direct or indirect control over the whole or parts of one or more undertakings by:

- one or more entities that already control at least one undertaking or  
- one or more undertakings, by purchasing securities or assets, by an agreement or in any other manner prescribed by law.”

56 Rusu V. D.; Roman A., *An empirical analysis of factors affecting competitiveness of C.E.E. countries*, available from: <https://www.tandfonline.com/doi/pdf/10.1080/1331677X.2018.1480969?needAccess=true>, 2018, Vol. 31, no. 1, pp. 2044–2059. Accessed on 11. November, 2019.

57 Hui L., Chua, X., *Merger Control in Small Market Economies*, Singapore Academy of Law, 27, 215, p. 401.

58 By definition, the “minimum efficient scale” means: The lowest point on a cost curve at which a company can produce its product at a competitive price. For a good survey of “minimum efficient scale”, see: Chandler, A. D.; Hikino T., *Scale and scope: the dynamics of industrial capitalism*, Cambridge Mass.: Belknap Press, 1990, p. 632.

59 See: Gal, M. S., *op. cit.*, p. 114.

centration levels, high entry barriers on the market of goods and services, a high percentage of economic activities accounted for by the largest firms in the economy cannot be avoided effortlessly.

In her research, Gal also pays special attention on the concept of “market threshold power”, pointing out the importance of this issue for small economies. According to Gal, when market shares are used as a *prima facie* indicator of market power in small economies, the typical market share that will signify market dominance should be *lower* than in large ones.<sup>60</sup> This is one of the ways for prevention of the abuse of dominant position in small economies. Yet, this is not always a solution, even in the small economies, especially when the competition laws anticipate more criteria’s for ascertaining abuse of dominant position. This is Gal’s opinion too.

In the context of Macedonian competition law, at a first glance, setting the lower threshold for determining market power is a suitable instrument for prevention of abuse of dominant position. But, according to article 10, paragraph 1, 2 and 3 from LPC, market share is not the *prima facie* indicator for determining market power. The assessment of the market power of the firms in Macedonian market should be conveying on the base of more criteria’s. In this context, Macedonian LPC, beside “market shares”, it also anticipates the access to sources of supply or the market and/or the connection with other undertakings and/or the legal or factual barriers for entry of other undertakings to the market and/or etc.<sup>61</sup> In percent, according to Macedonian LPC, it shall be presumed that an undertaking in RNM has a dominant position if its share on the relevant market is more than 40%, unless the undertaking proves the opposite.

Dominant position held by a single firm as a result of a merger, might be a serious impediments for the competition too. EU and other states beyond EU (USA, Canada, Australia, New Zealand, Israel etc.), pay special attention on the merger policy, taking into account jeopardy of the concentration by merger-acquisition, creation or strengthening of a dominant position and the abuse of the position. Merger and acquisition are very important tools for growth and development of the small economies, ultimately, creating a well-being for the consumers. Bearing in mind the specifics of the small markets, merger control policy should be on the top of the government agenda in these economies. For this issue, Gal notes that until recently merger control has been absent from the competition laws of most small economies. This is due to the fact that in small economies, mergers and acquisitions are perceived as a proper instrument for helping the economy. So, the merger control policy regarding competition is set in a background.

In order to emphasis the importance of this issue, Gal uses comparative methods of exploration and clearly ascertains that the “threshold market share” for regulation of concentration

60 Gal, M. S., *Competition policy for small economy*, Harvard University Press, Cambridge, Massachusetts and London, England, 2003, p. 76.

61 Article 10, paragraph 1, 2, 3 from LPC: An undertaking shall have a dominant position on the relevant market if, as a potential seller or purchaser of certain kinds of goods and/or services: 1) it does not have competitors on the relevant market, or 2) compared to its competitors, it has a leading position on the relevant market, and especially in relation to: the market share and position and/or; the financial power and/or; the access to sources of supply or the market and/or; the connection with other undertakings and/or; the legal or factual barriers for entry of other undertakings to the market and/or; the ability to dictate the market conditions taking into consideration its supply or demand, and/or; the ability to exclude the other competitors from the market by directing towards other undertakings.

in small economies should be set at a lower level compared with large economies.<sup>62</sup> She creates this opinion bearing into a mind the scale economies and high barriers to entry in a small economy.

RNM belongs to the states which should consider Gal's concept for merger control in small economies. Macedonian Commission for Protection of Competition has jurisdiction for conducting merger control that affects the competition. The merger control notification regarding the concentration shall be submitted to the Macedonian Commission for Protection of Competition if: "the joint aggregate turnover of all participating undertakings, generated by selling goods and/or services on the world market, exceeds the amount of Euro 10 million in Denars counter value according to the exchange rate valid on the day of preparing the annual account, gained in the business year preceding the concentration, and where at least one participant has to be registered in the RNM, and/or the joint aggregate turnover of all participating undertakings, generated by selling goods and/or services in the RNM, exceeds the amount of Euro 2.5 million in Denars counter value according to the exchange rate valid on the day of preparing the annual account, gained in the business year preceding the concentration, and/or the market share of one of the participants is more than 40% or the aggregate market share of the participants in the concentration on the market is more than 60% in the year preceding the concentration".

The paragraph 3 from article 14 of the LPC, stipulates that market share of 40% or 60% (the aggregate market share of the participants in the concentration on the market) represents cases when notification of concentration should be submitted to the competition authority.<sup>63</sup> Comparatively, in separate legal systems the conditions for conducting merger control procedures are different. For example, in Croatia, total annual consolidated turnover of undertakings participating in the concentration generated by selling goods and/or providing services is approx. EUR 130 million in the fiscal year preceding the year of intended concentration, if at least one undertaking has registered seat and/or branch in the Republic of Croatia; total turnover of each of at least 2 undertakings participating in the cartel, in the Republic of Croatia, is at least HRK 100 million (approx. EUR 13 million) in the fiscal year preceding the year of intended concentration. Or, in Slovenia, notification of a concentration to the CPA is mandatory if the total annual turnover of the undertakings involved in a concentration, together with other undertakings in the group, on the market of the Republic of Slovenia in the preceding business year exceeded EUR 35 million; and, the annual turnover of the acquired undertaking, together with other undertakings in the group, on the market of the Republic of Slovenia in the preceding business year exceeded EUR 1 million; or if the joint venture is created by two or more independent undertakings, performing on a lasting basis with all the functions of an autonomous economic entity and the annual turnover of at least two undertakings concerned in a concentration, together with other undertakings in the group, in the preceding business year exceeded EUR 1 million. In Slovenia, CPA can request from undertakings included in the concentration to notify the concentration to the CPA, even if above described thresholds are

62 See: Gal, M. S.; Cheng T., *Aggregate Concentration: An Empirical Study of Competition Law Solutions*, 2016, pp. 1–44. AVAILABLE from: <https://unctad.org/Sections/ditc-ccpb/docs/ciclp2016p01-ccGalCheng-en.pdf>. Accessed on 1 December, 2019.

63 Article 14 (1) from LCP of RNM.

not achieved but joint market share held by all undertakings included in the concentration exceeds 60%.<sup>64</sup>

Comparing with other states, RNM has set relatively low level of “market share threshold”, which is a condition for mandatory notification of concentration. For example, in Israel significant influence on the market among other means “market share threshold” of 50%, or, in New Zealand market share threshold is above 60%, which is higher than in Australia (substantial degree of power 60%) and the EC. According to Maltese Competition Act, dominant position is defined as control of over 40% of the market. Cyprus accepted market share threshold of 45–55% as a condition for ascertaining firm dominant position. In large economies these percentages are higher than in small one, which is totally understandable and justifiable (Canada 87% market share threshold, United States 70–75% etc.).<sup>65</sup>

Regarding RNM situation, at first glance, it seems that there is a space for anticipating lower level of “market share threshold”. But taking into account the real situation on the Macedonian market and the solutions in Macedonian LPC, we are on the opinion that this percentage is not the main problem for Macedonian market. Namely, analyzing the situation on the Macedonian market, we easily concluded that the biggest Macedonian problem, regarding this issue, is the generally non-liberalized market in crucial industries. In this context, RNM paid utmost attention for energy sector. The beginnings of the market liberalization of energy sector were inherent with status quo situation. The implementations of the measures for liberalization of the energy market have been delayed for a long time. According to some experts, this situation imposed the dilemma: does the government has a real will of procuring free market, participation of more firms in energy sector, and finally, will for protection from monopolistic behavior, unrealistic service prices and ultimately poor quality.

Bearing in mind the aspiration to EU membership, EU Commission’s indications and obligations accepted with SAA, the Macedonian government was aware with the fact that this delay had to stop. In 2007, RNM started with the first phase of liberalization of energy market. The phase referred to consumer’s right to supply electricity on the open market. On 1st of April 2014, total of 222 customers that had over 50 employees and total yearly income or total assets over 10 million euros in denars equivalent, acquired an obligation to procure their needs of electricity on the liberalized market from a supplier of their choice. Small consumers with total consumption over 100 MWh, got a right to procure their electricity on the liberalized market from 01. 07. 2018. Small consumers with total consumption over 25 MWh, got a right to procure their electricity on the liberalized market from 01. 07. 2019. From 01. 07. 2020, households and all other small consumers have a right to procure their electricity on the liberalized market.

Based on these amendments, EU report for RNM from 2019 anticipated that “the electricity and gas markets in RNM are open for competition”. So, the need to complete implementation of all phases of liberalization in energy sector remains to be achieved. The second sector, in which the RNM had to take measures, was the telecommunications sector. This market was a typical monopoly. Under the pressure of the EU Commission, 2014 the Law of electronic

64 More data about this issue see in Competition & Antitrust SELA –South East Legal Alliance, 2018, pp. 1–28. available from: <https://selegalalliance.com/image.ashx?i=1109945.pdf&fn=1542106829-004d6.pdf>. Accessed on 28 December, 2019.

65 See more about the “market share threshold” in other states in Gal, M. S., *op. cit.*, p. 66.

communications was enacted (hereinafter LEC).<sup>66</sup> According to LEC, “ensuring efficient and sustainable competition in the electronic communications market was envisaged as one of the main objectives”. Yet, this process of market liberalization of telecommunication sector was followed by numerous controversies.

Regardless of the principles anticipated in article 2 and 7 from LEC, the situation on the market did not change much. According to Telecommunications Agency’s annual report 2018 for RNM, telecommunications market from 281,2 million Euros, in the most part belongs to Macedonian Telecom (39,86%), than VIP (30,75%), Robi (15,17%), Multimedia Net (1,30%), Cable Net (1,27%), Inel International (1,26%), Neotel (1%), Cable Call 0,97, and the rest 8,42% from the market. Yet, this is a better situation on the market, than that before the enactment of the LEC. Nevertheless of the Macedonian Telecom domination on the market, there are other operators too, which was unimaginable before the market liberalization and penetration of ONE, VIP as operators.

In the last five (5) years, the most controversial and criticized decision of the Macedonian CPC, was the decision for allowing merging of VIP and ONE on Macedonian market. Although such a merger was conditioned with commitment of the operators (VIP and ONE) to secure entrance of a new (third) operator, for a period of at least 15 years. According to most experts, this case represents a distortion of competition, creation of a duopoly, and the jeopardy of rising market prices.<sup>67</sup> Today, the picture of the telecommunication market is far from free market, with high and loyal competition. The available data from 2018 present that in the category of internet services via mobile network, according to the number of subscribers, One and Vip has a market share of 50.86%, Macedonian Telecom has a market share of 47.28%, while Lycamobile has a market share of 1.86%. In all other categories (fixed and mobile telephony) the situation is similar.

Despite the many suggestions from EU about liberalization of the market of railway services, RNM did not took any steps in this order. Macedonian railways are still owned by the state and the conditions in this sector are at unenviable level.

The situation is similar on the Macedonian market of postal services. The market of postal services had to be liberalized in 2012. Yet, today, the state has a monopoly on this market and the quality of the services is on low level. Of the total of 41 million delivered postal items in 2017, Macedonian Post accounts for 38.4 million shipments, or 93.7% of the market cake.<sup>68</sup> The worst is the fact that liberalization of the market of postal services is postponed for one year. Summing up the situation in these key segments market, it is more than clear that the process of liberalization of the market of goods and services is difficult. For the most part, it is a result of the lack of will of the governing structures, based on different interests and monopoly preferences. RNM has much to do in order to make the competition better. Regardless of the achievements in the process of harmonization with EU law, the business and consumer sector still suffer from the incompetent competition policy, and lack of measures against unfair competition.

66 See: Law on electronic communications in Republic of North Macedonia, Official Gazette 39/2014.

67 See more about this: <https://prizma.mk/t-mobile-one-vip-konkurentsija-ili-duopol/>. Accessed on 29 December, 2019.

68 See more data about this at: <https://en.inbox7.mk/?p=2827>. Accessed on 28 December, 2019.

## REFERENCES

1. Colomo, P. I.; Govaere, I., *De minimis rule in competition law: An overview of EU and national case law*, 2015, pp. 1–13.
2. Jashari, A.; Metaj-Stojanova, A., *The Developments of the Competition Law in Macedonia (2014 until Today)*, Intellectual Property Rights, 2016, pp. 1–8.
3. Joaquín, A., *Presenting the State aid modernization initiative*, EP workshop: State Aid Modernization, Brussels EP workshop: State Aid Modernization, 2012, pp. 2–46.
4. Karova, R.; Botta, M., *Five Years enforcement of the Competition Law in Republic of Macedonia – Time for an Assessment*, Mediterranean Competition Bulletin, 2010, pp. 56–72.
5. Popović, D. V., *Institutional Design of State Aid Authorities in South East Europe: The Unfit Legal Transplant and Its Ramifications*, Competition Authorities in South Eastern Europe, 2018, pp. 63–77.
6. Themaat, W. V.; Reuder, B., *European competition law, a case commentary Cheltenham*; Northampton, MA: Edward Elgar, 2018, p. 78.
7. Ysewyn, J.; Boudet, J., *Leniency and competition law: An overview of EU and national case law*, e-Competitions, Antitrust Case Laws e-Bulletin, e-Competition Special Issue Leniency, 2018, pp. 1–22.

## LIST OF REGULATIONS AND ACTS

1. Annual reports of the Commission for protection of Competition law (2005–2017).
2. Constitution of the RNM, available from: <https://www.sobranie.mk/the-constituti> HYPERLINK “<https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspix> “on-of-the-republic-of-macedonia.nspix. Accessed on 5 March, 2019.
3. Criminal Code (“Official Gazette of the Republic of Macedonia”, nos. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 96/2015, 226/2015, 97/2017 and 248/2018).
4. Law for trade, “Official Gazette of the Republic of Macedonia”, nos. 16/2004, 128/2006, 63/2007, 88/2008, 159/2008, 20/2009, 99/2009, 105/2009, 115/2010, 158/2010, 36/2011, 53/2011, 148/2013, 164/2013, 97/2015, 129/2015, 53/2016 and 120/2018.
5. Law on Protection of Competition, “Official Gazette of the Republic of Macedonia” nos. 145/2010, 136/2011, 41/2014, 53/2016 and 83/2018.
6. Law on State Aid, “Official Gazette of the Republic of Macedonia” nos. 24/2003, 70/2006 and 55/2007.
7. Stabilization and Association agreement between the European Communities and their Member States and Republic of Macedonia, <https://cdn4eeas.fpfis.tech.ec.europa.eu/cdn/farfuture/Doff-DCjfiS2Cr3jkBhvUbfJN6VEXNo-U7tWuULX4Bc/mtime:1478596422/sites/eeas/files/saa03-01.en.pdf>. Accessed on 3 March, 2019.

## WEBSITE REFERENCES

1. Macedonia: Cartels & Leniency 2019. <https://iclg.com/practice-areas/cartels-and-lenien-cy-laws-and-regulations/macedonia>. Accessed on 10 March, 2019.
2. <https://link.springer.com/content/pdf/10.1007%2F978-3-319-76644-7.pdf>. Accessed on 10 March, 2019.
3. <https://civicamobilitas.mk/wp-content/uploads/2016/12/Fokus-Veles-Vodich-za-KZK.pdf>. Accessed on 10 May, 2019.
4. <https://www.sobranie.mk/content/republic-of-macedonia-report%2017.4.18.pdf>. Accessed on 20 April, 2019.
5. <https://vlada.mk/sites/default/files/dokumenti/strategii/strategija-za-msp.pdf>. Accessed on 1 May, 2019.
6. <http://europa.eu/rapid/press-release-MEMO-18-3405-en.htm>. Accessed on 1 May, 2019.
7. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R1218>. Accessed on 1 May, 2019.
8. <https://www.competitionpolicyinternational.com/wp-content/uploads/2019/01/AC-January-2019-2.pdf>. Accessed on 1 and 10 March, 2019.

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## ZAKON O ZAŠTITI TRŽIŠNOG NATJECANJA U REPUBLICI SJEVERNOJ MAKEDONIJI 20 godina Zakona o zaštiti tržišnog natjecanja u Republici Sjevernoj Makedoniji

### Sažetak

Predmet istraživanja ovoga članka zakoni su Republike Sjeverne Makedonije (u daljnjem tekstu RSM) koji dionicima na tržištu zabranjuju dogovaranje fiksnih cijena, podjelu tržišta ili bilo koju drugu vrstu izbjegavanja ili ugrožavanja tržišnog natjecanja, a koji su poznati još kao zakoni o zaštiti tržišnog natjecanja. U članku se istražuju uvjeti i izazovi provedbe makedonskih zakona o zaštiti tržišnog natjecanja, kao i uloga državnih (regulatornih) tijela, stupanj usklađenosti zakona o zaštiti tržišnog natjecanja sa zakonima EU-a o zaštiti tržišnog natjecanja, i napokon, stupanj učinkovitosti i korisnosti zakona o zaštiti tržišnog natjecanja za makedonsko gospodarstvo.

Velika su očekivanja od ispravno primijenjenih zakona o zaštiti tržišnog natjecanja. Donošenje zakona o zaštiti tržišnog natjecanja ključno je za dobrobit tržišnog gospodarstva. Prednosti koje ono uključuje su gospodarski rast, inovacije, niže cijene i veća kvaliteta roba i usluga. Donošenje zakona o zaštiti tržišnog natjecanja važno je od trenutka neovisnosti Republike Makedonije zbog obveza Makedonije da ispuni uvjete za pristupanje Europskoj uniji. Uz to, usvajanje zakona o zaštiti tržišnog natjecanja i podzakonskih akata o tržišnom natjecanju, pozitivno utječe na rad tijela za zaštitu konkurencije. Ono što je najvažnije, ovaj pravni režim konkurencije predstavlja osnovu za smanjenje zlouporabe i neučinkovitosti tijela državne vlasti. U zaključku članka navode se mišljenja i prijedlozi koje proizlaze iz provedenog istraživanja, a koji će biti od koristi mjerodavnom auditoriju.

U analizi predmeta ovoga članka primijenjene su analitičko-opisna metoda, usporedna metoda, metoda analize i sinteze te metoda indukcije i dedukcije.

*Ključne riječi:* antitrust, koncentracije, malo tržište, dominantni položaj, vodoravna i vertikalna ograničenja



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