

LAW NO. 08/L-056

ON PROTECTION OF COMPETITION

The Assembly of the Republic of Kosovo;

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Approves:

LAW ON PROTECTION OF COMPETITION

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CHAPTER I GENERAL PROVISIONS

Article 1 Purpose

1. This law determines the rules and measures for the protection of free and effective competition on the market, the competencies and the organization of the Competition Authority of the Republic of Kosovo, as well as the procedures for the implementation of this law.

2. This law is partly in accordance with the following European Union acts:

2.1. Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty;

2.2. Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation);

2.3. Commission Regulation (EU) No 330/2010 of 20 April 2010 on application of Article 101 (3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices;

2.4. Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No.139/2004 of 20 January 2004 on the control of concentrations between undertakings.

Article 2 Scope

1. This law applies to all forms of prevention, restriction or distortion of competition by enterprises inside or outside the territory of the Republic of Kosovo, if their activity affects the market of the Republic of Kosovo.

2. Insofar as it does not interfere with duties provided to them by law or for which they have been established, this law applies to enterprises exercising economic activity and that according to the law:

- 2.1. perform services of general economic interest;
 - 2.2. have the character of a revenue-producing monopoly;
 - 2.3. have exclusive rights.
3. This law does not apply to the relationship between employers and employees and also to relationships that are the subject of a collective agreement between employers and trade unions.

Article 3 **Definitions**

1. Terms used in this law shall have the following meanings as set forth in this Article.
2. **Agreement** - agreements of any form concluded between enterprises, with or without binding force, decisions or recommendations of groups of enterprises, as well as concerted practices between enterprises operating at the same level or at different levels of the market.
3. **Concerted practices** - any activity concerning an informal cooperation between enterprises and which is not based on a formal decision or agreement.
4. **Authority** - the Competition Authority of the Republic of Kosovo, established by this Law.
5. **Public Body** - the central or local public administration body or the legal entity with public function.
6. **Commission** - the Authority's decision-making structure.
7. **Dominant position** - a position of economic strength enjoyed by an enterprise which enables it to prevent effective competition on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, purchasers and consumers.
8. **Relevant market** - the market of a certain product in a certain geographical area.
9. **Concentration** - the creation of a joint enterprise by independent enterprises that on the basis of sustainability perform all functions as independent economic entities.
10. **Enterprise** - any natural or legal person, private or public, engaged in economic activity, regardless of legal status and the way in which it is financed. A public body is called an enterprise engaged in economic activities.
11. **Associated Enterprise** - any enterprise that, due to mutual control or interdependence, are called sole proprietorships when calculating joint revenue and market share. Enterprises shall be called to be associated enterprises when one, directly or indirectly, in relation to the other:
 - 11.1. owns more than half of the capital or assets;
 - 11.2. has the power to exercise more than half of the voting rights;
 - 11.3. has the power to appoint over half of the members of the board of directors, management board or bodies that legally represent the enterprise;
 - 11.4. is entitled to manage the affairs of the enterprise; or
 - 11.5. includes economic entities which consist of a unitary organization of personal tangible and intangible elements which pursues a specific economic aim on a long-term basis and can contribute to the commission of an infringement of this Law.

12. **Economic Activity** - the purchase of goods or services only if the subsequent use of the goods or services purchased amounts to an economic activity.

13. **Sister Institution** - the competition body of another state or supranational organization, and their associations.

14. The use of one grammatical number or gender shall not exclude other grammatical numbers or genders, unless otherwise specified.

Article 4 **Relevant market**

1. The relevant market shall be defined as follows:

1.1. the relevant product market, i.e. the market including all goods or services which are regarded as interchangeable or substitutable by the consumer, by reason of their characteristics, prices and intended use;

1.2. the relevant geographic market shall mean the market which comprises the area in which the enterprises concerned are involved in the supply and demand of goods or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from the conditions in neighboring areas.

2. The Authority shall issue a sub-legal act to define the relevant market.

CHAPTER II **AGREEMENTS**

Article 5 **Prohibited agreements (cartels)**

1. All agreements aimed at preventing, restricting or distorting competition in the relevant market shall be prohibited, and in particular those that:

1.1. directly or indirectly impose purchase and sale prices or any other trading conditions;

1.2. limit or control production, market, technical development or investments;

1.3. share markets or sources of supply;

1.4. implement unequal conditions to the same transactions with other commercial enterprises, consequently placing them in an unfavorable competitive position;

1.5. condition the conclusion of the contract with the acceptance of additional obligations by contracting parties that by nature or commercial use are not related to the object of the contract.

2. Paragraph 1. of this Article does not apply to agreements whose entire duration meets all of the following conditions:

2.1. contribute to the improvement of the production or distribution of goods or to the promotion of technical or economic progress;

2.2. allow consumers a fair share of the benefit;

2.3. do not impose restrictions on the enterprise that are not necessary for the achievement of the objectives of this paragraph;

- 2.4. do not enable the enterprise to avoid competition for a significant part of the relevant products.
3. The enterprise or group of enterprises claiming compliance with paragraph 2. of this Article shall be borne the burden of evidence.
4. Agreements that are prohibited under paragraph 1. of this Article shall be null and void, unless they are excluded under paragraph 2. of this Article.

Article 6

Group exclusion

1. The rules of group exclusion shall determine the exclusion of the categories of agreements from the general prohibition according to paragraph 1. of Article 5 of this Law.
2. The Authority shall, by sub-legal act, determine the categories of agreements and the circumstances in which the agreement meets the conditions from paragraph 2. of Article 5 of this Law. The Authority shall notify the relevant parliamentary committee fifteen (15) days before issuing the sub-legal act.
3. Group exclusion rules shall define the exclusion of the following categories:
- 3.1. agreements between enterprises not operating at the same level of production or distribution -vertical agreements- and in particular exclusive distribution agreements, selective distribution agreements, exclusive purchase and exclusivity agreements;
 - 3.2. agreements between enterprises operating at the same level of production or distribution -horizontal agreements- and in particular research, development and specialization agreements;
 - 3.3. agreements for transfer of technology;
 - 3.4. agreements for the distribution and servicing of vehicles;
 - 3.5. insurance agreements;
 - 3.6. agreements between enterprises in the transport sector.
4. Group exclusion rules shall define in particular:
- 4.1. the conditions that the agreements should contain;
 - 4.2. the restrictions or conditions that such agreements should not contain.
5. Group exemption is allowed only insofar as the effects of the agreement, individually or together with similar agreements in the relevant market, are in accordance with paragraph 2. of Article 5 of this Law.
6. The Authority may initiate ex-officio proceedings to assess the effects of agreements that meet the conditions of group exclusion. If it finds that the effects of the agreement are in contradiction with paragraph 2. of Article 5 of this Law, the Authority with a decision shall withdraw the agreement from the group exclusion.

Article 7

Agreements of minor importance

1. Paragraph 1. of Article 5 of this Law shall not apply to agreements of minor importance if both the parties to the agreement and the enterprises they control have an insignificant market

position and their common market share does not exceed:

- 1.1. ten percent (10%), if the parties operate at the same level of the production and distribution chain -horizontal agreement;
 - 1.2. fifteen percent (15%), if the parties operate at different levels of the production and distribution chain -vertical agreement;
 - 1.3. ten percent (10%), if the agreement has the characteristics of horizontal and vertical agreements or it is difficult to determine whether the agreement is vertical or horizontal;
 - 1.4. thirty percent (30%), if the agreements between the different participants have a significant effect on the market and the individual participation of each participant does not exceed five percent (5%) of each individual market where the effects of the agreement appear.
2. Paragraph 1. of this Article shall not apply to agreements aimed at setting prices, limiting production or share the market and supply.
3. The Authority shall issue a sub-legal act for the determination of agreements of minor importance.

CHAPTER III DOMINANT POSITION

Article 8 Determination of the dominant position

1. The enterprise shall be deemed to have a dominant position if, due to the power in the market, it can operate significantly independent of current or potential competitors, consumers, purchasers or suppliers in the relevant market. The dominant position is especially occupied by the enterprise that:
- 1.1. has no significant competitors in the relevant market; or
 - 1.2. has substantial power in the relevant market as compared to current or potential competitors, especially concerning:
 - 1.2.1. the participation and position of the enterprise in the relevant market;
 - 1.2.2. the financial strength of the enterprise;
 - 1.2.3. the enterprise's access to supplies or markets;
 - 1.2.4. the connections of the enterprise with other enterprises;
 - 1.2.5. the legal or factual barriers of entrance of other enterprises in the market;
 - 1.2.6. the ability to impose market conditions on its supply or demand; or
 - 1.2.7. the ability to exclude competitors from the market by orienting them to other enterprises.
2. Unless proven otherwise, the enterprise with a share of forty percent (40%) or more in the relevant market is considered to have a dominant position. The enterprise can prove that it does not have a dominant position based on the factors provided for in sub-paragraph 1.2 of this Article.

3. Legally independent economic enterprises may have a dominant position if:
 - 3.1. their joint market share exceeds sixty percent (60%);
 - 3.2. they operate significantly independently of competitors, consumers, purchasers or suppliers; and
 - 3.3. they present or operate together in the relevant market.
4. The Authority shall have the burden of proving the dominant position of:
 - 4.1. the enterprise with individual share under forty percent (40%) of the relevant market;
 - 4.2. the group of enterprises with joint share under sixty percent (60%) of the relevant market.
5. The authority shall issue sub-legal act to determine the dominant position.

Article 9 **Misuse of dominant position**

1. Misuse of a dominant position is prohibited.
2. The enterprise or group of enterprises shall be considered to misuse its dominant position if:
 - 2.1. directly or indirectly impose an unfair purchase or sale price or other unfair trading conditions;
 - 2.2. restrict production, markets or technological development to the detriment of consumers;
 - 2.3. applies different conditions for equivalent transactions with other enterprises, putting them at a competitive disadvantage;
 - 2.4. conditions the conclusion of the contract with additional obligations that by nature or commercial use are not related to the object of the contract;
 - 2.5. impose prices or other conditions that have the purpose or effect of preventing the entry into the relevant market or the removal from the relevant market of specific competitors or their product;
 - 2.6. deny the other enterprise to access in return for adequate remuneration in the network or infrastructure, making it impossible for it to act as a competitor.
3. The Authority shall issue a sub-legal act for misuse of dominant position.

Article 10 **Ascertaining misuse of a dominant position**

1. Based on Articles 8 and 9 of this Law, the Authority with a decision regarding the misuse of a dominant position shall:
 - 1.1. ascertain the existence of a dominant position, the action by which the enterprise or group of enterprises violates competition in the market, as well as the duration of the action;
 - 1.2. prohibit the enterprise or group of enterprises from pursuing an action that violates competition;

- 1.3. determine the measures, conditions and deadlines for avoiding the harmful effects of actions that violate competition;
 - 1.4. impose a fine in accordance with this Law.
2. The measures from sub-paragraph 1.3. of this Article shall include the enterprise surveillance measure and the structural measure. The structural measure may be imposed only if the enterprise surveillance measure is ineffective or more severe than the structural measure.

CHAPTER IV CONCENTRATIONS

Article 11 Concentration

1. Concentration is presented by the steady change of control of enterprises when independent enterprises join together or parts thereof; one or more enterprises acquire direct or indirect control over all or part of other enterprises, in particular by earning shares, by gaining the majority of voting rights and in other ways provided by the legislation in force.
2. The acquisition of control, according to paragraph 1. of this Article, shall be made by the transfer of rights, by contract or in another way that enables the enterprises, alone or together, to exercise decisive influence over other enterprises on a permanent basis.
3. The acquisition of control shall be made especially with:
 - 3.1. transfer of ownership or the right to use in whole or in part the assets of enterprises;
 - 3.2. transfer of rights or contracts that have a decisive influence on the composition, voting or decisions of the bodies of enterprises.
4. According to this Article, the following are not considered as concentrations of enterprises:
 - 4.1. purchase for resale of shares of the enterprise by the financial institution, credit institution or insurance institution, insofar as the buyer does not exercise the voting right for the shares and sells the shares within twelve (12) months - the buyer may request from the Authority an additional term of twelve (12) months, if it proves that it could not sell the shares;
 - 4.2. purchase of shares due to internal restructuring of the enterprise and in connection with the acquisition of joint control, merger or transfer of ownership;
 - 4.3. transfer of control of the enterprise to the bankrupt administrator or liquidator, in accordance with the law in force;
 - 4.4. establishment of a joint venture by independent enterprises that on a steady basis perform all functions as independent economic entities, where one enterprise has the purpose or effect of coordinating the competitive behavior of other enterprises and the coordination is assessed in accordance with Chapter II of this Law.
5. The Authority shall determine the way of submitting the request for permitting the concentration and the criteria for ascertaining the concentration with a sub-legal act.

Article 12 Prohibited concentrations

Concentrations that could significantly distort effective competition shall be prohibited, especially if such concentration results in the creation or strengthening of a dominant position.

Article 13

Obligation to apply for permitting the concentration

1. Concentration participants should ask the Authority in advance to allow them to achieve the intended concentration if:

1.1. the participants in the concentration have a total turnover of over twenty (20) million Euros in the international market and one concentration participant has a turnover of over one (1) million Euros in the domestic market; or

1.2. at least two (2) concentration participants have over three (3) million Euros turnover in the domestic market.

2. The turnover of concentration participants is calculated according to the financial reports of the financial year that precedes the year of concentration. If the Applicants have not managed to close the annual financial reports before submitting the application for permitting the concentration, the turnover of the participants shall be calculated according to the financial reports of the last financial year for which the financial reports were closed.

3. If the concentration participant belongs to a group of associated enterprises, the revenues of all enterprises of the group shall be taken into account in the turnover. Revenues from the sale of goods or services within the group are not taken into account.

4. If the concentration is related to the partial acquisition of the enterprise according to paragraph 1. of Article 11 of this Law, only the turnover of the parts that are the object of the concentration is taken into account.

5. The agreements from paragraph 4. of this Article that are concluded within a two-year period between the same enterprises shall be treated as a concentration. Concentration shall start on the date of the last transaction.

6. The Authority shall review the applications for authorization of concentration only when submitted in accordance with paragraph 1. of this Article.

Article 14

Concentration of financial institutions

1. If the concentration participant is a financial institution, in terms of the turnover provided in Article 13 of this Law, the total revenues from the operating activities of the financial year preceding the year of concentration are taken into account. The financial institution shall include the insurance and reinsurance company.

2. The revenues of the financial institution are determined after deducting taxes that are directly related to the following elements:

2.1. interest income;

2.2. income from shares, securities with variable interest rate, as well as from interests of equity participation;

2.3. revenues from receivable commissions;

2.4. net profit from financial operations;

2.5. revenues from other activities.

3. Revenues of the insurance and reinsurance company shall be determined by the gross value of the signed premiums, which include the amounts received and receivable according to the

insurance contracts issued by the company or on its behalf, including reinsurance premiums, after deduction of taxes according to paragraph 2. of this Article.

4. Participation in the market by percentage for concentrated participant - financial institutions, shall be calculated based on the overall assets of the concentrated participants -financial institutions.

Article 15 **Application for permitting the concentration**

1. The application for permitting the concentration shall be submitted by the enterprise that acquires control over the other. In other cases, the application shall be submitted by all concentration participants, by mutual agreement.

2. The application for permitting the concentration shall be submitted upon conclusion of the contract with which the control of the enterprise is acquired or after the concentration is made public, and before the concentration is carried out.

3. The concentration participants may submit an application for permitting the concentration before concluding the contract or making the concentration public, if they prove that the contract will be concluded or the concentration will be made public.

4. Concentration may be carried out after the deadline provided in Article 18 of this Law.

5. At the request of the participants, for justifiable reasons, the Authority may allow certain actions for carrying out the concentration before the deadline.

6. In reviewing the application for a concentration, the Authority shall take into account all the circumstances of the case, in particular the nature and severity of the damage which may be caused to the participants in the concentration or to third parties, as well as the effects of competition which may arise from the concentration.

Article 16 **Content of the application for permitting the concentration**

1. The following shall be attached to the application for permitting concentration:

1.1. the contract or other document proving the legal basis of the concentration, in original or certified copy and certified translation into the official language;

1.2. the annual financial report of the participants in the concentration for the previous financial year;

1.3. documents and other data provided by the sub-legal act from paragraph 4. of Article 11 of this Law.

2. The Authority may exempt the Applicant from the submission of documents or data from subparagraph 1.3 of this Article, if the Applicant proves that the documents or data are not necessary.

3. The applicant for a concentration permit must state whether it is obliged to notify the authority of another State of the concentration assessment or that such notification has been submitted.

4. Notwithstanding paragraph 1. of this Article, a short form application for permitting concentration shall be submitted in cases where the Authority conducts a short form concentration assessment procedure. The short form procedure shall take place especially in the following cases:

4.1. the participants in the concentration do not operate in the same relevant geographical and product market and there is no horizontal agreement between the participants;

- 4.2. no participant in the concentration operates in the upstream or downstream market in which the other participant operates and there is no vertical agreement between the participants;
- 4.3. the participants in the concentration operate in the same relevant geographical and product market, but their joint shares do not exceed fifteen percent (15%) of the relevant market;
- 4.4. the participant in the concentration operates in the market upstream or downstream of the market in which the other participant operates and there is a vertical relationship between the participants, but their joint shares do not exceed twenty-five percent (25%) at each market level;
- 4.5. the participant of the concentration gains sole control of the enterprise over which it already has joint control;
- 4.6. enterprises acquire control of the joint venture, which does not perform and is not expected to perform activities within a reasonable time in the Republic of Kosovo.
5. The Authority may reject the short procedure referred to in paragraph 4. of this Article and order the submission of a full application under paragraph 1. of this Article, if there are indications that the intended concentration may significantly impede effective competition.
6. The full application for a concentration permit shall be deemed to have been filed on the day when the Authority receives all documents and records referred to in paragraphs 1., 2. and 3. of this Article. The Authority shall issue a certificate to the Applicant with the submission of the Application.

Article 17 **Concentration assessment procedure**

1. The Authority shall initiate the concentration assessment procedure after receiving the full application according to paragraph 6. of Article 16 of this Law.
2. The applicant for the concentration permit has the burden of proving the beneficial effects of the concentration. The authority may require the applicant to submit the necessary documents and data for the assessment of the concentration.
3. In accordance with sub-paragraphs 1.1. and 1.2. of Article 29 of this Law, the Authority shall publish on its website a public announcement of the intended concentration. The public announcement shall include:
- 3.1. the names of the participants in the concentration and the type of activities performed by the participants in the concentration in the Republic of Kosovo;
- 3.2. the nature of the concentration;
- 3.3. call to enterprises, professional associations, employers' associations, consumer protection associations and other subjects who are not parties to the procedure, respectively competitors of the participants in the concentration, who are presumed to have knowledge of the relevant market reports, to provide remarks, thoughts and opinions about the possible effects of concentration;
- 3.4. the deadline for submission of remarks, thoughts and opinions, which may not be longer than fifteen (15) days.
4. If, during the assessment of the concentration, the controlling enterprise submits a new application for the permit of the concentration, the Authority may develop a joint application procedure if it

deems it appropriate and economically reasonable.

5. The deadline for the assessment of the concentration shall start from the issuance of the certificate of submission of the application for permitting the concentration according to paragraph 6. of Article 16 of this Law.

6. The authority shall determine the manner of assessment of the concentration with a sub-legal act.

Article 18 **Certification and decision for permitting the concentration**

1. Concentration shall be considered permissible if the Authority:

1.1. based on the documents and data submitted by the Applicant or on the knowledge it possesses, considers that the intended concentration is not prohibited by Article 12 of this Law; and

1.2. does not draw conclusions about the initiation of the concentration assessment procedure within thirty (30) days after receiving the full application for permitting the concentration.

2. The participant of concentration referred to in paragraph 1. of this Article may request from the Authority a certificate for permitting the concentration. The Authority shall issue the certificate within seven (7) days.

3. The Authority shall conclude the initiation of the concentration assessment procedure if it considers that the concentration may impede effective competition in the relevant market, in particular by establishing or strengthening a dominant position. The conclusion shall be based on the documents and data submitted by the Applicant and on the knowledge possessed by the Authority.

4. During the concentration assessment procedure, the Authority shall without delay notify the Applicant of the concentration permission when it finds that the concentration may be permitted only by setting measures, conditions and deadlines for the avoidance of the harmful effects of the concentration. The Applicant has thirty (30) days to propose appropriate measures, conditions and deadlines.

5. The measures, conditions and deadlines from paragraph 4. of this Article may be proposed earlier, even in the initial application for concentration.

6. The Authority may approve, in whole or in part, the proposed measures, conditions and deadlines if it finds that they are sufficient to prevent the obstruction of effective competition in the relevant market.

7. If the Authority does not approve the proposed measures, conditions and deadlines, the Authority may determine them itself.

8. Within sixty (60) days after the conclusion for initiating the procedure according to paragraph 3. of this Article, the Authority with a decision shall:

8.1. announce the concentration permitted;

8.2. declare the concentration permitted if the measures, conditions and deadlines approved or set by the Authority are applied; or

8.3. declare the concentration prohibited.

9. In the case from sub-paragraph 8.2. of this Article, the participants in the concentration may start it from the date of the decision.

10. If the participants in the concentration do not implement the measures or conditions within the deadlines set by the decision, the Authority shall repeal or change the decision according to Article 19 of this Law.

11. The deadline referred to in paragraph 8. of this Article shall be suspended if the participant in the concentration does not submit in full the documents and data required by the Authority according to paragraph 2. of Article 17 of this Law. The deadline shall be suspended from the first working day as the submission deadline expires until the submission of documents and data.

Article 19

Repeal and change of the decision for permitting the concentration

1. The Authority may, ex officio or at the request of the participant in the concentration, repeal the decision to permit the concentration when:

1.1. the participant in the concentration provided inaccurate or false information regarding the crucial facts; or

1.2. the participant in the concentration does not apply the measures or conditions within the deadlines set by the decision of the Authority.

2. In the cases from sub-paragraph 1.1. of this Article, the Authority shall repeal the decision in accordance with Article 12 of this Law and sets measures, conditions and deadlines for resetting effective competition in the market.

3. The Authority may, ex officio or at the request of the participant in the concentration, change the decision to permit the concentration if the concentration participant is unable to implement the measures or conditions within the specified deadlines due to unforeseen and unavoidable circumstances beyond its control of the concentration. The changed decision shall set new measures, conditions and deadlines.

Article 20

Measures after the illegal concentration

1. The Authority shall ex officio determine the measures, conditions and deadlines for the resetting the effective competition in the relevant market by a decision, when the concentration is carried out:

1.1. contrary to the decision of the Authority announcing the concentration as prohibited, according to sub-paragraph 8.3. of Article 18 of this Law;

1.2. without submitting an application for permitting concentration according to Article 15 of this Law.

2. The measures specified in paragraph 1. of this Article may be behavioral measures or structural measures.

3. With the decision referred to in paragraph 1. of this Article, the Authority can:

3.1. order the sale or transfer of acquired shares;

3.2. prohibit or restrict the exercise of voting rights in the participating enterprises in the concentration;

3.3. order the termination of the joint venture;

3.4. prohibit other forms of gaining control under Article 11 of this Law that lead to illegal concentration;

3.5. impose a fine in accordance with this law.

CHAPTER V THE AUTHORITY

Article 21 The Authority

1. The Authority is an independent agency, accountable for its duties to the Assembly of the Republic of Kosovo.
2. The Authority has its headquarter in Prishtina.
3. Any political, public or private interference that may impair the independence or impartiality of the Authority is prohibited.
4. The organization and functioning of the Authority are regulated by this Law and by the statute approved by the Commission.
5. From the budget of the state shall be allocated sufficient funds for the needs of the Authority, including the employment of qualified professionals and the purchase of goods and services necessary for work.
6. Administrative fees and fines collected by the Authority are deposited to the budget of the state.

Article 22 The Commission

1. The Commission is a collegial body that manages the work of the Authority.
2. The commission is composed of five (5) members, including the President and the Vice President of the Authority appointed by the Assembly of the Republic of Kosovo.
3. The Government, after holding a public competition, proposes the new Commission to the Assembly six (6) months before the end of the mandate of the Commission or immediately after the position of the member of the Commission is vacant.
4. The mandate of the member of the Commission lasts five (5) years.
5. A member of the Commission may be reappointed only once.

Article 23 Conditions for being a member of the Commission

1. Member of the Commission shall be appointed a person fulfilling the following conditions:
 - 1.1. to be a citizen of the Republic of Kosovo;
 - 1.2. to have high qualifications in law, economics or equivalent field; and
 - 1.3. to have five (5) years of professional work experience.
2. A person cannot be member of the Commission if he/she:
 - 2.1. within the last two (2) years has been a member of the steering board or management of an enterprise or group of enterprises;
 - 2.2. in the last five (5) years has been sentenced by a final decision for a criminal offense: of official corruption, abuse of official duty, economic crimes and conflict of interest.

3. During the exercise of mandate, a member of the Commission may not:

- 3.1. have a property interest, employment relationship or contractual relationship with an enterprise or group of enterprises;
- 3.2. be a public official;
- 3.3. be involved in political activities.

Article 24 **Dismissal of the Commission Members**

1. The Assembly or the Government shall propose the dismissal of a member of the Commission if that member is:

- 1.1. not in a state of health to perform duties for more than three (3) months and does not provide medical evidence that he will be able to perform duties during the next three (3) months;
- 1.2. violates Article 23 of this Law;
- 1.3. involved in a conflict of interest in contradiction to Article 31 of this Law or other applicable legislation; or
- 1.4. in serious disregard of the duty of the Commission's member.

2. According to paragraph 1. of this Article, the commission's member shall be dismissed by the Assembly with a majority votes of all deputies.

Article 25 **President of the Authority**

1. The President is the head of the Authority and has the following responsibilities:

- 1.1. represents the Authority;
- 1.2. organizes and leads the activity of the Authority;
- 1.3. prepares, invokes and leads meetings of the Commission and coordinates work between members of the Commission;
- 1.4. signs acts of the Commission, with the exception of decisions that are signed by all members present at the meeting;
- 1.5. proposes to the commission appointment and dismissal of the General Director, in accordance with the applicable legislation, statute and other acts of the Authority;
- 1.6. is responsible for the professional work of the authority.

2. In the event of his absence, the President is replaced by the vice-president or the authorized person from the Commission.

Article 26 **Responsibilities of the Commission**

1. The Commission has the following responsibilities:

- 1.1. proposes and endorses sub-legal acts in accordance with this law;

- 1.2. decides to initiate procedures for investigating competition disturbances;
 - 1.3. impose fines for violation of this law;
 - 1.4. issues a decision for allowing concertation;
 - 1.5. defines conditions, measures, and deadlines for performing concentration;
 - 1.6. finalizes procedures and defines measures, conditions and deadlines for reestablishment of effective competition of the market;
 - 1.7. requests from the court to authorize unexpected controls according to Articles 40, 41, 42, 43 and 44 of this Law;
 - 1.8. informs and increases public awareness about market competition;
 - 1.9. defines methodological principles for investigating market competition;
 - 1.10. defines rules and measures for protection of competition;
 - 1.11. provides professional opinions and recommendations under Article 32 of this Law;
 - 1.12. cooperates with sister institutions regarding the scope of the Authority defined under this law and international obligations of the Republic of Kosovo;
 - 1.13. approves the annual work report of the authority and presents the same to the Assembly of the Republic by 31st of March of the following year;
 - 1.14. performs market studies and collects data pursuant to this law.
2. The Commission sets implementation priorities based on the sensitivity and importance of cases.

Article 27 **Commission meetings and decision-making**

1. The Commission has a quorum for decision-making when there are at least three (3) members present at the meeting.
2. The Commission makes a decision when at least three (3) members vote “pro”.
3. A member of the commission voting against, may give a written reason for the vote “against”.
4. A member of the Commission may not “abstain”, but may however be excluded under Article 53 of this Law.
5. A member of the Commission should behave in a manner that does not violate the reputation of the Authority during decision-making.

Article 28 **Secretariat**

1. The organization and functioning of the Secretariat is determined by this law, the Law on Organization and Functioning of State Administration and Independent Agencies, Law on Public Officials and the statute of the Authority.
2. Secretariat is led by the General Director.

3. Employees of the Secretariat have the status of civil employees.
4. The Secretariat performs administrative investigations under this Law, the Law on General Administrative Procedure and other applicable legislation.
5. Salaries, risk allowances and other allowances of the Secretariat employees are based on special working conditions and are paid according to the applicable legislation.

Article 29 **Responsibilities of the Secretariat**

1. For implementation of this law, the Secretariat has the following responsibilities:
 - 1.1. monitors and analyses market conditions for development of free and effective competition;
 - 1.2. performs investigations in accordance with the Law on General Administrative Procedure, this law and other applicable legislation;
 - 1.3. prepares investigation reports and submits them to the Commission for decision-making;
 - 1.4. ensures publication of decisions and other publishable acts, bylaws approved under this law, and the annual work report of the Authority;
 - 1.5. ensures implementation of the decisions of the Commission;
 - 1.6. performs other tasks provided by the statute of the Authority.

Article 30 **General Director**

1. The General Director is accountable to the Commission for his work and that of the Secretariat.
2. The General Director has the following responsibilities:
 - 2.1. ensures development of procedures and cases according to this law;
 - 2.2. ensures drafting and submission of investigation report for decision-making to the Commission;
 - 2.3. coordinates work of the Secretariat;
 - 2.4. drafts the annual work report of the Authority.

Article 31 **Prevention of the Conflict of interest**

1. The official of the Authority may be a member or participant in scientific institute or other association that does not violate the official's impartiality in the performance of his/her duties.
2. The official of the Authority may not be a member of the Board of Directors or the administration of the enterprise or association or group of interest that may violate impartiality of the official in the performance of his/her duties. And in other cases that conflict the applicable law on preventing the conflict of interest.

CHAPTER VI PROFESSIONAL OPINION AND RECOMMENDATIONS

Article 32 Professional opinion and recommendations of the Authority

1. Upon self-initiative or on the recommendation of the Assembly of the Republic, the Government or a public body, the Authority provides professional opinion on the following:

- 1.1. draft-laws or bylaws that significantly affect the market competition;
- 1.2. compliance of other laws and legal acts with this law.

2. Upon self-initiative or at the request of the body under paragraph 1. of this Article, the Authority may provide the body with a recommendation for protection and reestablishment of free and effective competition in the market.

3. The Authority may provide a professional opinion or issue a press release to inform and raise public awareness about market competition, including legislation, policies and comparative developments.

CHAPTER VII PROCEDURES

Article 33 Rules of procedure in general

The Authority conducts the procedure in accordance with the provisions of this law. In the absence of the provisions determined by this law, the provisions of the relevant Law on General Administrative Procedure shall apply.

Article 34 Parties to the procedure

1. The parties to the procedure are the enterprise against which the Authority conducts the procedure and the enterprise participating in concentration.

2. The party to the procedure is not the proposer of the procedure initiation, unless the procedure affects the rights or interests of the proposer.

3. A person that is not a party to the procedure and who proves that the procedure affects his/her rights or interests, may request the Authority to recognize the rights of the proposer to initiate the procedure mentioned in paragraph 4. of Article 35 of this Law. In this regard, the Authority shall come up with a conclusion within thirty (30) days.

Article 35 Proposal for initiating the procedure

1. The proposal for initiating a procedure within the competence of the Authority can be submitted by any natural or legal person, professional association, association of enterprises, association of consumers, the Government and a central or local public administration body.

2. The proposal for initiating the procedure shall contain the following:

- 2.1. the name and headquarters of the proposer, if he/she is a legal person, or the name, surname and place of residence of the proposer, if he/she is a natural person;
- 2.2. relevant data stating against whom the proposal is submitted;

- 2.3. a description of the facts or circumstances that give rise to the proposal;
- 2.4. personal data, documents and other data in possession of the proposer and which supplement the description from sub-paragraph 2.3 of this Article.
3. Where the proposal contains information that the proposer considers to be commercial secret, the proposer must specify it and provide it legally.
4. At the request of the proposer, the Authority shall:
 - 4.1. notify the proposer regarding the preliminary ascertainment of the facts in short form according to Article 46 of this Law;
 - 4.2. invite the proposer to the hearing in the capacity of the witness.
5. The proposer may request the protection of identity from the Authority. The Authority shall approve reasoned requests, without granting the Proposer the rights from paragraph 4. of this Article.

Article 36 **Initiation of the procedure**

1. The Authority shall initiate the following in an ex officio manner:
 - 1.1. the procedure for ascertaining the agreement prohibited by Article 5 of this Law;
 - 1.2. the procedure for ascertaining the misuse of the dominant position from Article 9 of this Law.
2. The Authority shall initiate the procedure for assessing concentration at the request of the participants in accordance with Article 15 of this Law.
3. The Authority may initiate the procedure for assessing the concentration in an ex officio manner if:
 - 3.1. the participants in the concentration do not submit a request for authorization of the concentration in accordance with Article 13 of this Law;
 - 3.2. the decision to authorize the concentration in accordance with Article 19 of this Law shall be revoked or changed;
 - 3.3. measures shall be imposed after the illegal realization of the concentration according to Article 20 of this Law.
4. The procedure from paragraphs 1., 2. and 3. of this Article shall be considered initiated on the day that the Authority issues a conclusion on initiating the procedure in accordance with Article 37 of this Law.
5. Should it consider that the proposal to initiate the procedure concerns actions that do not have a significant effect on the competition in the relevant market, the Authority shall conclude that there is no public interest in initiating the procedure. The Authority shall submit the conclusion to the proposer.
6. Upon receipt of the proposal to initiate the procedure, the Authority shall immediately conduct a preliminary review of the relevant market in accordance with sub-paragraphs 1.1. and 1.2. of Article 29 of this Law. During the preliminary review, the Authority may conclude that there are no conditions for initiating the procedure. The Authority shall come to a conclusion within six (6) months from the proposal.

7. The Authority shall submit the conclusions from paragraphs 5. and 6. of this Article to the proposer, with relevant justification for each claim.

8. During the preliminary review mentioned in paragraph 6. of this Article, the Authority shall act according to Article 39 of this Law.

Article 37

Conclusion for initiating the procedure

1. The conclusion for initiating the procedure according to this Law contains, in particular, the following:

- 1.1. case number;
- 1.2. the provisions of this Law on the basis of which the procedure is initiated;
- 1.3. a description of the facts, circumstances and practices that give rise to the procedure;
- 1.4. the request for submission of data and documents according to Article 39 of this law.

Article 38

Notice, rights and obligations of the Party

1. The Authority shall submit the conclusion for initiating the procedure to the Party against whom the procedure has been initiated and to the applicant for permission to concentrate. In the submitted conclusion, the part containing commercial secrecy is covered or removed according to Article 51 of this Law.

2. The Party against whom the procedure has been initiated shall submit remarks, information and documents for the case within the deadline set by the Authority.

3. The Authority shall set the deadline from paragraph 2. of this Article for each case separately. The initial deadline may not be longer than thirty (30) days. At the request of the Party and for reasonable reasons, the Authority may extend the deadline for up to thirty (30) additional days.

4. If the Party against whom the procedure has been initiated does not act upon the request and within the set deadline and does not notify the Authority regarding its inability to act, the Authority ascertains the facts and circumstances in ex officio manner, based on its own knowledge and the data and documents it possesses. The authority, without delay, submits to the Party a Notice for the preliminary ascertainment of the facts according to Article 46 of this Law and thereafter schedules a hearing.

5. If the procedure is initiated according to the proposal in Article 35 of this Law, the Authority does not submit to the proposer the conclusion from paragraph 1. of this Article, but notifies in writing for the initiation of the procedure.

Article 39

Data collection

1. The Authority may request the following:

- 1.1. from the parties to the procedure and other natural and legal persons, associations of enterprises, associations of consumers, public bodies, the necessary information in any digital form, written remarks or verbal statements, as well as the provision of necessary data and documents;
- 1.2. from the parties to the procedure to provide direct viewing of all business premises, immovable and movable properties, business books, databases, as well as other

- documents and accessible information for undertaking in any digital form, regardless of the form and means in which it is stored;
- 1.3. from the parties in the procedure to perform other actions that it deems necessary for the ascertainment of the relevant facts.
2. The Authority may collect and use voluntarily submitted information in any form, regardless of the form and means in which it is stored.
3. The request from paragraph 1. of this Article contains the following:
- 3.1. legal basis;
 - 3.2. the subject and purpose of the request;
 - 3.3. deadline for response;
 - 3.4. warning the recipient that if he does not act upon the request he/she will be fined.
4. If the recipient does not act upon the request, the Authority ascertains with a decision the violation of this law and imposes a fine according to this law.
5. If the recipient of the request considers commercial secrets the data or documents required under paragraph 1. of this Article, the recipient must:
- 5.1. correct the data and documents it deems to be such and explain the reasons according to Article 51 of this Law;
 - 5.2. submit to the Authority a part of or all of the data and documents that do not contain commercial secrets.
6. If the recipient of the request does not respond even after the repeated request, the Authority finds that the requested data and documents do not constitute commercial secrets.
7. If the recipient of the request does not submit the data or documents required under paragraph 1. of this Article, the Authority shall assess the importance of the non-submission and ascertain the facts in accordance with this assessment.

Article 40 **Unannounced inspection at premises of the Party**

1. The Authority may, without notice, inspect the premises of the enterprise or other person under investigation if there is a risk of concealment or destruction of evidence.
2. Before carrying out the unannounced inspection, the Authority shall request the court to authorize the officials of the Authority to enter the facility where the inspection will be carried out without notice or special permission.
3. If there is a reasonable suspicion that the evidence in the possession of the Party to the procedure may disappear or be altered, the authorized Authority officials themselves or with the assistance of the authorized experts of the Police perform unannounced inspection and notify the person in possession of the building or items.
4. Before carrying out the unannounced inspection, the authorized officials of the Authority shall show the party in the procedure or the owner of the facility the official identification card and the authorization from the court for conducting the inspection.
5. The authority regulates the form and content of the legitimacy with a sub-legal act.

6. If other persons authorized in accordance with paragraph 3. of this Article participate in the inspection, they shall demonstrate to the Party in the procedure or the owner of the building the authorization of the Authority for participation in inspection.

7. The officials authorized for the unannounced inspection according to paragraph 3. of this Article may:

7.1. carry out inspections on all business premises, open warehouses and means of transport at the headquarters of the enterprise against which the procedure is conducted and at any other address at which the enterprise operates;

7.2. look at business books and other documents which are related to the business of the enterprise;

7.3. obtain or copy business books, extracts from business books, data and other documents and any information accessible to the enterprise, including legally secured data, regardless of the form and means in which they are stored;

7.4. obtain the necessary documentation to make a copy of the documents;

7.5. seal with lead the premises, facility, business books and documents during the time of inspection and as far as is necessary to carry out the inspections;

7.6. request from the representatives and employees of the enterprise a verbal statement on the facts or documents related to the building and purpose of the inspection, while the received statements are recorded;

7.7. require representatives and employees of enterprises to submit written observations on the facts or documents related to the building of inspection, as well as to determine the necessary deadline for the submission of observations.

8. If for technical reasons it is not possible to make copies of the necessary documents during the inspection, the authorized official shall compile a report.

9. In case of temporary seizure of items, business books and other documents during the unannounced inspection, the Authority shall draw up an official submission in which it shall indicate in particular the place where the items were found and their description.

10. The authorized official of the Authority shall without delay give the Party to the procedure or the owner of the items a certificate for the items and other documents temporarily seized.

11. Items, business books and other documents temporarily seized are kept until the ascertainment of all the facts and circumstances that contain those items, and at the latest until the receipt of the decision concluding the procedures in the Authority.

Article 41

Unannounced inspection of other persons' premises

1. The following buildings may be subject to unannounced inspection according to Article 40 of this law, if there is a reasonable suspicion that they hide business books or other documents related to the procedure that is being conducted by the Authority:

1.1. the building of the enterprise or grouping of the enterprise for which no procedure has been initiated;

1.2. the apartment or similar facility that has a connection with the member of the board of directors or the employee of the enterprise against which the procedure has been initiated;

1.3. the building of the other person.

2. During the unannounced inspection in the building from paragraph 1. of this Article, two (2) persons of adult age must assist as witnesses.

Article 42 **Conduction of unannounced inspection**

1. The inspection can be conducted against the will, if the enterprise, group of enterprises or the owner of the building:

1.1. refuses to allow the entry of authorized officials;

1.2. prevents viewing of business books or other documents; or

1.3. otherwise complicates the conduction of the unannounced inspection.

2. The inspection against the will is performed by the authorized officials with the help of the authorized police officers.

Article 43 **Exclusion of documentation in unannounced inspection**

1. Letters, notes and other forms of communication between the enterprise or group of enterprises against which the procedure is conducted and the authorized lawyer of the enterprise or group, which are called confidential or confidential information are excluded from the documentation checked during the unannounced inspection.

2. The Authority may inspect the documents if the enterprise, group of the enterprise or the authorized lawyer refuses to provide them with a view by invoking the information referred to in paragraph 1. of this Article in secret.

3. If it deems that the information is not confidential according to paragraph 1. of this Article, the authorized official of the Authority shall close the document or the certified copy in a special envelope in the presence of the representative or authorized attorney of the enterprise or group of the enterprise. The envelope is sealed with the stamp of the Authority, marked with a date and signed by the authorized official and those present.

4. The Authority determines with a sub-legal act the procedure that is applied in the cases from paragraphs 2. and 3. of this Article.

Article 44 **Unannounced inspection report**

1. Within fifteen (15) days after the unannounced inspection notified by Articles 40 and 41 of this law, the authorized official compiles the minutes for the inspection.

2. The unannounced inspection report contains the following:

2.1. place and date of compilation of the minutes;

2.2. the legal basis for the conduction of unannounced inspection;

2.3. place and time of conduction of unannounced inspection;

2.4. the names of the authorized officials who participated in the inspection and the parties present in the procedure;

- 2.5. a description of the flow and content of any action taken during the unannounced inspection and the statements given;
 - 2.6. list of documents and other items used or temporarily seized during the unannounced inspection.
3. The minutes of the unannounced inspection shall be handed over to the parties in the procedure and to the persons to whom the unannounced inspection has been performed.
 4. The parties to the procedure and the persons to whom the unannounced inspection has been performed may submit in writing the remarks for the minutes of the inspection, within fifteen (15) days after the submission of the minutes.

Article 45 **The right of access to files**

1. The Party in the procedure may request in writing access to the file after the Notice is submitted to the preliminary ascertainment of the facts according to Article 46 of this law.
2. The proposer of the initiation of the procedure may request access in writing to the documents on which the decision or conclusion was based, after having the following submitted:
 - 2.1. the conclusion from paragraph 3. of Article 34 of this law for the recognition of the right to act as a proposer of initiating the procedure;
 - 2.2. the conclusion from paragraph 5. of Article 36 of this law for ascertaining the lack of public interest for initiating the procedure;
 - 2.3. the decision to ascertain the lack of distortion of competition.
3. The parties are provided with the necessary documents by the Authority, defined by this law and the Law on Access to Public Documents.
4. The Authority shall set the date for access to the file within five (5) days after the submission of the request specified in paragraph 3. of this Article.
5. Notwithstanding paragraphs 1., 2. and 3. of this Article, the following may not be viewed, accessed or described:
 - 5.1. the decisions of the Authority, the minutes or sound recordings of the meetings of the Commission;
 - 5.2. internal instructions and notes for the case;
 - 5.3. correspondence between the Authority and its sister institutions;
 - 5.4. other documents which are considered commercial secrets according to Article 51 of this law.
6. Notwithstanding paragraphs 2. and 3. of this Article, a person who is not a party to the procedure has no right of access to files, but may request brief notice of the ascertainment of facts and provide remarks according to Article 46 of this law.

Article 46 **Notice of ascertainment of facts**

1. Before the hearing, the Authority notifies in writing the party in the procedure for the preliminary ascertainment of the facts.

2. The proposer of the initiation of the procedure and the person who is recognized the right to act as a proposer may request a brief notice to the Authority for the preliminary ascertainment of the facts. The briefing does not contain commercial secrets.

3. Within thirty (30) days after the submission of the notice referred to in paragraph 1. or 2. of this Article, the recipient of the notice may:

3.1. submit remarks on the preliminary ascertainment of the facts;

3.2. propose additional evidence or the hearing of witnesses at a hearing.

4. If after the notice from paragraph 1. or 2. of this Article, the Authority accepts new evidence or learns new facts, the Authority may change the preliminary ascertainment of the facts.

5. If it changes the prior finding of the facts, the Authority shall submit a new notice in accordance with paragraphs 1. and 2. of this Article and shall set a reasonable time for the respondents to submit observations.

6. The Authority may not base the decision on facts and circumstances for which the parties to the procedure has not been given the opportunity to defend itself.

Article 47 **Undertaking the obligations**

1. After the initiation of the procedure and before the notice of the ascertainment of the facts, the Party in the procedure may propose to the Authority measures, conditions and deadlines to avoid the harmful effects on the competition in the market.

2. The Authority may, by decision, approve in part or in whole the proposed measures, conditions and deadlines if it deems them sufficient to eliminate the harmful effects on the market competition.

3. The decision from paragraph 2. of this Article:

3.1. makes the proposed measures, conditions and deadlines binding on the Party;

3.2. requires from the party to provide evidence of compliance with the measures, conditions and deadlines adopted;

3.3. finds that there are no conditions to continue the procedure.

4. The Authority may approve the measures, conditions and deadlines proposed in the following cases:

4.1. the violation is of short duration;

4.2. the party has cooperated with the Authority and proposed measures, conditions and deadlines within six (6) months after the start of the procedure;

4.3. otherwise, if it considers the proposed measures, conditions and deadlines sufficient to minimize the adverse effects on market competition.

5. The Authority publishes on its website a notice approving the proposed measures, conditions and deadlines. The notice contains the following:

5.1. case description;

5.2. description of approved measures, conditions and deadlines;

- 5.3. call on interested persons to submit remarks, views and opinions within fifteen (15) days.
6. Notwithstanding paragraph 3. of this Article, the Authority may resume the procedure if:
- 6.1. the decision was based on inaccurate or false information submitted by the Parties;
 - 6.2. the circumstances on which the decision was based have changed considerably;
 - 6.3. the Party acts in contradiction with the approved measures, conditions and deadlines.
7. The Authority oversees the implementation of the approved measures, conditions and deadlines. If the Party does not comply with them, the Authority ascertains a violation of this law and imposes a fine according to this law.

Article 48 **Hearing session**

1. The Authority holds a hearing session during the procedure.
2. The Authority may exclude the public from the hearing session in order to maintain commercial secrecy.
3. If none of the invited persons or their authorized persons appear at the hearing session, the Authority may adjourn the hearing session to another time.
4. If the invited or their authorized persons do not appear at the hearing session even for the second time, the Authority shall hold the hearing session with the parties present or decide for itself according to the data and documents in its possession.

Article 49 **Interim measures**

1. The Authority may initiate proceedings and decide on interim measures against a Party when there is a risk of irreparable damage to competition in the market, in particular when certain actions distort competition.
2. With the decision for interim measures, the Authority orders the enterprise to stop the certain action or to implement measures, conditions and deadlines for the elimination of the harmful effects on the competition in the market.
3. Interim measures last up to six (6) months. The Authority may extend the duration of the interim measures if necessary.
4. If the Party does not implement the decision for interim measures, the Authority ascertains the violation of this law and imposes a fine according to this law.

Article 50 **Determining the conditions for imposing a fine**

1. When it ascertains that the party in the procedure has disturbed the market competition or has violated the provisions of this law, the Authority shall submit to the party the notice for ascertaining the facts and the notice for the content of the decision taken on ascertaining the facts.
2. The notice from paragraph 1. of this Article is attached to the invitation for a hearing session. The party is given the opportunity to provide protection and is presented with evidence on which the violation is found, a fine is imposed and the amount of the fine is determined.

3. After the hearing, the Authority decides on the imposition of the fine, the amount of the fine and the manner and conditions of execution.

4. The authority closes the procedure with the final decision that finds the violation and imposes the fine.

Article 51 Commercial secret

1. Commercial secrets - trade secret or business secret, are information that have current or potential market value and information the disclosure or use of which may give economic advantage to another enterprise.

2. The following are considered commercial secrets:

2.1. information that commercial secrecy is defined by law or sub-legal act;

2.2. information that the enterprise has marked as commercial secret, provided that the Authority has received it;

2.3. correspondence between the Authority and sister institutions.

3. The members of the Commission and other officials of the Authority have the duty to maintain commercial secret five (5) years after the completion of the work in the Authority.

4. In assessing whether information constitutes commercial secrets, the Authority shall take into account:

4.1. possession of information outside the enterprise;

4.2. enterprise measures to protect the confidentiality of information, in particular clauses prohibiting competition and prohibiting the disclosure of information in employment contracts and similar contracts;

4.3. the value of information for the enterprise and competitors.

5. The following are not considered commercial secrets:

5.1. information accessible to the public, including information that may be provided by specialized institutions and services and information known worldwide by experts;

5.2. annual financial reports and statistical reports, respectively data on general revenues that are published in the annual financial report or can be accessed in another way;

5.3. data and documents on which the decision of the Authority is based.

6. If the party in the procedure or the other person does not respond to the repeated request for submission of data or documents according to Article 39 of this law, the Authority ascertains that the requested data and documents do not constitute commercial secrets.

Article 52 Storing of files and documentation

The documents that the Authority receives from the enterprise during the procedure or collects and processes for the procedure are stored in the case file in the archives of the Authority according to the Law on State Archives.

Article 53

Excluded officials

1. The official of the Authority is excluded from the procedure if he is:
 - 1.1. party, witness or designated expert on the case;
 - 1.2. close to the party or the party's representative or lawyer:
 - 1.2.1. in vertical connection at any degree;
 - 1.2.2. in indirect and kinship relations up to the fourth degree;
 - 1.2.3. in the genus of marriage up to the second degree; or
 - 1.2.4. in marital or extramarital union, even if it has ended; or
 - 1.3. adoptive, adopted, guardian, defence counsel or cohabitant of the party or the representative or lawyer of the party.
2. Notwithstanding paragraph 1. of this Article, an official of the Authority may be excluded from the proceedings if there are other circumstances that call into question the impartiality of the official.
3. The request for exclusion from the procedure of the official of the Authority may be submitted in writing by the party in the procedure.
4. This Article also applies to members of the Commission.
5. The request for exemption according to this Article is decided by the Commission.

Article 54

Decision-making deadlines

1. The Authority shall issue the following decisions within sixty (60) days after notice of the ascertainment of the facts:
 - 1.1. the decision for ascertaining the prohibited agreement according to Article 5 of this law;
 - 1.2. the decision for ascertaining the abuse of the dominant position according to Article 10 of this law.
2. If a hearing is held, the Authority shall issue a final decision on the cases referred to in paragraph 1. of this Article within ninety (90) days after the end of the hearing.
3. The Authority issues the decision for the evaluation of the concentration according to Article 17 of this law within ninety (90) days after the conclusion for initiating the procedure.
4. The Authority shall issue the following decisions within four (4) months after the establishment of the facts or the conclusion of the hearings:
 - 4.1. the decision to withdraw the agreement from the group exemption according to Article 6 of this law;
 - 4.2. the decision for announcing the agreement of minor importance according to Article 7 of this law;

- 4.3. the decision to change the decision to allow concentration according to paragraph 3. of Article 19 of this law.
5. The Authority shall issue the following decisions within ninety (90) days after the ascertainment of the facts or the conclusion of the hearings:
- 5.1. the decision for abrogation of the decision for allowing the concentration according to paragraphs 1. and 2. of Article 19 of this law;
- 5.2. the decision on imposing measures for restoring competition in the market to the prohibited concentration according to Article 20 of this law;
- 5.3. the decision for the approval of the obligations proposed by the enterprise according to Article 47 of this law.
6. Notwithstanding paragraph 3. of this Article, the Authority may extend the deadline for issuing a decision to assess the concentration for ninety (90) days if it deems that additional expertise or analysis is needed to establish the facts. The authority notifies the party in the procedure for the postponement before the expiration of the deadline.
7. In special cases, the Authority may extend the deadline for issuing the decision for sixty (60) days.

Article 55 **Acts of the Authority**

1. Based on Articles 26 and 27 of this law, the Authority issues special decisions by which:
- 1.1. ascertains the agreement prohibited according to Article 5 of this law and imposes the fine for the violation of that Article;
- 1.2. withdraws the agreement from the group exemption according to Article 6 of this law;
- 1.3. announces agreements of minor importance according to Article 7 of this law;
- 1.4. ascertains the abuse of the dominant position, imposes the fine for this violation and sets the measures from Article 10 of this law;
- 1.5. declares the concentration allowed or forbidden according to Article 17 of this law;
- 1.6. abrogates the decision to allow concentration, based on paragraphs 1. and 2. of Article 19 of this law, and imposes the fine for the respective violation;
- 1.7. changes the decision to allow concentration and sets measures, based on paragraph 3. of Article 19 of this law;
- 1.8. sets measures for restoring competition in the market to prohibited concentrations, based on Article 20 of this law, and imposes a fine for the respective violation;
- 1.9. imposes temporary measures according to Article 49 of this law;
- 1.10. approves the obligations proposed by the enterprises according to Article 47 of this law;
- 1.11. ascertains the non-fulfilment of the obligations taken according to Article 47 of this law and imposes the fine for the violation of that Article;
- 1.12. imposes the fines provided by this law;

- 1.13. ascertains that the market competition has not been distorted according to this law;
 - 1.14. orders the prohibition of violation of this law;
 - 1.15. on its own initiative or upon request, provides recommendations aimed at restoring free and effective competition in the market for central and local public administration bodies and public legal entities.
2. Based on Articles 26 and 27 of this law, the Authority issues special conclusions with which:
 - 2.1. initiates the procedure according to Article 37 of this law;
 - 2.2. asks the competent court to approve the unannounced inspection according to Articles 40, 41, 42, 43 and 44 of this law;
 - 2.3. ascertains that there is no public interest to initiate the procedure according to the proposal, based on paragraph 4. of Article 36 of this law;
 - 2.4. ascertains that there are no conditions to initiate the procedure according to the proposal, based on paragraph 5. of Article 36 of this law;
 - 2.5. gives a professional opinion to the Assembly of the Republic, the Government or a public body according to Article 32 of this law;
 - 2.6. concludes that the Authority is not competent to review the complaint under this law.

Article 56

Submission and publication of acts of the Authority

1. The decision of the Authority is delivered to the party in the procedure and the proposer of initiating the procedure.
2. The decision is submitted within thirty (30) days after the expiration of the term for decision-making from Article 54 of this law.
3. The decisions from sub-paragraphs 1.1., 1.2., 1.3., 1.4., 1.5., 1.6. and 1.7. of Article 55 of this law are published in the Official Gazette.
4. The decisions from paragraph 1. of this Article and the court decisions related to the act of the Authority are published on the website of the Authority.
5. In the submitted or published decision, the part that contains commercial secrecy according to Article 51 of this law is covered or removed.

CHAPTER VIII

PUNITIVE PROVISIONS

Article 57

Fines for serious offenses

1. A fine of up to ten percent (10%) of the total turnover realized worldwide in the last year for which the financial report has been concluded shall be imposed on the enterprise or group of enterprises that:
 - 1.1. enters into prohibited agreements or otherwise participates in agreements with which competition is distorted, contrary to Article 5 of this law;

- 1.2. abuses the dominant position, contrary to Article 9 of this law;
- 1.3. participates in prohibited concentration, contrary to Article 11 of this law;
- 1.4. does not submit to the Authority a request for permitting concentration, contrary to sub-paragraph 1.2. of Article 20 of this law;
- 1.5. does not act in accordance with the decision of the Authority that imposes measures for restoration of competition or temporary measures according to sub-paragraphs 1.1., 1.2., 1.3., 1.4., 1.5., 1.6., 1.7., 1.9., 1.12. and 1.14. of Article 55 of this law.

Article 58 **Fines for minor offenses**

1. A fine of up to one percent (1%) of the total turnover realized worldwide in the last year for which the financial report has been concluded shall be imposed on the enterprise or group of enterprises that:

- 1.1. submits incorrect or false information to the Authority in the concentration assessment procedure according to Article 16 of this law;
- 1.2. does not act upon the request of the Authority from paragraphs 1. and 3. of Article 39 of this law;
- 1.3. obstructs the implementation of the order of the competent court according to Articles 40, 41, 42, 43 and 44 of this law;
- 1.4. does not appear in the interview according to Article 39 of this law;
- 1.5. breaks the sealing imposed according to sub-paragraph 6.5. of Article 40 of this law;
- 1.6. gives inaccurate or misinformative data and documents or refuses to give a complete answer according to sub-paragraph 6.6. of Article 40 of this law;
- 1.7. is not a party to the proceedings and does not act upon the request of the Authority, in accordance with paragraphs 1. and 3. of Article 39 of this Law.

Article 59 **Fines for violations by responsible persons**

The responsible person of the enterprise or state body shall be fined from one thousand (1,000) to four thousand (4,000) Euros for any violation of Articles 57 and 58 of this Law.

Article 60 **Periodic penalty payments**

1. With a fine in daily payment up to five percent (5%) of the average daily turnover from the last year for which the financial report is concluded, counting from the day of the decision, the enterprise or group of enterprises is punished until:

- 1.1. the violation from Article 5, Article 9 or sub-paragraph 1.4. of Article 58 of this law stops;
- 1.2. the decision for interim measures according to Article 49 of this law is implemented;
- 1.3. the commitment that has become mandatory with a decision approved according to Article 47 of this law is fulfilled;

1.4. complete and accurate information and documents required under Article 39 of this law are provided;

1.5. the inspection ordered according to Article 40 of this law is accepted.

Article 61 **Manner and criteria for imposing fines**

1. The maximum amount of the fine imposed according to this law may not exceed ten percent (10%) of the total turnover that the enterprise or group of enterprises has realized worldwide during the last year for which the financial report is concluded.

2. In imposing the fine, the Authority shall take into account the mitigating and aggravating circumstances according to the gravity of the violation, the duration of the violation and the consequences of the violation for other undertakings in the market and consumers. The authority first sets the basic amount of the fine for the violation, then reduces or increases the amount of the fine depending on mitigating or aggravating circumstances.

3. The basic amount of the fine is set up to thirty percent (30%) of the revenues that the enterprise has realized exclusively in the respective market in which the violation has been ascertained and during the duration of the violation.

4. The mitigating circumstances according to paragraph 2. of this Article are actions that:

4.1. with the exception of the participants in the prohibited agreement, the enterprise submits evidence for the cessation of the illegal action after being notified of the initiation of the procedure;

4.2. the enterprise submits data on the violation committed by negligence;

4.3. the enterprise submits evidence that it has not implemented the prohibited agreement to which it is a party or that it has acted in accordance with the law despite the prohibited agreement;

4.4. the cooperation of the enterprise with the Authority exceeds the obligation of the enterprise for exemption from the fine or reduction of the fine according to Article 62 of this law.

5. The aggravating circumstances according to paragraph 2. of this Article are actions that:

5.1. the party continues or repeats the illegal action, the same or similar, even after the decision of the Authority has been served, which finds that the action distorts competition;

5.2. the enterprise refuses to cooperate with the Authority or obstructs the conduct of the procedure;

5.3. the enterprise incites the other enterprise to commit violations or takes actions to ensure the participation of the other enterprise in violation of this law.

6. In the case from sub-paragraph 5.1. of this Article, the basic amount of the fine is increased by one hundred percent (100%).

7. The Authority may increase the amount of the fine as necessary by seizing the property that the enterprise has acquired in violation of this law, if the benefit can be calculated.

8. Notwithstanding paragraph 4. of this Article, the Authority may reduce the amount of the fine if the undertaking that has committed the violation is in a difficult financial situation and proves that the imposition of the fine may irreversibly damage its economic stability and the value of the property.

9. When there are legal or organizational changes within an undertaking participating in a breach, the Authority may prosecute and impose a fine on the legal or economic successor of the undertaking.

10. The authority with a sub-legal act determines the procedure, manner and criteria for imposing fines provided by this law. The authority determines the criteria in accordance with the competition norms of the European Union, according to Article 70 of this law.

Article 62 **Exemption from fine and reduction of fine**

1. In order to detect the most serious violations of this law, the Authority may exempt from fines:

1.1. the participant of the prohibited agreement who first notifies the Authority and provides data, facts and evidence that enable the initiation of the procedure;

1.2. the participant of the prohibited agreement who first notifies the Authority and provides evidence that enables the finding of a violation of this law, when the Authority has initiated the procedure, but there was not enough evidence to complete the procedure or to conclude the prohibited agreement.

2. Exemption from the fine according to paragraph 1. of this Article does not apply to the enterprise that has been the initiator or instigator of the prohibited agreement.

3. The Authority may impose a smaller fine on the participant of the prohibited agreement who does not meet the conditions for exemption from the fine according to paragraph 1. of this Article but who has provided the Authority with decisive evidence for the conclusion of the prohibited agreement.

4. The Authority with a sub-legal act determines the procedure and criteria for exemption from fine and reduction of fine according to this Article.

CHAPTER IX **COOPERATION WITH OTHER BODIES AND JUDICIAL PROTECTION**

Article 63 **Legal remedies against causing damage**

1. The enterprise that violates this law must compensate the damage caused to the enterprise or other person, in accordance with the legislation in force.

2. Anyone whose legitimate interest is violated by a restrictive action from Article 5 or 9 of this law can request through the court:

2.1. termination of illegal action;

2.2. compensation for the damage caused.

Article 64 **Cooperation of the Authority with the judiciary and other bodies**

1. The Authority cooperates with judicial bodies and other competent bodies in matters related to the distortion of competition in the market in the Republic of Kosovo.

2. At the written request of the Authority, the ministry responsible for internal affairs provides assistance in unannounced control or sequestration of items and documents, according to Articles 40, 41, 42, 43 and 44 of this law.

3. At the request of the Authority according to Article 39 of this law, the public body submits to the Authority the requested information and documents, including data and documents that

contain commercial secrets.

4. During the regulation of economic activities within the Republic of Kosovo, the central and local administration bodies apply the provisions of this law and take into account the recommendations of the Authority according to Article 32 of this law.

5. At the initiative or request of the ministry responsible for industry, entrepreneurship and trade, the Authority shall hold a roundtable or conference where public bodies, enterprise associations and consumer associations may submit observations on the market situation.

Article 65 **Cooperation of the Authority with sister institutions**

1. For the purpose of implementing this law, the Authority may cooperate mutually with sister institutions.

2. The Authority may send and request to sister institutions information and documents on factual or legal matters, including confidential information and in particular commercial secrecy.

3. The Authority may use as evidence the information received from the sister institution.

4. The Authority may send information and documents provided that the receiving institution:

4.1. use the information as evidence solely for the purpose of enforcing competition law and in relation to the object of the investigation for which the information was obtained from the Authority;

4.2. maintain the confidentiality of information and not disclose the information to a court, administrative body or third party without the consent of the Authority.

5. The Authority may send confidential information from the concentration assessment procedure only with the consent of the enterprise that provided the information.

Article 66 **Judicial protection**

1. An appeal is not allowed but the party may initiate an administrative dispute with a lawsuit in the competent court against the following acts of the Authority:

1.1. the decision to establish a violation of this law and to impose a fine;

1.2. the decision to ascertain the absence of a distortion of competition;

1.3. the decision to terminate the proceedings due to the preliminary issue;

1.4. the decision for interim measures from Article 49 of this law;

1.5. the conclusion drawn during the procedure;

1.6. the conclusion from paragraph 3. of Article 34 of this law for the recognition of the right to act as a proposer of initiating the procedure;

1.7. the conclusion from paragraph 5. of Article 36 of this law for ascertaining the lack of public interest for initiating the procedure;

1.8. the conclusion from paragraph 6. of Article 36 of this law for ascertaining the lack of conditions for initiating the procedure.

2. No appeal or administrative dispute is allowed against the following acts of the Authority:

2.1. the conclusion from Article 37 of this law for initiating the procedure;

- 2.2. the conclusion from paragraph 4. of Article 17 of this law for the merging of cases on allowing concentration.
3. No special appeal or administrative dispute is allowed against the conclusion from Article 45 of this law for the refusal of access to the file. Such a conclusion can be challenged with an administrative dispute lawsuit against the main decision of the case.
4. The administrative dispute does not stop the execution of the act of the Authority, unless the court postpones the execution according to the legislation in force.
5. The lawsuit against the decision for ascertaining the violation of this law and the imposition of the fine is submitted by the dissatisfied party.
6. The lawsuit against the decision for ascertaining the absence of market disorder can be filed by the initiator of the initiation of the procedure or the party that has been recognized the right to act as a proposer.

CHAPTER X EXECUTION OF FINES AND STATUTE OF LIMITATION

Article 67 Execution of fines

1. The decision of the Authority for imposing the fine for violation of this law determines the term and the manner of payment of the fine.
2. The fine shall be paid after the decision of the Authority enters into force or after the final court decision when the court has suspended the decision of the Authority. In the amount of the fine is calculated current legal interest, from the day the decision of the Authority is delivered to the party until the day of payment.
3. The Authority may allow the payment of the fine in instalments, in accordance with the criteria of Article 61 of this law.
4. If the party does not pay the fine within the deadline, the fine is executed in accordance with the Law on Enforcement Procedure.

Article 68 Statute of limitation of prosecution

1. The Authority may initiate a procedure and impose a fine within the statute of limitations of five (5) years from the day of violation of this law.
2. In case of continuous or repeated violations of this law, the statute of limitations derives from the day when the violation of the law has ceased.
3. The statute of limitations is interrupted by any action of the Authority for ascertaining the violation of this law and the imposition of a fine.
4. When the Authority takes action against several undertakings or a group of undertakings, the statute of limitations shall be terminated on the day when any undertaking having the status of a party to the proceedings is served with a document on the action of the Authority.
5. The statute of limitations expires again after the interruption ceases. Despite the termination, the Commission may not conduct a procedure or impose a fine after the absolute statute of limitations of ten (10) years from the day of violation of this law.

Article 69 Statute of limitation of enforcement

1. The fine imposed for violation of this law is enforced within the statute of limitations of five (5) years.

2. The statute of limitations derives from the day:

2.1. that the decision of the Authority is served on the party;

2.2. that the final court decision is served on the party, when the court has suspended the decision of the Authority;

2.3. that the party has not paid the due obligation, when the Authority has approved the payment of the fine in instalments.

3. The statute of limitations is interrupted by any action of the competent body for the enforcement of the fine.

4. The statute of limitations shall start again after the interruption ceases. Despite the termination, the fine may not be enforced after the absolute statute of limitations of ten (10) years.

CHAPTER XI TRANSITIONAL PROVISIONS

Article 70 Applicable legislation and international obligations

1. The procedures shall be conducted according to the Law in force at the time of initiating the procedure.

2. This law shall be implemented in accordance with the obligations of the Republic of Kosovo deriving from the Stabilization and Association Agreement with the European Union and the European Atomic Energy Community.

Article 71 Sub-legal acts

Within eighteen (18) months, the Authority shall issue the sub-legal acts stipulated in this Law and harmonize the statute and other general acts.

Article 72 Repealing provisions

With the entry into force of this Law, the Law No. 03/L-229 on Protection of Competition and the Law No. 04/L-226 on Amending and Supplementing the Law No. 03/L-229 on Protection of Competition shall be repealed.

Article 73 Entry into force

This Law shall enter into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo.

**Law No. 08/L-056
13 May 2022**

**Promulgated by Decree No. DL-159/2022 dated 01.06.2022 President of the Republic
of Kosovo Vjosa Osmani-Sadriu**

