

SCF

Sofia Competition Forum

Comparative overview of the Balkan competition regimes

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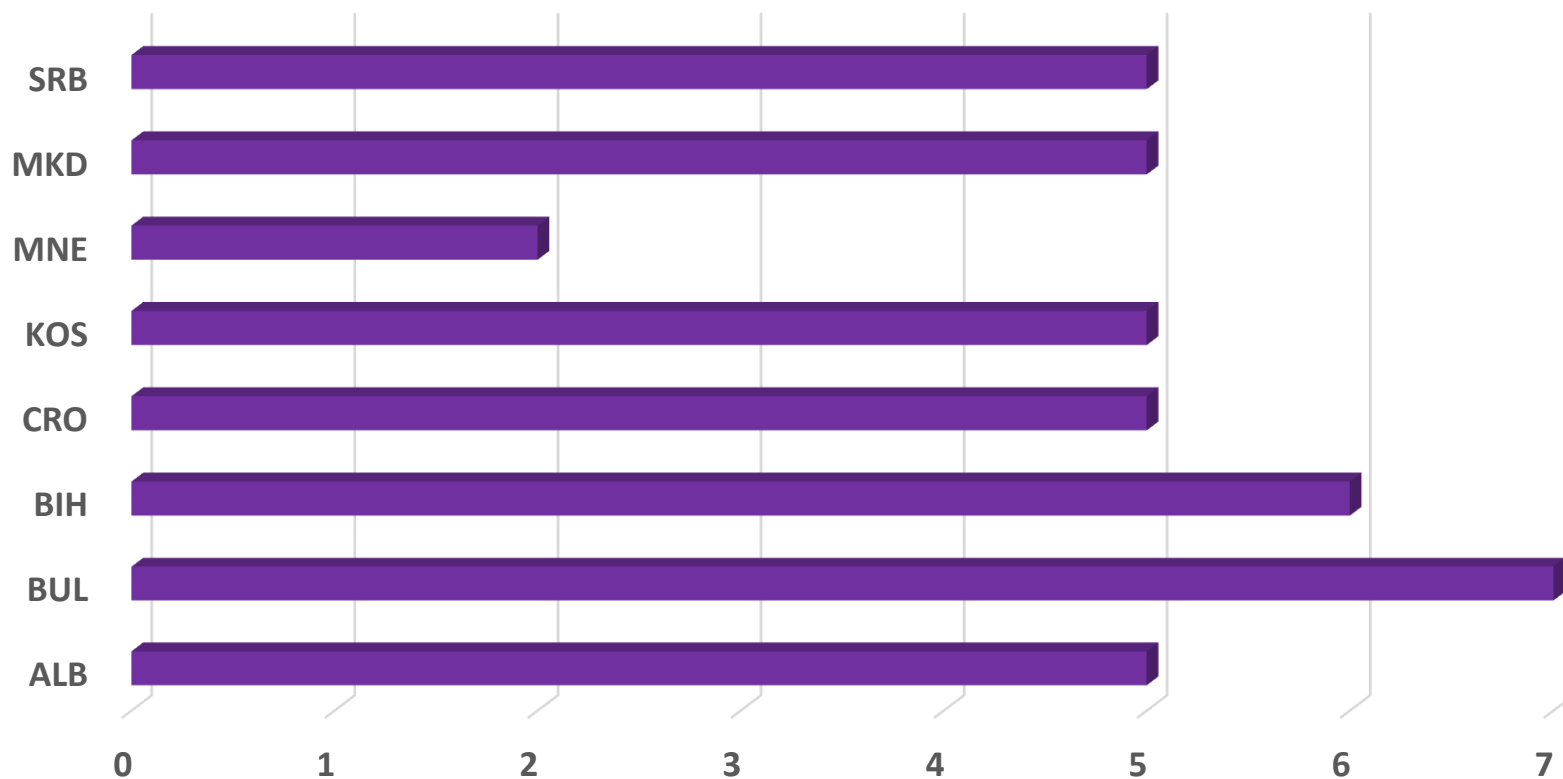
Establishment of the Balkan Competition Authorities

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

<i>Competition authority</i>	<i>Year of establishment</i>
BUL	1991
CRO	1995
ALB	2004
BIH	2004
MKD	2005
SRB	2005
KOS	2009
MNE	2013

Composition of the Balkan Competition Authorities

Number of members of the collegiate body



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;*

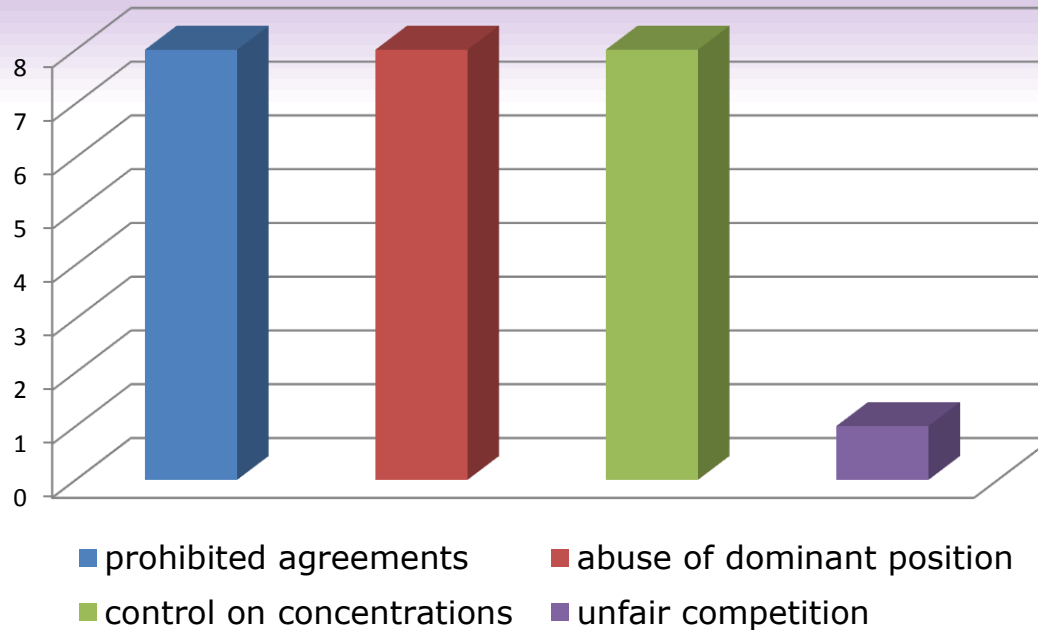
- e. *Others*

- **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

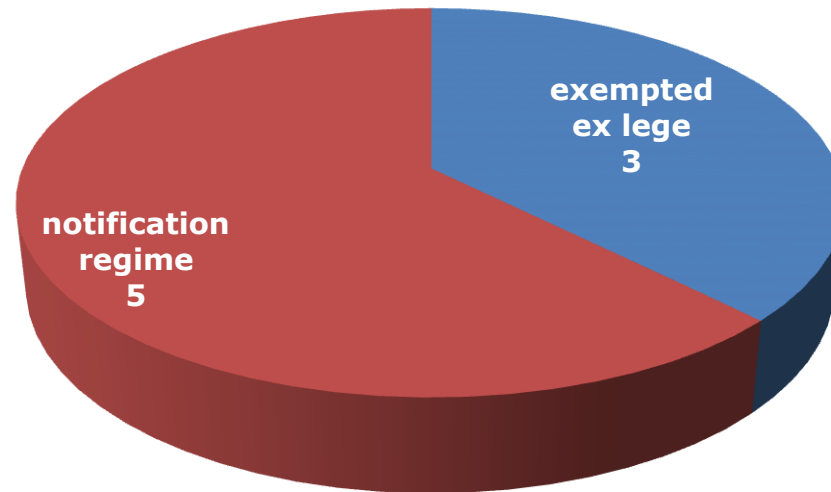
Areas of operation



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

Prohibited agreements

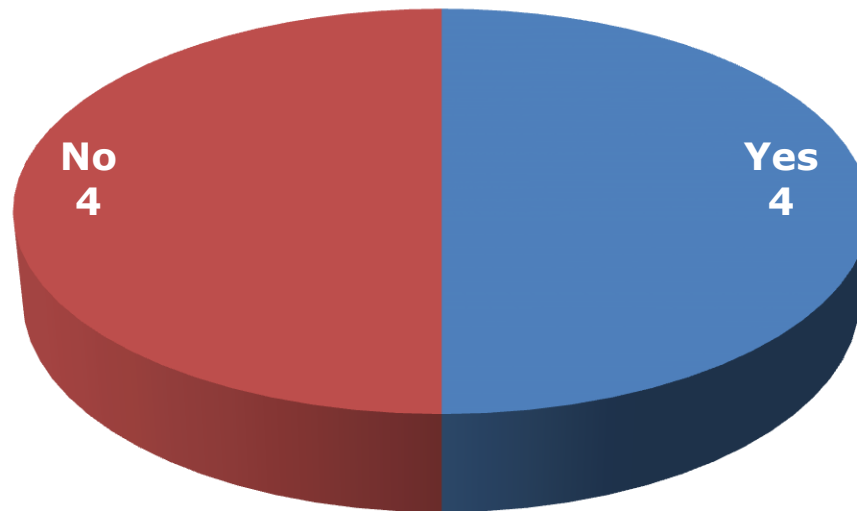
- provisions concerning prohibited agreements - identical to Art. 101 TFEU



- individual exemption – differences whether there is a notification regime

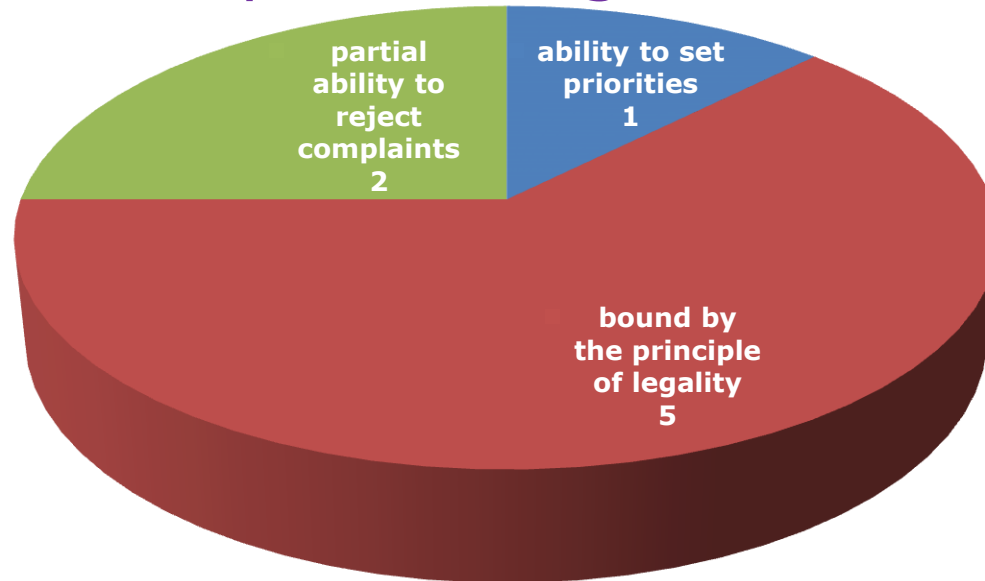
Abuse of dominant position

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



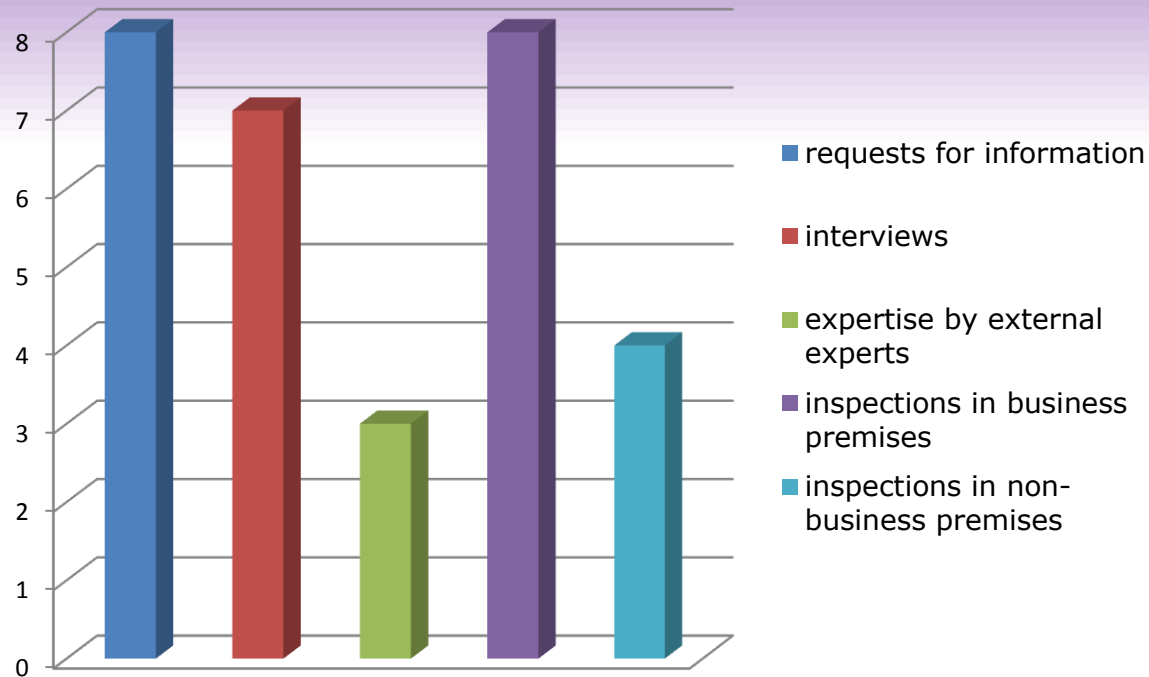
Priority setting

- all can initiate proceedings *ex officio*



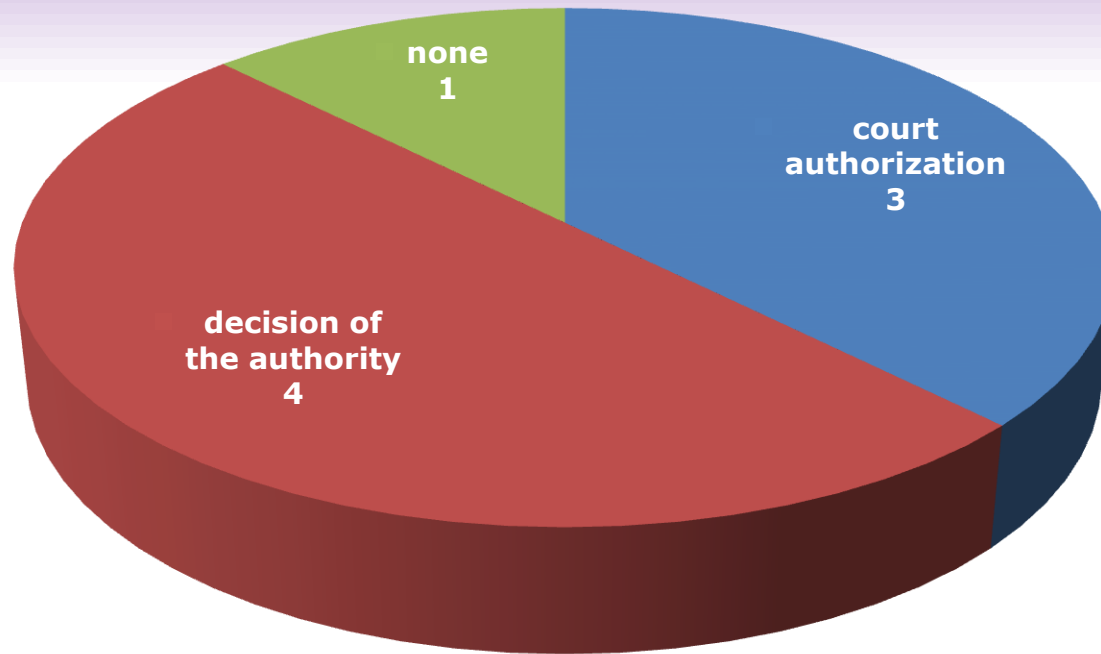
- most have to deal with each case that is brought to their attention

Investigative powers



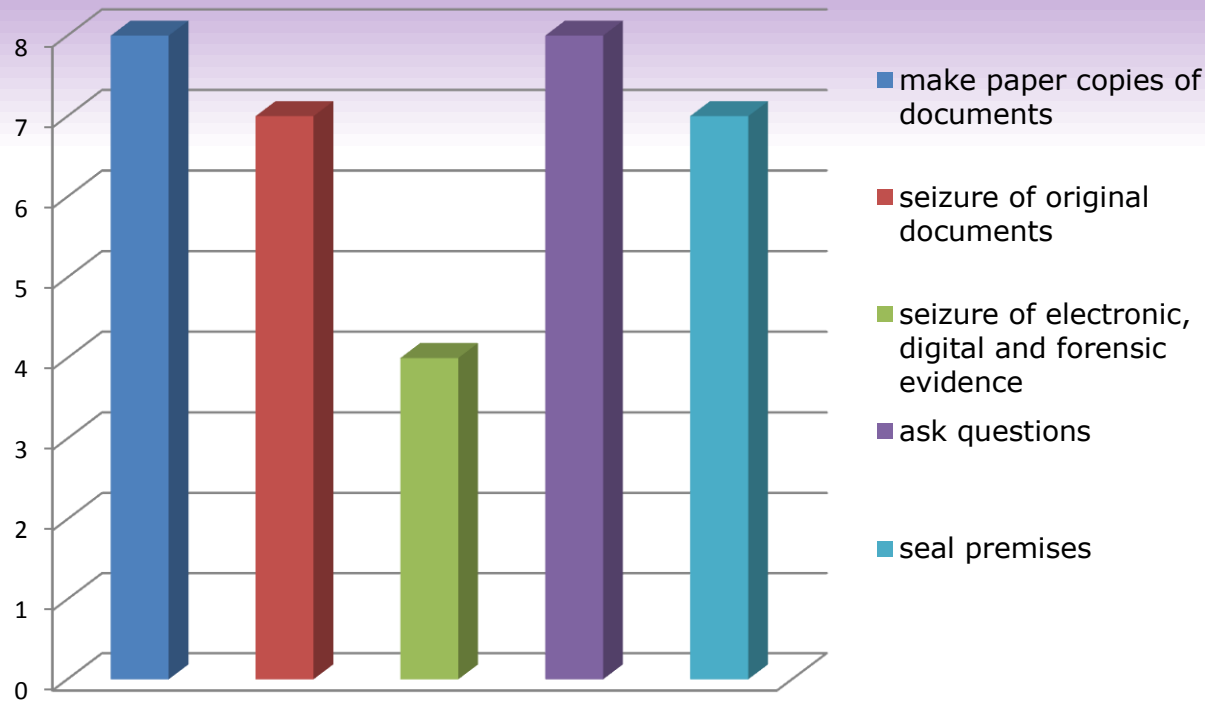
- all have the basic investigative powers
- the most significant difference - the right to inspect non-business premises

Requirements for an inspection



- different requirements for an inspection in business premises

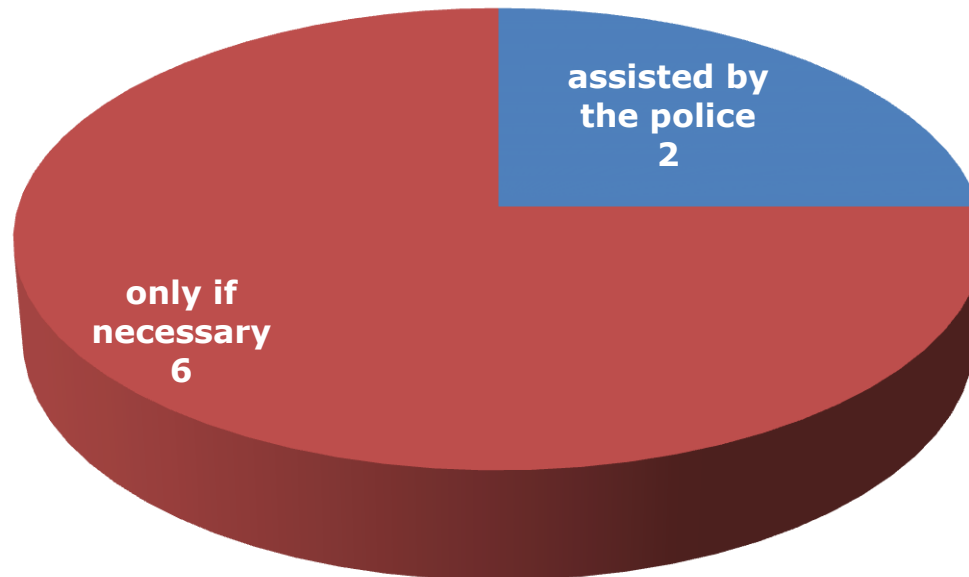
Powers during inspections



- 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



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

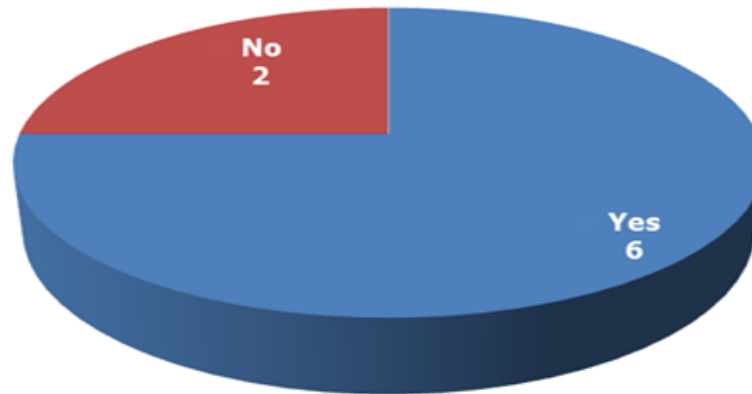
- In **MKD** the CA issues a preliminary SO and a final SO.

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

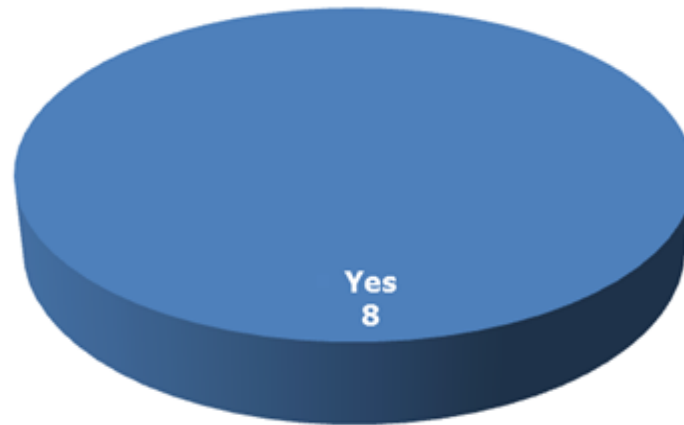
- *ALB, BUL, CRO, MNE, MKD* and *SRB* are empowered to adopt commitment decisions



- 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

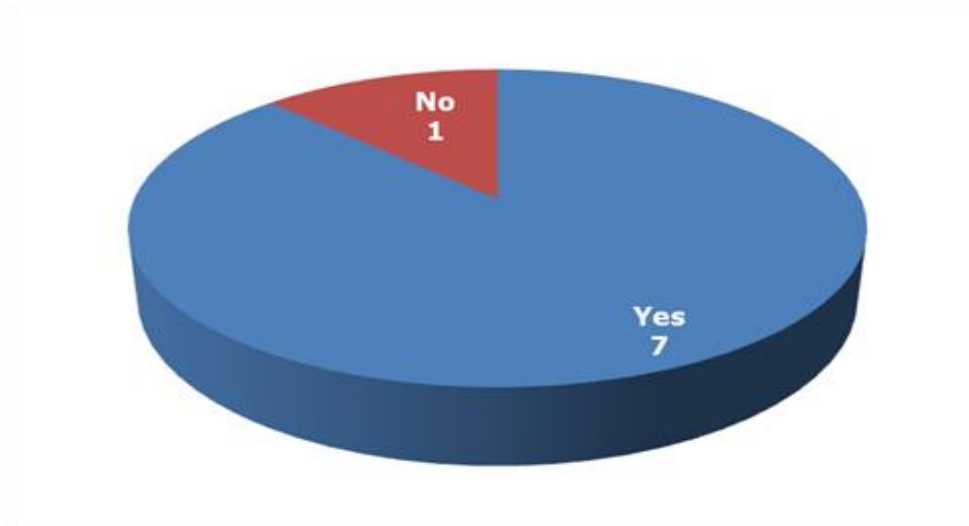
- **All jurisdictions** are empowered to adopt interim measures



- **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.

Sanctions & Leniency (2)

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

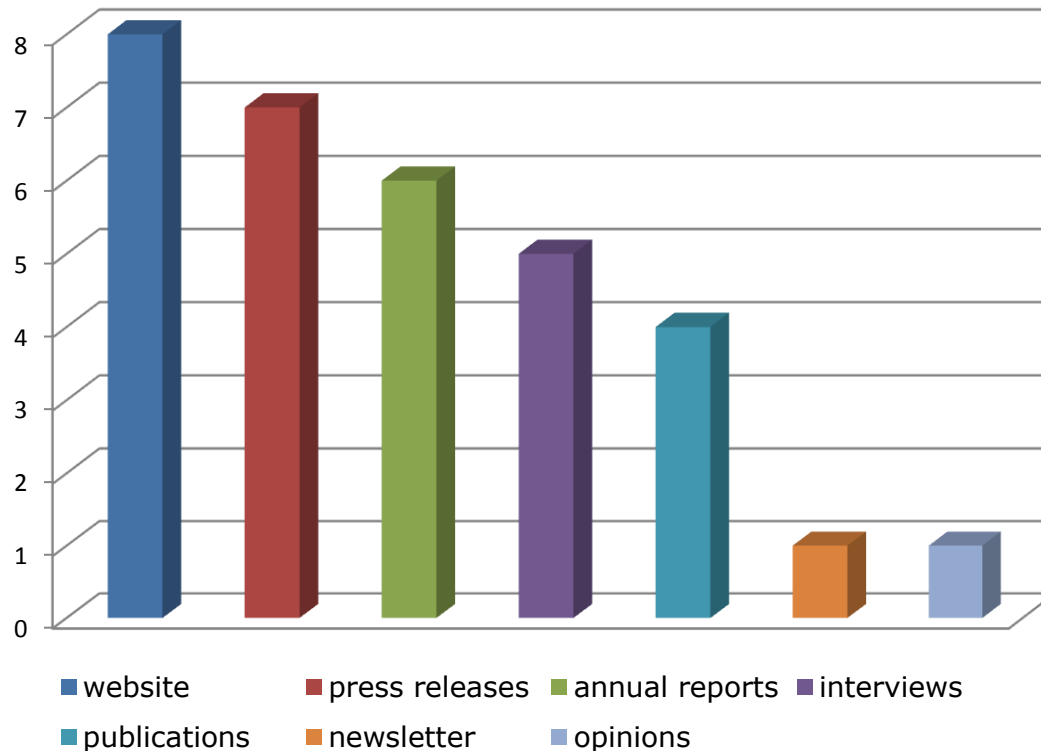
- **All jurisdictions** are empowered to perform competition advocacy
- **Main tool**, used by *all authorities* – competition impact assessment of draft legal acts and legal acts in force and other regulations
 - ✓ *opinion* decisions, which are *not obligatory* for the competent state authority, however:
 - 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

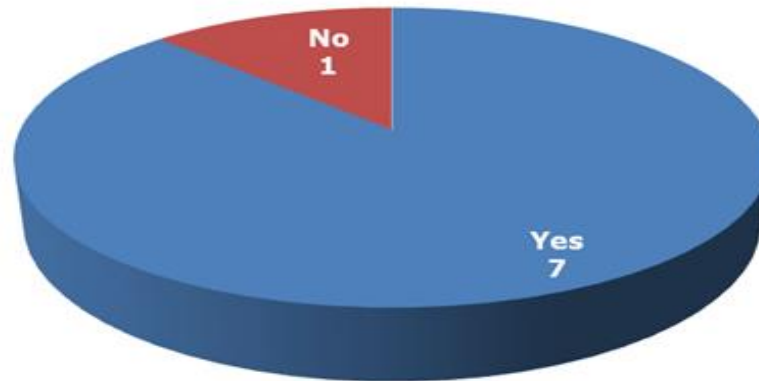
- competition authorities tend to be transparent



- 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