Comparative overview of the Balkan competition regimes

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Establishment of the Balkan Competition Authorities

- Independent state authorities, empowered to protect the free competition on the markets

<table>
<thead>
<tr>
<th>Competition authority</th>
<th>Year of establishment</th>
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<tbody>
<tr>
<td>BUL</td>
<td>1991</td>
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<tr>
<td>CRO</td>
<td>1995</td>
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<tr>
<td>ALB</td>
<td>2004</td>
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<tr>
<td>BIH</td>
<td>2004</td>
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<tr>
<td>MKD</td>
<td>2005</td>
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<tr>
<td>SRB</td>
<td>2005</td>
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<td>KOS</td>
<td>2009</td>
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<td>MNE</td>
<td>2013</td>
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Composition of the Balkan Competition Authorities

Number of members of the collegiate body

- SRB: 5
- MKD: 5
- MNE: 2
- KOS: 5
- CRO: 5
- BIH: 6
- BUL: 7
- ALB: 5
Competence

- **Functions:**
  a. *Enforcement* of competition law:
     - a lot of similarities, however some *specificities* apply, as for example:
       ✓ *BUL* and *CRO* – competent to apply Art. 101 and 102 TFEU and to cooperate with the EC and the other NCAs;
       ✓ *SRB* – *keep records* of notified agreements between undertakings with a dominant position;
       ✓ *MNE* and *SRB* – keep records of notified concentrations;
       ✓ *KOS* – *propose methodological basis* to research market competition;
       ✓ *BIH* and *MNE* – to establish expert and advisory bodies;
  b. *Market supervision*;
  c. *Competition advocacy*;
  d. *International cooperation*;
  e. *Others*

- **Major reforms**
Safeguards for Independence of the competition authorities

- Financing of the CAs is provided by the state budget
- The CA of **MNE** takes part in the budgetary procedure
- Strict criteria for appointment and early termination of the mandate
- CAs render their decisions as a college of members
Areas of operation

- All SCF members have competences concerning:
  - Prohibited agreements;
  - Abuse of dominant position;
  - Control on concentrations.
Prohibited agreements

- provisions concerning prohibited agreements - identical to Art. 101 TFEU

- individual exemption – differences whether there is a notification regime
Abuse of dominant position

- provisions – mostly in line with the EU law
- presumption of dominance based on market share - difference
Priority setting

- all can initiate proceedings *ex officio*

- most have to deal with each case that is brought to their attention
Investigative powers

- all have the basic investigative powers
- the most significant difference - the right to inspect non-business premises
Requirements for an inspection

- different requirements for an inspection in business premises
- enough powers during inspection;
- seizure of electronic, digital and forensic evidence – possible in 4 countries.
Assistance by the police during inspections

- all are or have the possibility to be assisted by the police during inspections

![Pie chart showing that 98% of inspections do not require police assistance, and 2% do only if necessary.](image-url)
Procedural Fairness

1. Right of access to the case file
   ▪ In MNE and SRB, access may be exercised at any moment of the proceedings.

2. Confidential treatment of the information
   ▪ In CRO and SRB the law contains special provisions on legal professional privilege.

3. Right to reply to the Statement of Objections or equivalent
   ▪ In MKD the CA issues a preliminary SO and a final SO.
Resolution on cases

- **One institution** - responsible for investigation and deciding upon the case:
  - **case handlers** – responsible for carrying out the investigation, SO, proposal for a decision on substance;
  - **board of the authority** – responsible for decision-making upon the case

- In **MNE** – possibility for drafting a decision without prior investigation – *only in merger cases*

- **Types of decisions**
Commitment decisions

- ALB, BUL, CRO, MNE, MKD and SRB are empowered to adopt commitment decisions.

- Explicit legal provision, restricting the approval of commitments in case of **hard core restrictions** in BUL, CRO and MKD.

- **Main condition** – recovery of the competition in short terms.
Interim measures

- **All jurisdictions** are empowered to adopt interim measures

- **Condition** - risk of serious and irreparable damage to the competition

- **Time-limits** of their duration vary
Structural and Behavioral Remedies

- **ALB, BIH, BUL, CRO, MNE, MKD** and **SRB** are empowered to impose structural and behavioral remedies

- **general rule** – structural remedies shall be imposed only where there is no appropriate behavioral remedy

- In **ALB** - undertakings may participate in the process of their determination
Sanctions & Leniency

1. Sanctions for substantive infringements
   - In **MNE** the CA cannot directly impose sanction and instead should ask the court to do so.

2. Sanctions for procedural infringements
   - Single procedural fines
   - Periodic penalty payments – In **MNE** the CA is empowered to impose only periodic penalty payments.
3. **Setting the sanctions**
   - Calculation of the basic amount – In **ALB** the basic amount of the fine should not be less than the illegal gains from the infringement, when it is possible to calculate them. In **ALB, CRO, MKD** the basic amount is multiplied by the number of years of the infringement.

4. **Adjustment of the basic amount**
   - Aggravating circumstances
     - Affection the competition in neighboring market - **BG**
     - Whether the infringement was done intentionally - **SRB**
   - Mitigation circumstances
     - In **ALB** support by a public authority or legislation for anticompetitive behavior
     - In **ALB, CRO, SRB** infringement which is due to negligence
Sanctions & Leniency (3)

5. Legal maximum of the sanctions

- The turnover of the preceding financial year
- The income from the last three completed financial years – KOS
- Income from the financial year preceding the year when the infringement was committed – MNE
- In SRB the income to be considered is only the one realized on the territory of the country.
- In ALB and CRO the CAs can consider the inability of the undertaking to pay the fine.
Sanctions & Leniency (4)

6. Leniency policy

- All competition authorities have adopted leniency programs.
- In CRO a leniency applicant may continue its involvement in the cartel when it is reasonably necessary to preserve the secrecy of the unannounced inspection.
- In BG undertakings qualifying for a reduction of the fine, may see their fine decreased by up to 50%.
- In KOS submitting decisive for the case evidence may lead to paying the smallest fine.
- In MNE an undertaking may apply for full immunity if it reports and provide evidence of another cartel agreement without being involved in it.
Judicial review

- **General rule** - the final decisions of the competition authorities
  - In BUL and CRO – administrative acts of procedural nature, not related to the merits of the case
- **Competent court** - the national administrative courts
- **Effect of the appeal:**
  - usually it does not postpone the enforcement of the decision, except for BUL and MKD
- **Scope** of judicial review
Competition advocacy

- **All jurisdictions** are empowered to perform competition advocacy
- **Main tool**, used by all authorities – competition impact assessment of draft legal acts and legal acts in force and other regulations
  - **opinion** decisions, which are **not obligatory** for the competent state authority, however:
    - in **MKD** the state authority is obliged to inform the Commission of the reasons for non-acceptance of the opinion
- **Other tools:**
  - *Interaction with other state authorities;*
  - *Interaction with other stakeholders*
Sector Inquiries

- The CAs have the full investigative powers envisaged in their laws, except for the power to carry out inspections on spot.
- The sector inquiry may lead to a formal initiation of antitrust proceedings or provide recommendation to the competent state authorities.
- In ALB and SRB the CAs may invite interested parties to comment on the findings of the inquiry.
Publicity and transparency

- competition authorities tend to be transparent
- all publish their decisions
Actions for damages

- **Explicit provision** in the national legislation of ALB, BUL, BIH, CRO, MKD, MNE, SRB

- **Standing**: all natural and legal persons, including the indirect purchaser (ALB and BUL)

- **Effect of the competition authorities’ decisions**
Possible future projects

- Inspections on spot
- Procedural fairness
- Commitment decisions
- Structural and behavioural remedies
- Sanctions & Leniency