



## Anti-Competitive Agreements according to Kosovo's Law on the Protection of Competition – Case Study of the Insurance Market

by

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### *Abstract*

Competition law is an area which links the economy with the law and is very important for the functioning of a free market economy. Anti-competitive agreements, along with the abuse of dominance and concentrations of undertakings, are the subject matter of the Law on the Protection of Competition (LPC) of the Republic of Kosovo. Anti-competitive agreements can be horizontal or vertical in nature.

The following paper deals with agreements and other multilateral practices prohibited under Kosovo's Law on the Protection of Competition. The LPC explicitly states also specific circumstances where the prohibition does not apply – these are covered by the so called 'exceptions and allowances' section of the LPC.

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In this respect, the LPC has incorporated the entirety of the principles covered by Article 101 TFEU.

The insurance market of the Republic of Kosovo was analyzed in the context of this case study, which has all the features of an oligopoly including: a limited number of participating firms, product standardization, interdependence in controlling prices and, difficulty of new market entry. From this perspective, the insurance market is highly problematic as far as violations of the provisions of the law dealing with anti-competitive agreements are concerned. The analysis is conducted based on the enforcement measures undertaken by the Kosovo Competition Authority and reviewed by the judiciary of the Republic of Kosovo.

Taking into consideration that Kosovo is a young country facing special transitional challenges and aiming to become a member of the European Union, much needed reforms are to take place still. The aim of this analysis is thus to contribute to further development of competition law in Kosovo through the analysis of current market situation, domestic legislation and its compliance with EU rules.

### *Resumé*

L'article suivant concerne des accords et des pratiques interdites par la loi sur la protection de la concurrence du Kosovo. La loi mentionnée ci-dessus prévoit également circonstances atténuantes exceptionnelles pour l'application des dispositions concernant les accords anticoncurrentiels. À cet égard, la loi sur la protection de la concurrence a incorporé les principes de l'article 101 du Traité sur le fonctionnement de l'Union européenne.

Dans ce contexte, l'article analyse le marché de l'assurance dans la République du Kosovo, qui possède toutes les caractéristiques d'oligopole, y compris le nombre limité d'entreprises, la normalisation des produits, l'interdépendance dans le contrôle des prix et les difficultés de nouvelles entreprises qui entrent le marché. Dans cette perspective, le marché de l'assurance est très problématique en termes de violation des dispositions concernant les accords anticoncurrentiels. L'analyse est effectuée à la base de sanctions introduits par l'Autorité de la concurrence de Kosovo, ainsi que par la Cour de la République du Kosovo.

En prenant en compte que le Kosovo est un pays jeune, avec des défis pour la transition, qui a pour son objectif de devenir un membre de l'Union européenne, certaines réformes doivent être mises en oeuvre. En effet, le but de l'article est de donner la contribution pour les développements de la loi de la concurrence au Kosovo, par l'analyse de la situation actuelle du marché, de la législation nationale et de sa cohérence avec des règles du droit de l'Union européenne.

**Key words:** anti-competitive agreements; competition law; insurance; Kosovo; oligopoly.

**JEL:** K21

## I. Introduction

Kosovo's state building and development process is based on the principles of parliamentary democracy and free market economy. As a ex-communist country, the Republic of Kosovo is a State in transition, which has been through fundamental changes concerning the improvement of its legal infrastructure and its economic base. Situated in South-Eastern Europe, a region impacted by ethnic conflicts, a fragile economy and internal political problems, Kosovo is successfully facing its democratic changes.

Although a small country, its economic potential should not be underestimated. It is well worth mentioning here the report of the World Bank entitled 'Doing Business 2015'<sup>1</sup> which puts Kosovo on the 75<sup>th</sup> position in the world when it comes to the ease of doing business – in comparison to the 2014 report, Kosovo has thus improved by six points. In fact, also according to the World Bank, starting up a business in Kosovo has been upgraded last year alone by as much as 58 points, placing the country at the 42<sup>nd</sup> position in the world in 2015. On the other hand, Kosovo has dropped in the ratings with respect to its electricity production and is presently in position 112<sup>th</sup> (105<sup>th</sup> in 2014).<sup>2</sup> These changes are the outcome of legislative improvements and continuing building of democratic and functional institutions in Kosovo.

Among them, concrete steps have been taken to build a legal and institutional infrastructure in the field of competition law, which should be perceived as a necessary instrument to increase general welfare, by ensuring higher possibility of profit for enterprises and better service quality for consumers.

The Law on the Protection of Competition No. 03/L-229<sup>3</sup> (hereafter, LPC), was approved on 7 October 2010. It was subsequently amended and supplemented by Law No. 04/L-226 for Amending and Supplementing the Law No. 03/L-229 on the Protection of Competition<sup>4</sup>, approved on 13 February 2014 (hereafter, LPC Amendment). Importantly, Kosovo's legislation explicitly determines the necessity to implement the legal instruments of the European Union in its domestic competition law. Therefore, according to LPC, 'Implementation of this Law should be in conformity with European Union on competition'<sup>5</sup>.

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<sup>1</sup> <http://www.doingbusiness.org/data/exploreeconomies/kosovo/>.

<sup>2</sup> *Ibidem*.

<sup>3</sup> Official Gazette of The Republic of Kosovo, Prishtinë: Year V, No. 88, 25 November 2010.

<sup>4</sup> Official Gazette of The Republic of Kosovo, No. 17, 10 March 2014 .

<sup>5</sup> Article 66 of Law on Protection of Competition of Kosovo (Law No. 03/L-229). Official translation of the LPC can be found at <https://ak.rks-gov.net/repository/docs/2010-229-eng.pdf>.

This paper will focus on one segment of Kosovo's competition law, that is, the prohibition of anti-competition agreements. The discussion correlated this material aspect of competition law with a case study of Kosovo's insurance market, which is well known to suffer from agreements that violate the provisions of its competition law. EU law was taken into consideration in the following discussion where ever Kosovo's legislation has already been approximated to EU legislation at least to a certain extent.

## **II. Anti- Competitive Agreements According to Kosovo Legislation**

### **1. Prohibition of anti-competitive agreements**

In a competitive market, companies have a tendency to increase their profits by competing independently from each another, a fact that brings about an increase in productivity. However, in order to limit competition companies interact with each other and coordinate their activities by entering into secret agreements meant to fix prices and other trading conditions. This is in turn reflected in a reduction of productivity and higher prices for consumers (Vickers, 2003, p. 74).

Pursuant to the LPC Amendment, the definition of an 'agreement' refers to – agreements of any kind concluded between enterprises, with or without binding force, decisions or recommendations of groups of enterprises, as well as coordinated practices between enterprises that operate at the same level, or at different levels of the market. According to the legal definition, an agreement can be written, non-written, or unspoken (so called gentleman's agreement) provided it violates legal provisions on the protection of competition<sup>6</sup>.

First instance investigations of cases related to competition harm resulting from prohibited agreements are conducted via an administrative procedure led by the Kosovo Competition Authority, which reaches a decision after reviewing the respective case. 'In order to rule if competition was restricted, one should analyze the effect of the agreement on the parameters of market competition such as the price, quantity of production, quality of productions, variety of productions and market innovations. Price and quantity of production are the most important parameters of market competition, every limitation in the freedom to set them independently by enterprises is harmful for competition' (Kabashi and Asllani, 2012, p. 90–91<sup>7</sup>).

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<sup>6</sup> Article 2(1.1.) of Law on amending and supplementing Law No. 03/L-229 on Protection of Competition.

<sup>7</sup> Translation by the Authors of this paper.

Kosovo's LPC clearly states when an agreement between business entities is considered to be illegal. The LPC provides that 'All agreements between two or more independent enterprises are prohibited, decisions made by business associations and concerted practices that aim or may significantly influence on disturbance of market competition in relevant market, and in particular the ones that:

1. directly or indirectly impose purchase or sale price or any other condition in trade;
2. limit or control production, market, technological development and investments;
3. share markets or supply sources;
4. implement unequal conditions for similar transactions with other enterprises, consequently placing them in an unfavorable competitive position;
5. apply conditions for agreements on contracts to rely on other contracting subjects, through other supplementing conditions that do not have any natural or common trade practice connection to the object of such contract<sup>8</sup>.

Aside from cases where formal signed agreements between companies exist, according to the LPC, there are also informal concerted practices which affect market competition. A 'concerted practice' is, according to the LPC 'an activity concerning an informal cooperation between two or more enterprises and which is not based on a formal decision or agreement'<sup>9</sup>.

When analyzing the provisions of the LPC on anti-competition agreements, it is noticeable that it is almost in full compliance with Article 101 TFEU (former Article 81 TEC). This shows that Kosovo has made great progress in aligning its legislation to that of the EU – a fundamental criterion for its EU accession process.

In order for an anti-competitive practice to violate Article 101 TFEU, 'it requires that the agreement, decision or concerted practice targets, or results in the prevention, limitation, distortion of internal market competition' (Zajmi, 2012, p. 31<sup>10</sup>).

The fact whether a cumulative fulfillment of these requirements is needed, or if the existence of one of them is sufficient to ascertain a violation remains a matter of discussion. The truth is that the existence of one the items provided in Article 101 TFEU is sufficient to ascertain a violation of this provisions. 'First the objective of the agreement should be analyzed, if the objective of the agreement is not to restrict competition; in order for an agreement to be

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<sup>8</sup> Article 4 of Law on Protection of Competition, Law No. 03/L-229.

<sup>9</sup> Article 3(1(2) of Law on Protection of Competition, Law No. 03/L-229.

<sup>10</sup> Translation by the Authors of this paper.

covered by Article 101 TFEU, it should aim or cause obstruction, limitation or distortion of the common market competition' (Kabashi and Asllani, 2012, p. 87<sup>11</sup>).

TFEU prohibits concerted practices by enterprises which aim to limit competition in the internal market. 'There are two factors to consider in conceiving this term: On the one side companies can be avert. They could have been plotting, but also have been shrewd enough to destroy all written evidence. The 'agreement' might have never been put on paper at all, being based on a verbal consensus and exchanges only. Nevertheless, a conspiracy and a secret agreement could be real, and the creation of a term such as concerted practices should be sufficiently flexible as to cover this fact of business life. On the other hand, a broad interpretation of the term could be considered as parallel price adjustment, which is a natural and reasonable response of companies active in the same market. In normal and competitive markets, it is unlikely that companies set the same price level without having made some sort of a secret agreement due to differences in their cost structures and other similar matters' (Zajmi, 2012, p. 21<sup>12</sup>).

## 2. Exemptions

[I expect they are meant to be BLOCK EXEMPTIONS but because the official translation of the LPC is not aligned with the TFEU, especially with reference to the use of the term 'allowance' but also 'exemptions', this fragment needs to be revised by the Authors in order to explain differences in terminology with EU law so that readers can understand which Kosovo instruments are meant to fulfill which EU functions especially with reference to: **individual exemptions vs. group exemptions vs. ancillary restraints**]

Although some agreements are contrary to competition law, there are also situations when these agreements are exempt from these general rules. It was emphasized above that in order to ascertain that a practice has been anti-competition, the agreement, decision or concerted practice should aim or result in the prevention, restriction, or distortion of market competition. 'When the analysis of these clauses does not reveal that the impact on competition is significantly detrimental, the consequences then should be considered and in order for it to fall under the prohibitions it is necessary to ascertain the presence of factors proving that competition in fact has been obstructed or restricted, distorted to a considerable extent' (Zajmi, 2012, p. 37). Therefore, the LPC provides exemptions because in cases foreseen by the LPC (the goal

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<sup>11</sup> Translation by the Authors of this paper.

<sup>12</sup> Translation by the Authors of this paper.

of which is not a serious violation of competition or the impact of the violation does not significantly impair market competition) sometimes a harmful effect is indispensable to achieve positive market objectives or public interest goals.

The LPC contains an entire group of 'exemptions and allowances' including: Exemption on horizontal agreements, Exemption on vertical agreements, and Exemption for license agreements, Small value agreement.

This section of the LPC speaks first of an 'Exemption on horizontal agreements':

1. Horizontal agreements, especially agreements the objective of which is rationalization or specialization of economic activity, researching and developing products or processes, joint purchase or sale of products from one single source, may be exempt from prohibition set forth in Article 4, of this law, due to economic efficiency.
2. The agreement is justified by economic efficiency if the following conditions are fulfilled:
  - 2.1. reduction of production or distribution costs, improvement of efficiency, improvement of products or production processes, encouragement of research for development and dissemination of technical or professional knowledge, rational exploitation of resources or encouragement of the development of small and medium enterprises;
  - 2.2. more direct participation of consumers or users in these advantages.
  - 2.3. not significantly limit competition<sup>13</sup>.

In order to consolidate the provisions of the LPC, it is also necessary to refer to the jurisprudence of the Court of Justice of European Union (hereafter, CJEU) in particular to the *REMA* case where the Court of Justice had to rule whether a competition clause was conflicting Article 101(1) TFEU, which is part of enterprise sales contract<sup>14</sup>. CJEU ruled that such a clause was necessary for the sale of the enterprise. The competition clause was classified as exemption agreement and was not in violation of Article 101(1) TFEU (Papajorgji, 2013, p. 47).

The LPC contains also an 'Exemption on Vertical Agreements':

1. Vertical agreements may be exempted from prohibited agreements set forth in Article 4 of this law due to economic efficiency, especially agreements the objective of which is:
  - 1.1. to limit direct contact sales within an exclusive territory or against a group of exclusive clients, reserved for the supplier itself or another distributor authorized by the supplier, if such an agreement does not restrict sales of the distributor's clients;

<sup>13</sup> Article 5 of Law on the Protection of Competition of Kosovo, Law No. 03/L-229.

<sup>14</sup> 42/84 *Remia and others v. Commission*, ECLI:EU:C:1985:327.

- 1.2. to limit sales to end users by the distributor that is engaged in whole trade level activities;
  - 1.3. to limit sales to unauthorized distributors from members of a single distribution system, in which supplying enterprises, directly or indirectly, sell contracted products to distributors selected based on specified criteria;
  - 1.4. to limit the distributors' right to sell component parts to clients, who use the same for production of products similar to that of the supplier.
2. Provisions set forth in paragraph 2 of Article 5 of this law also apply to paragraph 1 of this Article<sup>15</sup>.

The LPC contains an 'Exemption of License Agreements':

1. License agreement and the agreement for selling the industrial property rights may be exempt from prohibited agreement specified in Article 4 of this law, if:
  - 1.1. freedom of trade of the merchant, licensed entity or other undertakings is not restricted unjustly, and;
  - 1.2. market competition is not significantly limited.
2. Limitations pursuant to article 4 of this law are not valid for the buyer, for the time period in which these limitations do not exceed the period of purchased right or the right that makes the object of the license, especially when:
  - 2.1. they are justified by the interests of the seller or the licensor requesting better technical use of the object of the protected right;
  - 2.2. they set an obligation to exchange experience or to issue nonexclusive invention licenses, improvement or implementation of the latter, on the condition that these obligations are the same for the seller and the licensor;
  - 2.3. their object is indisputability of the protected right;
  - 2.4. they contribute to minimal use of the protected right which is object of license or payment of a minimal tariff;
  - 2.5. they label licensed products, not excluding producer's reference<sup>16</sup>.

Part of the exemptions and allowances section of the LPC is also the provision on 'Small Value Agreements' (in EU law terminology: *de minimis* agreements) which states that '[a] small value agreement is considered an agreement where their joint participation in the market is not significant and does not disturb competition. Criteria and conditions on defining the

<sup>15</sup> Article 6 of Law on Protection of Competition of Kosovo, Law No. 03/L-229.

<sup>16</sup> Article 7 of Law on Protection of Competition of Kosovo, Law No. 03/L-229.



Agreements of small value shall be regulated through bylaws issued by the Government, based to the Authority proposals<sup>17</sup>.

### III. Insurance Market

#### 1. Legislation, licensing and supervision of insurance companies

The insurance industry – that is, the organization and functioning of insurance companies in accordance with requirements and modern trends of economic development on the national and international level – began in Kosovo in 1999.

In 2001, United Nations Interim Administration Mission in Kosovo (hereafter, UNMIK) promulgated Regulation No. 2001/25 on the Licensing, Supervision and Regulation of Insurance Companies and Insurance Intermediaries (hereafter, Insurance Regulation), which was meant to establish a domestic legal regime in Kosovo's insurance field. Based on the Insurance Regulation, all insurance companies which now operate in the national insurance sector are licensed and function under this legislative act. Insurance companies active on the Kosovo market, offering compulsory motor liability insurance services as well as offering non-compulsory insurance types, are bound by the Insurance Regulation and by a set of bylaws issued by the Central Bank of the Republic of Kosovo (hereafter, CBK) (Zajmi, 2012, p. 3).

The Insurance Regulation describes in detail the nature of insurance, including monitoring insurance, sets forth obligations of the authority (the CBK) in issuing bylaws such as regulations, orders, directives and other decisions foreseen by the Insurance Regulation, which served as the basis for all actions undertaken for the purpose of advancing and development of insurance in general (Ahmetaj, 2012, p. 4).

The main objective of the Insurance Regulation is to define the powers and authority of the insurance supervisory body – the CBK. These powers relate to, first, the licensing of insurance companies and insurance intermediaries (meant to protect insurance policy-holders) and second, the exclusive responsibilities and obligations of the CBK to draft and approve regulations, directives, guidelines and criteria associated with the business of insurance companies.<sup>18</sup>The Insurance Regulation grants therefore the CBK extended

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<sup>17</sup> Article 8 of Law on Protection of Competition of Kosovo, Law No. 03/L-229.

<sup>18</sup> UNMIK/REG/2001/25, 5 October 2001 on licensing, supervising and regulating Insurance Companies and Insurance Intermediaries. This regulation is still in force and is the main legal

powers on licensing, supervision and regulation of insurance companies and the insurance market in Kosovo.

According to the Insurance Regulation, in order for an insurance company to engage in the insurance business it must be licensed by the CBK through a procedure set forth by the Insurance Regulation. The CBK shall grant a license to an insurance company only if it is satisfied that the following minimum requirements are met:

- (a) The insurance company shall be a corporation formed under the applicable law in Kosovo, or a branch of a corporation formed under the laws of another jurisdiction;
- (b) The minimum required capital has been paid-in;
- (c) The business plan of the insurance company is based on a sound analysis under reasonable assumptions;
- (d) The insurance company undertakes to comply with all provisions of the present regulation; and
- (e) The qualifications, experience, and integrity of the insurance company administrators, principal shareholders and those who propose to have or have significant interests are appropriate for the insurance company's business plan and financial activities.<sup>19</sup>

The CBK may prescribe rules setting out additional requirements consistent with the Insurance Regulation.

- (a) Within three (3) months from the date of its receipt of a completed application for an insurance company license, the CBK shall preliminarily approve or deny it and notify the applicant of its decision in writing; notifications of a denied license shall state the grounds on which the license was denied.
- (b) In the case of preliminary approval of an application for an insurance company license, the CBK shall enumerate the conditions for the insurance company to receive the license to commence its operations.
- (c) If an insurance company fails within one (1) year to comply with the conditions to receive the license to commence operations, the preliminary approval of the application shall expire.
- (d) When a corporation has been formed in Kosovo with the intention of applying for an insurance company license, all founding corporate documentation, including the founder's agreement, charter, by-laws, and any shareholders' agreement, or equivalent documentation, as well

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act in the insurances sector in Kosovo. The Kosovo Government has proceeded to the Kosovo Assembly to pass the Law on Insurance, but the new law has not been approved yet by the legislator.

<sup>19</sup> Article 12(1) of UNMIK/Regulation/2001/25.

as any additional information required by CBK rules, shall be submitted to the CBK.

- (e) The charter establishing the insurance company shall contain information regarding the corporate name and address, the amount of charter capital, classes of shares, numbers and nominal values of each class of shares, and the voting rights accompanying those shares.
- (f) In addition to any grounds set forth in a CBK rule, the CBK may refuse to issue a license to an insurance company where it determines that the best interests of policyholders will not be well served by approving the application.
- (g) An insurance company license shall be granted for an indefinite period of time and shall not be transferable.
- (h) Decisions on the licensing of insurance companies shall be taken by the CBK independently. The CBK shall be guided by the desire to ensure a sound and stable insurance market in which fair competition and consumer choice is enhanced<sup>20</sup>.

In order to improve the functionality of the Kosovo insurance market, the CBK approved in 2014, in accordance with its competences, a separate Regulation on the Licensing of foreign insurance companies and branches of foreign insurance companies.

The Licensing Regulation determines the criteria, requirements, procedures and license application terms for foreign insurance companies or branches of a foreign insurance companies referred to as an *insurance company*, except for cases when an insurance company, established as a subsidiary or branch of a foreign insurance company, is specifically addressed. The Licensing Regulation is applicable to all entities applying to the CBK for a license to operate in the insurance market in the Republic of Kosovo<sup>21</sup>. According to the Licensing Regulation, in order to obtain a license, a company offering life and non-life insurance policies needs to have a charter capital of 3,000,000 EUR. 'Charter capital of any insurance company licensed to operate in the insurance market in the Republic Kosovo cannot be less than three million Euros (€3.000.000). For this reason the insurance company applying for the license to operate in Kosovo, after receiving final license, shall deposit charter capital at CBK as foreseen in this Articles'<sup>22</sup>.

On 23 June, the Kosovo Assembly passed the Law on Compulsory Motor Liability Insurance No. 04/L-018, which regulates compulsory motor liability insurance (hereafter, TPL).

<sup>20</sup> Article 12(2)-(9) of UNMIK/Regulation/2001/25.

<sup>21</sup> Article 1 of CBK regulation of 30 October 2014 on licensing of the insurance companies and branches of foreign insurance companies.

<sup>22</sup> Article 10 of CBK regulation.

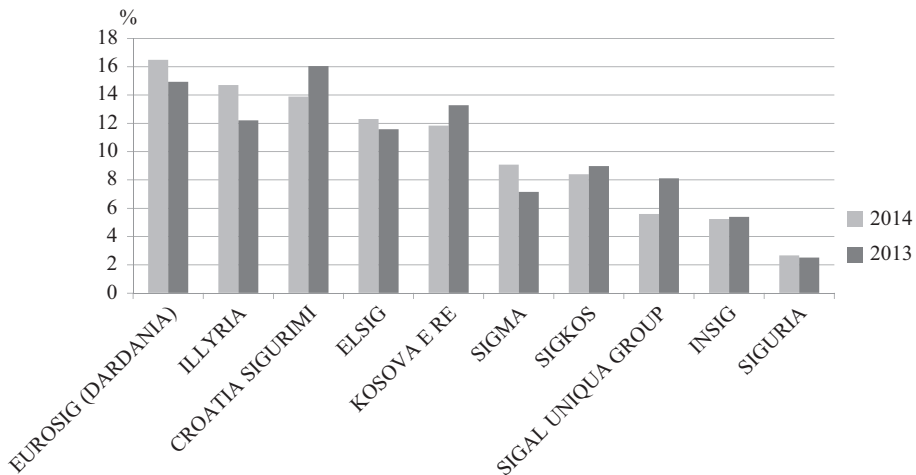
The TPL determines that the owner of a vehicle must contract a motor vehicle insurance covering the liability for damages caused to third parties, regardless whether the damage is material or non-material, prior to using the vehicle and irrespectively of their actual users. A compulsory insurance policy (a contract covering liability to third parties, valid all over the territory of the Republic of Kosovo) can be contracted only by insurers licensed by the CBK through the payment of the assigned Premium (Mazreku, 2012, p. 5).

Until 2015, 10 insurance companies operated in Kosovo. Two additional ones were licensed in 2015 bringing the current total to 12 insurance companies operating in a market of 1,804,944 inhabitants<sup>23</sup>.

This small number of companies indicates that there are barriers for new companies to enter the market. One of those lies in the aforementioned high amount of the charter capital needed to enter the Kosovo insurance market which is currently set at 3 million EUR<sup>24</sup>. Aside from the need of a large charter capital, there are indications that existing insurance companies have concluded secret agreements to make new market entry impossible.

Looking at the general insurance market shows that the five biggest companies control 70% of the market, shared almost proportionally between them. The rest of the market is covered by five other companies<sup>25</sup>.

**Table 1. Insurance market in Kosovo in 2013–2014**



<sup>23</sup> <https://ask.rks-gov.net/>: official web site of Kosovo Agency of Statistics.

<sup>24</sup> Article 10(1) of CBK regulation.

<sup>25</sup> In the calculation, the methodology was used by which an overview of the gross premium income was extracted for all companies and compared with each other.

Kosovo's insurance market is dominated by compulsory motor vehicle liability – TPL. Analyzing this market, 'one would notice that compulsory motor vehicle liability constituted 70.1% of the portfolio in 2012, and around 70% in 2011, while other non-TPL insurances constituted 27% with only 1.77% of life insurances' (Kryeziu, 2013, p. 7). Unfortunately, no changes are expected in this regard in upcoming years either.

It is fair to say that the above situation is related to the economic situation in Kosovo and the fact that potential clients lack sufficient information on the benefits and costs of other types of insurances. Insurance companies, each of them individually, should thus do more to increase the awareness of both private citizens and businesses of the purposes of insurance and of the different types of insurances which they have on offer. Information and awareness campaigns should be more consumer-oriented since they are even less informed about the insurance market than businesses<sup>26</sup>. As a result Kosovo's citizens tend to only use compulsory policies with very few voluntary insurances. For this reason, it is recommended that 'Promoting activities of insurance companies should be focused on increasing individuals' and businesses' knowledge of the different types of insurances, other than TPL, since other types of insurances are rarely purchased despite the fact that their prices are not unaffordable'<sup>27</sup>.

## 2. Harm to competition by insurance companies

As to the perception of the public, researchers and clients, insurance companies have continuously violated the provisions of the LPC. This perception was confirmed by the Kosovo Competition Authority – the body competent to review and decide according to an administrative procedure, on the applicability of competition law in Kosovo.

In the Decision No. 5/1 dated 27 December 2010, the Kosovo Competition Authority fined ten insurance companies for their involvement in an agreement signed in 2009 that fixed prices of insurance policies.

The Kosovo Competition Authority conducted a thorough investigation of the national insurance market focusing on the domestic market for compulsory TPL insurance. After the investigation, the Competition Commission reached the decision on the agreement of insurance companies to fix prices for the sale of insurance policies for motor vehicle insurance policies covering liability for damages caused to third parties. The object of the agreement was fixing prices for the sale of insurance policies for motor vehicle insurance policies covering

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<sup>26</sup> Buletini i Sigurimeve, Shoqata e Sigurimeve të Kosovës, Nr. 6, dhjetor, 2013, p. 8.

<sup>27</sup> Ibidem, p. 8.

liability for damages caused to third parties (TPL). Parties in the investigation were 10 insurance companies operating in the Kosovo market.

The Competition Commission, after a two months investigations and the completion of its documentation, collection of facts and meetings, has noticed that there is a justified suspicion of cooperative practices among insurance companies in the form of price fixing of motor vehicle insurance policies. During these investigations, the Competition Commission has found a copy of a written agreement by the Insurance Companies dated 3 July 2009 signed in Gjakova to disallow price discounts on the insurance market.

The Competition Commission has verified that an agreement existed between insurance companies which fixed prices of insurance policies making it impossible for consumers to choose the most favorable offer consequently causing a competition limitation and market distortion, which is in contradiction with Article 3 LPC.

The Commission has proved that all ten insurance companies have signed this agreement and has imposed a fine in the amount of 100,000 (one hundred thousand) Euros on each of them – 1,000,000 Euros (one million) in total.<sup>28</sup>

The insurance companies did not agree with the decision of the Kosovo Competition Authority. They have initiated an administrative dispute before the Basic Court of Prishtina, which has jurisdiction to review the case. On 17 January 2014, the first instance court rejected the appeal of the insurance companies and reinforced the sanctions imposed by the Kosovo Competition Authority. The companies rejected the first instance ruling and filed an appeal before the Appeal Court. After reviewing the appeal of the “Siguria” insurance company, the Appeal Court annulled the judgment of the Prishtina Basic Court of 17 January 2014 and referred the case back for a retrial (decision no. 108/2014<sup>29</sup>).

In its reasoning, the Court of Appeal emphasized, among other things, that the first instance ruling was defective and could not be re-examined. The Court of Appeal stated that there has been no reason for the decisive facts to be analyzed and compared in order to verify the contested facts, and that the decision of the Kosovo Competition Authority was unlawful and did not provide evidence for the potential unlawfulness of the actions of the “Siguria” company. The Appeals Court also stated that the contract on the basis of which the company was sanctioned was non-existent, that the company

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<sup>28</sup> Short summary of the case in which the Authority imposed sanctions for the violation of the Law, was taken from <https://ak.rks-gov.net> (official web site of Kosovo Competitive Authority).

<sup>29</sup> Up to the time of writing, the court’s final decision has not yet been reached. This proves that judicial procedures take too long in Kosovo due to an overall inefficiency of the judicial system in general.

had not been informed about this contract and that it had not been signed by authorized persons, the it did not have a name nor a stamp and that it is possible that it had been brought into the proceedings with the intention of damaging the insurance companies, etc. Subsequently, the Appeal Court decided to approve the appeal and annulled the first instance ruling, sending the case back for retrial.<sup>30</sup>

When considering the arguments presented in the reasoning of the Court of Appeal, it is evident that the national judiciary does not have the needed experience to review competition law cases as this is a very new legal area for Kosovo. The Court of Appeal did not reflect on the fact that according to the LPC, a legal infringement can take place even without a written contract and that the LPC provides the possibility of imposing antitrust sanctions on enterprises when there is a distortion of competition in practice and there is grounded suspicion that the enterprises have merely a verbal agreement to fix prices.

#### **IV. Conclusions**

In general, Kosovo's legislation on competition protection is in accordance with international standards and is approximated to EU law. In this regard, the Law on the Protection of Competition and the Law Amending and Supplementing the Law on the Protection of Competition have incorporated the legal solutions of the TFEU. This paper is based on the basic principles of the law of competition namely 'prohibited agreements'. The LPC states when agreements between different companies are prohibited, be that on the horizontal or vertical level. The LPC also prescribes which cases are legally exempt from that prohibition (exemptions) including cases that do not significantly infringe competition and are indispensable for the functioning of the market as well as agreements between parent companies and branch company and license agreements.

By analyzing the insurance market as an exemplary case study, the conclusion emerges that the Kosovo Competition Authority, as the competent institution for competition policy and enforcement in the country, has found that 10 insurance companies have infringed the LPC. They were operating in breach of the LPC and were consequently subject to a fine imposed by the Kosovo Competition Authority for a prohibited price fixing agreement concerning

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<sup>30</sup> Summary of the reasoning of the Court of Appeal in relation to the appeal filed against the ruling of the Basic Court in Prishtina in confirming the decision of the Kosovo Competition Authority which sanctioned the insurance companies, decision A no.108/2014.

their TPL insurance policies. Although the decision of the Authority was approved by the Basic Court in Prishtina (first instance court), its ruling was later overturned by the Appeal Court (second instance court). The case is currently under re-examination and a final verdict has not yet been reached.

Insurance companies should be cautioned not to undertake actions by which they violate the LPC to the detriment of consumers. The approval of the Code of Ethics in the Insurance Market should be seen as a very positive step in this context, which obligates insurance companies to respect competition law and regulations.

It is noticeable that Kosovo's judiciary is not experienced enough yet in ruling on competition law cases and that special expertise and assistance from the European Union is needed. Kosovo has officially signed the Stabilization and Association Agreement with the EU in October 2015. Aside from its other benefits, Kosovo should also incorporate the practice of the CJEU.

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