

CONCENTRATIONS AND SHARE PURCHASE CONTRACTS IN KOSOVO: ALIGNING WITH EU LEGAL STANDARDS

KONCENTRÁCIE A ZMLUVY O KÚPE AKCIÍ V KOSOVE: ZOSÚLADENIE S PRÁVNymi ŠTANDARDMI EÚ

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<https://doi.org/10.33542/SIC2026-1-06>

ABSTRACT

This paper examines the regulation and impact of business concentrations, including mergers and acquisitions, in Kosovo, with a focus on cases handled by the Kosovo Competition Authority (KCA). The study aims to assess how concentrations are evaluated and their effects on market competition and consumer protection. The methodology combines legislative analysis, review of KCA practices, and examination of cases from 2016 to 2024. Findings indicate that while concentrations are important for corporate growth, enforcement of competition rules faces challenges. The KCA has approved many cases but also addressed violations through penalties and corrective measures. The study highlights the need for stronger legislation and proactive enforcement to ensure fair competition, benefiting both consumers and businesses in Kosovo.

ABSTRACT

Tento príspevok skúma reguláciu a dopad podnikových koncentrácií, vrátane fúzií a akvizícií, v Kosove, so zameraním na prípady riešené Kosovským úradom pre hospodársku súťaž (KCA). Cieľom štúdie je posúdiť, ako sú koncentrácie hodnotené a aký majú vplyv na trhovú súťaž a ochranu spotrebiteľa. Metodika kombinuje analýzu legislatívy, preskúvanie praktík KCA a skúmanie prípadov z rokov 2016 až 2024. Zistenia naznačujú, že koncentrácie sú dôležité pre rast firiem, ale uplatňovanie pravidiel hospodárskej súťaže čelí výzvam. KCA schválila mnoho prípadov, ale riešila aj porušenia prostredníctvom sankcií a nápravných opatrení. Štúdia poukazuje na potrebu silnejšej legislatívy a proaktívnejšieho presadzovania, aby bola zabezpečená férová konkurencia a prospech pre spotrebiteľov aj podniky v Kosove.

I. INTRODUCTION

In a rapidly evolving economic environment, the monitoring and control of business concentrations are vital for maintaining competition and safeguarding consumer interests. Mergers and acquisitions, in particular, can significantly influence market dynamics and the distribution of economic power. This issue is especially relevant for developing economies like Kosovo, which is undergoing a critical phase of economic transformation and EU integration. In this context, Kosovo is committed to aligning its competition framework with EU standards, with particular attention to the regulation of business concentrations, including share purchase transactions.

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Despite the growing importance of this area, studies on the regulation and practical enforcement of concentration control in Kosovo remain limited. Existing research has primarily focused on general competition law (Asllani et al., 2019; Vula & Asllani, 2018) and institutional challenges (Mucaj & Vlahek, 2020), while specific analyses of concentration cases are scarce. This highlights the need to understand how legal provisions on concentrations are applied in practice, what challenges arise in enforcement, and how these practices compare with EU norms, particularly the principles established under the EU Merger Regulation (Council Regulation (EC) No 139/2004). The aim of this paper is to examine how business concentrations are regulated and enforced in Kosovo and to identify the practical challenges in implementing the legal framework. The study addresses the following research questions:

1. *How are business concentrations legally defined and regulated in Kosovo, and to what extent is the legal framework aligned with EU standards?*
2. *How does the KCA monitor, assess, and enforce concentration cases in practice?*
3. *What are the main challenges in the application of concentration rules, and how do these challenges affect market competition?*

This study employs a mixed-method approach to examine the regulation and enforcement of business concentrations in Kosovo. It combines legislative analysis, practical case evaluation, and literature review to provide a comprehensive understanding of both the normative framework and its practical application. Legislative analysis involves reviewing Kosovo's laws and regulations on business concentrations and assessing their alignment with EU standards.

Practical case evaluation focuses on concentration cases handled by the Kosovo Competition Authority (KCA) during the period 2016–2024. This timeframe was selected because only the decisions published on the official KCA website are available for these years. Moreover, the KCA was established in 2008 and functioned normally until 2013. Between 2013 and 2016, it was largely non-functional due to an incomplete composition of the Competition Commission, the executive body of the authority. The KCA resumed full operations in 2016 and continued functioning until 2021, after which it became partially inactive until the end of 2022. As of 2024, the authority remains incomplete and not fully operational. The study analyzes investigatory procedures, decisions, enforcement practices, and identifies challenges in their application during this period. Additionally, a literature review of empirical studies, comparative analyses, and institutional assessments provides theoretical context and highlights gaps in existing research. By integrating these approaches, the study aims to assess how business concentrations are regulated, how legal provisions are applied in practice, and what obstacles exist in enforcement. The periods of non-functionality have had significant implications for market competition and consumer protection, as limited enforcement capacity and incomplete institutional operation reduced oversight of mergers and acquisitions, potentially allowing anti-competitive practices to occur unchecked and adversely affecting consumer welfare and fair market conditions.

II. LITERATURE REVIEW

Studies that directly address concentrations in Kosovo are limited, reflecting the relatively late development of this field within competition law and policy in the country. Nevertheless, the existing literature provides several valuable analyses on this topic and establishes a foundation for further research. In addition, a number of other studies have examined competition policy more broadly, focusing on the challenges of the competition authority, institutional development, and harmonization with European Union standards.

One of the most important contributions is the study by Asllani, Grima, and Citaku (2021), which analyzes the regulation of competition in Kosovo with particular emphasis on the control of concentrations. The authors highlight that concentrations, whether domestic or international, can create unequal market conditions, generating monopolistic positions. For this reason, the role of the Competition Authority in supervising these processes is crucial to ensuring fair and functional competition. They also point out that competition in Kosovo is still in a developmental stage and requires significant improvement, particularly in terms of alignment with EU directives.³

Asllani and Grima (2022) further emphasize that, despite moderate progress, challenges remain in addressing potential abuses during mergers and acquisitions. They underscore the complexity of joint ownership structures and joint ventures in Kosovo, which often necessitate rigorous supervision to prevent anti-competitive outcomes.⁴ These observations echo the principles of the EU Merger Regulation (Council Regulation (EC) No 139/2004), particularly the assessment of whether a concentration may result in a significant impediment to effective competition (SIEC). Comparatively, KCA decisions tend to focus primarily on local market shares, with less systematic consideration of competitive dynamics or cross-border effects.

In addition to works that deal directly with concentrations, a number of studies provide a broader context on the development of competition law and the functioning of institutions in Kosovo. Mucaj (2020) examines the legal framework of competition and the role of the EU in promoting competition policies in countries aspiring to membership, emphasizing the challenges of the Kosovo Competition Authority and the limited number of cases it has handled.⁵ At an earlier stage, Çeku (2015) discusses the initial problems and challenges of the Law on the Protection of Competition, highlighting weaknesses in its practical implementation and the lack of institutional capacities.⁶

With regard to the judicial enforcement of competition law, Mucaj and Zejna (2023) analyze the role of the judiciary in Kosovo and find that enforcement has been weak for a decade, while the establishment of the Commercial Court in 2022 is seen as a promising development.⁷ In another study, Mulaj (2022) contributes with an analysis of abuse of dominant positions and anti-competitive agreements, emphasizing the obligations of the Authority to safeguard competition.⁸ Similarly, Mucaj (2020) discusses the challenges of following EU jurisprudence in the field of antitrust, pointing out the discrepancies between the legal framework and actual practice in Kosovo.⁹

Another important dimension is addressed by Asllani, Spiteri, and Grima (2019), who, through an empirical analysis, examine the level of economic competition in the Gjilan region. Their findings show that, although economic sectors are perceived as relatively competitive, there are areas vulnerable to monopolistic practices, particularly in the banking, insurance, and pharmacy

³ ASLLANI G, GRIMA S, CITAKU S: Competition Regulation in Kosovo: An Emphasis on Enterprises Concentration. In *New Challenges for Future Sustainability and Wellbeing* 2021 May 21, p. 429.

⁴ ASLLANI G, GRIMA S: Regulation and Protection of Competition in Kosova: Control of Enterprise Concentration. In *Managing Risk and Decision Making in Times of Economic Distress*, Part A 2022 Mar 1, Vol. 108, p. 127.

⁵ MUCAJ A: Competition Law Framework in Kosovo and the Role of the EU in Promoting Competition Policies in Other Countries and Regions Wishing to Join the Block. *Yearbook of Antitrust and Regulatory Studies (YARS)*. 2020;13(22), p.89.

⁶ ÇEKU M.O: Competition law in Kosovo: problems and challenges. *Yearbook of Antitrust and Regulatory Studies (YARS)*. 2015;8(11), p. 101.

⁷ MUCAJ A, ZEJNA I: The Role of the Judiciary in Effective Enforcement of Competition Law in New Jurisdictions: the Case of Kosovo. *Yearbook of Antitrust and Regulatory Studies*. 2023; 16(27) p. 133.

⁸ MULAJ V: Protection of Competition from Abuse with Dominant Positions and Anticompetitive Agreements in the Kosovo Market. *Studia Iuridica Lublinensia*. 2022;31(2), p. 207.

⁹ MUCAJ A: Antitrust Law in Kosovo: Challenges in Following the EU Enforcement Jurisprudence. *Journal of European Competition Law & Practice*. 2020 Mar;11(3-4) p. 166.

sectors. The authors suggest strengthening the role of the Competition Authority to prevent harmful practices.¹⁰

At a regional level, Vula and Asllani (2018) discuss the challenges of developing economic competitiveness in the Western Balkan countries, including the case of Kosovo. They emphasize the importance of building strong national competition authorities and ensuring their alignment with EU rules, including in the area of concentrations.¹¹

In another study, Mucaj (2020) examine the challenges of public enforcement of competition law in Kosovo, analyzing the period 2009–2013 and the decisions of the Competition Authority and relevant courts up to 2018. They conclude that the approach of local institutions has been limited and often ineffective, highlighting the urgent need to strengthen institutional capacities and to adopt a more coherent interpretation of the law in line with EU standards.¹²

From a comparative perspective, Ajeti (2024) examines competition protection in Kosovo and Albania, analyzing the level of harmonization with the EU *acquis*.¹³ Finally, Mucaj (2025) provides a chronological overview of the development of competition law and policy in Kosovo, including recent legal amendments and future enforcement challenges.¹⁴

From this literature review, it is clear that studies on concentrations in Kosovo are limited, but those that exist (Asllani et al., 2021; Asllani & Grima, 2022) provide an important theoretical and practical foundation. The broader literature on competition, including empirical studies (Asllani et al., 2019), comparative analyses (Vula & Asllani, 2018; Ajeti, 2024), and assessments of institutional and judicial enforcement (Mucaj & Vlahek, 2020; Mucaj & Zejna, 2023), enriches the overall analytical framework. A common element across nearly all studies is the observation that, despite legal progress and alignment with the EU, the practical enforcement of competition law in Kosovo remains weak, making the role of the Competition Authority and the courts crucial for the future development of this field.

Recent findings from the European Commission's 2025 Progress Report confirm and complement these observations. The report notes that Kosovo's legislative framework on mergers and antitrust is only partially aligned with EU standards, while enforcement remains constrained by institutional vulnerabilities, including staffing shortages and governance instability.¹⁵ Analytically, combining the literature with the EC findings illustrates a clear pattern: while Kosovo has established a legal framework for concentration control, weak institutional capacity and limited enforcement reduce its effectiveness, leaving certain markets susceptible to anti-competitive practices. These insights reinforce the importance of applying EU standards, including the SIEC assessment, and building the capacity of the KCA to ensure that business concentrations do not hinder competition or harm consumers.

¹⁰ ASLLANI G, SPITERI JV, GRIMA S: Economic competition in Kosovo: an empirical analysis. *International Journal of Economics & Business Administration*, 2019, 7(2), p. 39.

¹¹ VULA V, ASLLANI G: Economic Competitiveness Development Challenges In The Western Balkan Countries-Kosovo Case. *International Multidisciplinary Scientific GeoConference: SGEM*. 2018;18(5.4) p. 401.

¹² MUCAJ A: Challenges of Public Enforcement of Competition Law in Kosovo (Doctoral dissertation, Univerza v Ljubljani, Pravna fakulteta). 2020.

¹³ AJETI A: Comparative Aspects of the Protection of Competition in Kosovo and Albania. *International Comparative Jurisprudence*. 2024;10(2), p. 235.

¹⁴ MUCAJ A: Competition Law and Policy in Kosovo. In *Competition Law and Policy in the Western Balkans 2025* Aug 2 (pp. 121-156). Cham: Springer Nature Switzerland.

¹⁵ European Commission, *Kosovo 2025 Report*. Brussels, p. 70.

III. DEFINITIONS AND TYPES OF CONCENTRATIONS

Concentrations are considered as mergers or acquisitions of specific business entities.¹⁶ Concentrations are structural changes in the market that occur when some business entities merge or when one entity gains control over another. These processes significantly affect market dynamics and competition.

1. Mergers occur when two or more entities combine to form a new entity. In this case, the original entities cease to exist as separate businesses, and their assets and liabilities are transferred to the new company. This process typically involves mutual negotiation and equal sharing of responsibilities and benefits.
2. Acquisitions involve one entity gaining control over another, often through the purchase of a majority of shares or assets. Unlike mergers, acquisitions do not always require an equal sharing of responsibilities, and the acquiring company may not assume all liabilities of the acquired company.¹⁷

Under Kosovo's Law on Protection of Competition, concentrations are defined as a permanent change in control of enterprises, occurring when independent enterprises merge or when one or more enterprises acquire direct or indirect control over all or part of another enterprise. This control can be acquired through means such as the purchase of shares, gaining majority voting rights, or other methods specified by the applicable law.

The acquisition of control refers to the transfer of rights, through a contract or other means, that enables enterprises to exercise decisive and lasting influence over another enterprise. This can be achieved by transferring ownership or rights, including the ability to control decision-making bodies, or other contractual arrangements.¹⁸

However, the law excludes certain transactions from being considered as concentrations, including:

- Purchases for resale by financial institutions, provided the buyer does not exercise voting rights and sells the shares within twelve months (with a possible extension if justified).
- Internal restructuring or the acquisition of joint control through mergers or ownership transfers.
- Transfers of control to a bankruptcy administrator or liquidator under applicable law.
- Establishing joint ventures by independent enterprises that function as separate economic entities without substantially coordinating competitive behavior.¹⁹

Mergers are typically categorized into three main types:

- Horizontal Mergers: Occur when two companies in the same industry and market segment combine, often to enhance competitive position.
- Vertical Mergers: Involve the combination of companies within the same supply chain, helping to increase efficiency and reduce risks associated with suppliers.
- Conglomerate Mergers: Involve companies in unrelated industries, aimed at diversifying business operations and reducing exposure to sector-specific risks.²⁰

In Kosovo, as part of its ongoing efforts to align with EU standards, the Kosovo Competition Authority (KCA) plays a critical role in regulating concentrations to ensure that they do not unduly

¹⁶ JASHARI, A: *Subjektët e së Drejtës Afariste*, Tetovë, 2009, p. 389.

¹⁷ ROBERTS, A; WALLACE W, & MOLES, P: *Mergers and Acquisitions*. Edinburgh Business School. Heriot-Watt University, 2016, p. 1-2.

¹⁸ Law No.08/l-056 on protection of competition, Official Gazette of the Republic of Kosovo, no.14 (7 June 2022), art 11 par.1, 2, 3.

¹⁹ *Ibid*, art 11 par.4.

²⁰ OSMANAJ E, & JASHARI, A: *E drejta e konkurrencës*, Kolegji UBT, 2021, p. 224-225.

restrict competition or harm consumer interests. The KCA's focus is on monitoring mergers and acquisitions that have the potential to significantly alter market dynamics. In the following sections, this paper will focus on how Kosovo's legal framework and the KCA address concentrations, with an emphasis on merger and acquisition control and their impact on market competition in Kosovo. It will also include a comparison with the EU Merger Control Law, analyzing the similarities and differences between the two systems and examining Kosovo's efforts to align with international standards.

IV. THE EVOLUTION OF MERGER CONTROL IN KOSOVO'S COMPETITION LAW

Competition law in Kosovo has a relatively short history when compared to the European Union (EU) member states and other countries in the region. The evolution of Kosovo's competition legislation can be divided into two main phases.

The first phase began in 1999, with the conclusion of the Kosovo War.²¹ A key step in this phase was the adoption of the Constitutional Framework for Provisional Self-Government in Kosovo by the Kosovo Assembly in 2001. This framework set out the fundamental principles and institutions on which the new political, legal, and economic system would be built, based on a market economy.²² In 2007, the Kosovo Assembly adopted Law No. 2004/36 on Competition, which represented a significant step in regulating anti-competitive practices.²³ The law aimed to ensure the development of a sustainable market economy in Kosovo by prohibiting actions that would restrict or distort competition. However, it did not include provisions related to concentrations of enterprises. The law also provided for the creation of an independent institution responsible for enforcing competition law. In 2008, Kosovo entered a new era. On February 17, 2008, the Assembly of the Republic of Kosovo declared Kosovo's independence, and on May 9, 2008, it adopted the Constitution of the Republic of Kosovo, which came into force on June 15, 2008. Another important milestone in competition law came in 2008 with the establishment of the KCA.²⁴ Under Law No. 2004/36 on Competition, the Kosovo Competition Authority was officially founded by the Kosovo Assembly on November 7, 2008. The KCA was created as an independent institution with the responsibility to enforce competition law and promote fair competition between enterprises, while also protecting consumers in Kosovo. Recognizing the need to align competition practices with the European Union's regulations, the Kosovo Assembly adopted Law No. 03/L-229 on Protection of Competition in 2010, which was amended once in 2014. This law included provisions related to the concentration of enterprises, marking a significant development in Kosovo's legal framework for competition.²⁵ Under the 2010 law, an enterprise was considered to have a dominant position in the market if it held more than 40% of the market share.²⁶ However, with the 2014 amendments, this threshold was lowered to 25%.²⁷

According to the 2010 law, in order for a concentration to be approved, the participants were required to notify the KCA if the following conditions were met:

²¹ OSMANAJ, E & JASHARI, A: *Agreements, Concerted Practices, and Decisions by Associations of Undertakings in the EU, Kosovo, North Macedonia, and Albania: Comparative Overview*. *Eur. Competition & Reg. L. Rev.* 6, 2022, p. 222.

²² OSMANAJ, E, & JASHARI, A, (n 20) p.68.

²³ See Law no.2004/36 on Competition, Official Gazette of the provisional institutions of self-government in Kosovo/Prishtina: Year/II no.14/01 July 2007.

²⁴ NEZAJ, N. X: *The development of competition law in Kosovo* (No. 6/15). 2015. Discussion Paper, p. 5.

²⁵ OSMANAJ, E, & JASHARI, A, (n 20) p. 69.

²⁶ See Law no.03/l-229 on protection of competition, official gazette of the Republic of Kosova /Prishtina: Year V/No.88/25 November 2010, art 10. par. 2.

²⁷ See Law no. 04/l-226 on amending and supplementing the law no. 03/l-229 on protection of competition, Official Gazette of the Republic of Kosova/nr.17/10 march 2014, art 6.

- The combined turnover of the participating enterprises in the international market exceeded €100 million (based on the financial reports from the year prior to the concentration), and at least one participant had its headquarters in Kosovo; or
- The total turnover of at least two participants in the domestic market exceeded €3 million (according to the financial reports from the year prior to the concentration).²⁸

Following the 2014 amendments, the €100 million threshold was replaced with €20 million, reflecting an effort to better regulate and monitor concentrations that could impact the competition.²⁹ In June 2022, Kosovo adopted a new Competition Protection Law, which introduced several changes to align more fully with EU legislation. Among the most notable revisions was the reversion to the 40% market share threshold for dominant positions, as well as adjustments to the concentration notification thresholds. These changes reflect Kosovo's ongoing efforts to improve its competition law framework, ensuring it is in line with EU standards and practices. The reports of the last three years (2023-2025) from the European Commission assess Kosovo's efforts to approximate its antitrust and concentration legislation with EU standards. However, it is recommended that Kosovo continue its efforts to further harmonize and fully implement these standards.³⁰ Efforts to harmonize with EU *acquis* and the Commission's recommendations emphasize the importance of continuous improvement and implementation of the law to ensure a fair and competitive environment that aligns with international standards. In addition to LPC, there are also subordinate regulations that assist in the implementation of the law and in aligning Kosovar legislation with EU *acquis*. The subordinate regulations with a direct impact on the field of concentrations are:

1. Guideline No. 03/2023 on the Assessment of Non-Horizontal Concentrations: This guideline is important to ensure that the Authority has clear instructions for assessing concentrations occurring in different markets. It helps analyze the impact of concentrations in various markets and prevents concentrations that could create unfair advantages for enterprises.
2. Guideline No. 02/2023 on the Assessment of Horizontal Concentrations: This guideline is necessary for addressing cases where enterprises are competitors in the same market. It ensures that horizontal concentrations, which occur when competitors merge, are carefully analyzed to prevent harm to competition and the creation of monopolies in the relevant markets.
3. Simplified Concentration Notification Form: This form standardizes the information that must be submitted when a concentration is notified to the Authority. It helps increase transparency and streamline the process for enterprises and the Competition Authority.
4. Guideline No. 02/2023 on the Procedure for Filing Requests for Concentration Approval: This guideline outlines the procedures and content required for concentration approval requests, aiding in the standardization of the process and ensuring the necessary information for the Authority's assessment.
5. Guideline No. 03/2023 on Criteria for Imposing Fines: This guideline establishes the criteria the Authority must consider when imposing fines for violations of the Competition Law (LPC). This document is crucial for ensuring that penalties are fair and proportional, and for maintaining a competitive and fair environment.

²⁸ Law no.03/1 -229 (n26) art 15.

²⁹ Law no. 04/1-226 (n27) art 8.

³⁰ See European Commission, *Kosovo Report 2024*, Strasbourg, 30.10.2024. p.66.; European Commission, *Kosovo Report 2023*, Strasbourg, 8 October 2023, pp. 96-97.

6. Regulation No. 01/2023 on the Investigation Procedures of the Competition Authority: This regulation helps define the procedures for investigations conducted by the Authority, ensuring that investigations are carried out in a clear and structured manner.

Kosovo's merger control legislation is largely aligned with EU standards, providing clear rules for assessing and approving concentrations. However, its effective implementation depends on the Competition Commission, the executive decision-making body of the KCA. Composed of five members appointed by the Assembly upon government proposal, the Commission has often been inactive due to delays in appointments.³¹ Currently, from 2024 it remains non-functional after a member's resignation.

This highlights that, despite a solid legal framework, enforcement and adoption of secondary regulations are hindered without a fully operational Commission, limiting the Authority's ability to protect competition and consumers effectively.

4.1. Main elements of the LPC regarding merger control

The LPC outlines the conditions under which concentrations must be notified to the KCA for review. The law focuses on preventing concentrations that could significantly distort competition, particularly those that create or strengthen a dominant market position. Concentrations are defined broadly in the LPC, including:

- Mergers or acquisitions of independent enterprises.
- The acquisition of control, either directly or indirectly, through the acquisition of shares, voting rights, or other means.
- The creation of joint ventures that perform all the functions of an autonomous economic entity.³²

Participants in a concentration are required to seek prior approval from the KCA if certain financial thresholds are met. Specifically:

- a) The participants in the concentration must have a combined total turnover exceeding €20 million in the international market, and one of the participants must have a turnover of €1 million or more in Kosovo.
- b) Alternatively, at least two participants in the concentration must have over €3 million in turnover in Kosovo.³³

These thresholds ensure that significant mergers and acquisitions are reviewed to determine whether they may harm competition. Turnover for the purpose of determining whether a concentration meets the notification thresholds is calculated using the financial reports from the previous year:

- If the financial reports for the most recent year are unavailable at the time of submitting the concentration application, turnover will be based on the latest available financial year.
- If a concentration involves a group of associated enterprises, the revenues of all enterprises in the group are considered, with the exception of internal transactions within the group.³⁴

This method ensures a comprehensive assessment of the financial impact of the concentration by including all relevant entities and their combined turnover.

The KCA evaluates whether a concentration would significantly harm competition, particularly in terms of creating or strengthening a dominant position in the market. This assessment considers

³¹ Law no. 08/l-056 (n18) art 21.

³² *Ibid*, art 11.

³³ *Ibid*, art 13.

³⁴ *Ibid*, art 13. par. 2.

factors like market shares, barriers to entry, and the effect on consumer choice and prices. A company is considered to hold a dominant position in the market if its market share exceeds 40%. This aligns with the EU's approach, though Kosovo's previous version of the law had set the dominance threshold at 25%, reflecting a more stringent approach.³⁵

Certain transactions are excluded from merger control under the LPC. These exclusions are designed to avoid unnecessary regulatory oversight on transactions that are unlikely to significantly impact competition. Excluded transactions include:

- Internal restructuring of a company, where there is no change in the overall market structure.
- Purchase of shares by financial institutions for resale, provided the buyer does not exercise voting rights and sells the shares within 12 months (with an option for a 12-month extension if the buyer proves they couldn't sell the shares within the original timeframe).
- Transfer of control during bankruptcy proceedings to a bankruptcy administrator or liquidator, as governed by applicable insolvency laws.³⁶

These exclusions help streamline the process for certain types of transactions while focusing the KCA's resources on those that may have a significant competitive effect. The KCA has the authority to block a concentration or impose fines if companies fail to comply with the notification requirements or if their merger threatens market competition. These fines can reach up to:

- a) 1% of the total turnover of the involved enterprises for failure to notify.
- b) 10% of the turnover for executing a prohibited concentration.³⁷

These penalties mirror those imposed by the EU's competition authorities, aiming to deter anti-competitive practices. However, this approach raises questions about proportionality and its relevance given Kosovo's economic context. Kosovo's legal and economic context is different from the EU, where the competition system is more mature and the market is larger.

4.2. Comparison with EU Merger Control Law

LPC and the EU Merger Regulation share several similarities in their objectives, structure, and the procedures they establish for reviewing concentrations. However, there are also some differences, particularly in the scope of implementation and the level of experience in merger control. Below is a comparison based on the key elements:

4.2.1. Definition of Concentration

Both Kosovo's LPC and the EUMR adopt a broad definition of concentration. They cover mergers between previously independent companies, acquisitions of control through shares or voting rights, and the establishment of full-function joint ventures. At first glance, the definitions are closely aligned, reflecting Kosovo's intention to harmonize its legislation with EU standards.

However, the two systems differ considerably in the depth of interpretation that accompanies these definitions. The EU has developed more than three decades of case law and administrative guidance clarifying what constitutes "control," "decisive influence," and the borderline between cooperative joint ventures and genuine concentrations.³⁸ Kosovo, by contrast, lacks an equivalent

³⁵ See OSMANAJ, E., & ZENJULLAHU, N: *Prohibition of Abuse of Enterprises with a Dominant Position in the Market According to the Competition Law in Albania and Kosovo*, 2023, CoRE, p. 118.

³⁶ Law no. 08/1-056 (n18) art 11 par. 4.

³⁷ *Ibid*, art 57 and 58.

³⁸ See Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), art 3; See WHISH, R., & BAILEY, D. (2021). *Competition Law* (9th ed.). Oxford University Press. pp. 852-871.

body of interpretative case law. While the legal text mirrors the EU rules, many practical scenarios remain underexplored. For example, the EU has dealt extensively with situations involving minority shareholdings, veto rights, cross-border joint ventures, and complex ownership structures.³⁹ Kosovo's Competition Authority has had far fewer opportunities to develop similar doctrines. Consequently, the interpretation of concentration concepts in Kosovo remains largely legislative rather than practice-based, which limits predictability and depth of assessment.

4.2.2. Notification Requirements

Under the LPC, concentrations must be notified to the KCA if certain turnover thresholds are met. Specifically, participants in a concentration must have a combined turnover exceeding €20 million internationally, and one participant must have a turnover of €1 million in Kosovo, or at least two participants must have a combined turnover of €3 million in Kosovo.⁴⁰ EU Merger Regulation requires notification when the combined turnover of the parties exceeds €5 billion worldwide, with at least two parties having a turnover of more than €250 million within the EU, unless each of the parties achieves more than two-thirds of its turnover in one member state.⁴¹ Both Kosovo and the EU impose financial thresholds based on the turnover of the participants in a concentration to determine whether a transaction should be reviewed by the relevant competition authorities. The EU threshold for notification is considerably higher than Kosovo's, reflecting the scale and economic size of the EU market compared to Kosovo's. This also means that the number of transactions requiring notification is higher in the EU due to its larger market.

The lower thresholds under the LPC make merger review accessible even for relatively small transactions, which is appropriate given Kosovo's smaller market structure. However, this also raises questions about the balance between regulatory oversight and administrative efficiency. As noted by Völcker (2024), the EU's original mandate in 1989 aimed to limit the Commission's competence to large transactions with clearly defined thresholds, yet over time, the Commission developed practices such as "call-in" powers to review mergers below these thresholds.⁴² This demonstrates that while thresholds are essential for defining the scope of merger control, their practical effect depends on procedural tools and enforcement experience. However, as highlighted by Bradford, Jackson, and Zytneck (2018), the practical effects of these thresholds are not determined solely by their numeric value. Their empirical study of over 5,000 mergers reported to the European Commission between 1990 and 2014 shows that concerns about protectionism such as systematically targeting non-E.U. acquirers were largely anecdotal and unsupported by evidence. In fact, non-E.U. acquirers were statistically less likely to face challenges, emphasizing that procedural rigor, neutrality, and institutional capacity are critical for fair enforcement.⁴³

A recent development in the EU illustrates the practical significance of thresholds and jurisdiction: the *Illumina/Grail* case (ECJ, 2024). *Illumina*, a US-based company, acquired *Grail*, a start-up with no EU revenue. Since the transaction did not meet either the EU or any Member State turnover thresholds, it was initially not subject to merger control review. Following a complaint, several National Competition Authorities (NCAs) requested the European Commission to intervene under Article 22 EUMR. The Commission accepted the referral and prohibited the

³⁹ *Ibid.*

⁴⁰ Law no. 08/1-056 (n18) art 15.

⁴¹ See von KOPPENFELS U. A fresh look at the EU merger regulation? The European Commission's White Paper "Towards more effective EU merger control". *Liverpool Law Review*. 2015 Apr;36(1):7-31.

⁴² VÖLCKER SB. Back to the future: Merger control outside the Merger Regulation. *Common Market Law Review*. 2024 Oct 1;61(5).

⁴³ BRADFORD A, JACKSON JR RJ, ZYTNICK J. Is EU merger control used for protectionism? An empirical analysis. *Journal of Empirical Legal Studies*. 2018 Mar;15(1), p. 165.

transaction, also imposing fines for breaching the standstill requirement (“gun jumping”). However, on appeal, the ECJ ruled that the Commission does not have jurisdiction to review transactions referred by NCAs if they fall below the national thresholds of the referring Member States. The judgment emphasizes that the scope of EUMR is intentionally limited by turnover thresholds to balance legal certainty, enforcement efficiency, and predictability for businesses. The ruling underscores the potential complexities of below-threshold transactions and highlights alternative enforcement mechanisms, including the use of Article 102 TFEU or new national thresholds introduced by Member States.⁴⁴ This case provides an important lesson for Kosovo while lower thresholds capture more transactions, enforcement capacity and legal clarity are equally critical to ensure effective merger control.

4.2.3. Exemptions and Exclusions

The LPC excludes certain transactions from merger control, including internal restructuring, purchases of shares for resale by financial institutions (if certain conditions are met), and transfers of control during bankruptcy proceedings. These exclusions aim to reduce unnecessary burdens for transactions unlikely to affect competition.⁴⁵ The EU also has exclusions for certain transactions, such as acquisitions that do not meet the turnover thresholds or transactions that are unlikely to affect competition. Financial institutions' purchases of shares for resale and certain internal restructuring are also exempt from review, as in the Kosovo LPC. Both regimes exclude certain transactions from merger control, primarily to reduce regulatory burdens on transactions that are unlikely to harm competition.⁴⁶ While the LPC aligns with EU principles, it remains more limited in practice due to Kosovo's smaller market and less frequent enforcement experience.

4.2.4. Fines and Penalties

Similar to the EU regulations, the LPC provides for fines for failing to notify concentrations or for carrying out prohibited concentrations. Both frameworks allow for penalties up to 1% of turnover for failure to notify and up to 10% for the realization of prohibited concentrations. However, it is important to note that as of now, the KCA has not yet imposed a fine for executing a prohibited concentration. It has only imposed fines for failure to notify, which can be up to 1% of the total turnover of the involved enterprises.⁴⁷ This reflects Kosovo's relatively newer experience in merger control enforcement.

The EU has a longer history of enforcement, with more cases involving the imposition of fines for prohibited concentrations. However, as Koenig (2024) notes, even in the EU the vast majority of fines remain well below the 10% turnover cap, which has attracted some criticism regarding their deterrent effect.⁴⁸ The EU's well-established case law and more extensive experience in merger control provide a more developed framework for the assessment of concentrations compared to Kosovo.⁴⁹ Kosovo has made significant progress in creating a legal framework for competition protection. However, further steps are needed to achieve full alignment with the EU

⁴⁴ Court of Justice of the European Union (ECJ). (2024). *Illumina Inc. v. European Commission; Grail LLC v. European Commission* (Joined Cases C-611/22 P and C-625/22 P). ECLI:EU:C:2024.

⁴⁵ Law no. 08/l-056 (n18) art 11 par. 4.

⁴⁶ Council Regulation (EC) No 139/2004 (n38), art 3 par. 5.

⁴⁷ Law no. 08/l-056 (n18), art 14.

⁴⁸ Koenig C. *Magnitude of Fines*. Elgar Encyclopedia of Competition Law (Edward Elgar Publishing) [forthcoming]. 2024 Apr, p.8.

⁴⁹ For a general approach on European case law in merger control, see: CALLERMO, J: *Case Law in European Merger Control*. *International Review of Law & Economics*, 2025, p. 1-9.

acquis, which includes not only legislative harmonization but also improvements in the implementation and enforcement of competition rules. The comparison highlights that Kosovo has made substantial progress in adopting a framework that mirrors EU merger control, including detailed procedures, thresholds, and sanctions. However, full alignment extends beyond legislation. The effectiveness of the LPC depends critically on the operational capacity of the KCA and, in particular, the functional status of the Competition Commission, the executive decision-making body. Historically, the Commission has often been inactive due to delays in appointments, notably during the periods 2013–2016, 2021–2022, and currently since 2024 following a member's resignation. This recurring non-functionality has directly limited the Authority's ability to review and enforce merger regulations, underscoring that, despite sound legal provisions, practical implementation remains constrained. Institutional stability and continuity of the Commission are therefore crucial for Kosovo to fully realize its merger control framework and achieve effective convergence with EU practices.

V. THE ROLE OF THE KCA IN THE ASSESSMENT OF CONCENTRATIONS

The KCA plays a critical role in regulating concentrations and ensuring that competition is protected. The KCA is an independent agency accountable to the Assembly of the Republic of Kosovo, tasked with enforcing competition rules and overseeing the review of mergers and acquisitions. KCA is independent in its operations, and any political or private interference is prohibited to preserve impartiality.⁵⁰ The organizational structure of the KCA consists of two main bodies:

1. *The Secretariat;*
2. *The Commission for Protection of Competition (CPC).*⁵¹

The Secretariat is the administrative body that provides professional support to the Commission for Protection of Competition during its proceedings. The Secretariat includes:

The General Director-The Chief administrative officer who reports to the Commission. The General Director manages the Secretariat's overall operations, supervises the implementation of Commission decisions, presents cases under investigation for decision-making, coordinates primary and secondary legislation drafting in collaboration with the Commission, and manages the KCA's finances and resources.

Legal and Administrative Department-This department develops staff policies and plans for personnel management, coordinates legislation drafting, ensures compliance with EU legislation and Kosovo's laws, and prepares the budget with the Commission and the Directorates.⁵²

Market Surveillance Department-This department's primary mission is to maintain and restore effective competition in the market. It supervises market activities through investigation procedures, proposes corrective measures for anticompetitive practices, and manages unannounced inspections of business premises. It also plays a key role in raising awareness about the role of competition policy. The Market Surveillance Department has four divisions:

- a) Division of Prohibited Agreements
- b) Division of Dominant Position
- c) Division of Concentrations

⁵⁰ *Ibid*, art 21.

⁵¹ Regulation No.3-2018 on the internal organization and systematization of jobs and job description in the Secretariat of the Kosovo Competition Authority. No. 207/18-02/13. Date 25.05.2018, art 4.

⁵² *Ibid*, art 9-10.

d) Division of Analysis, Methodology, and Exclusive Rights.⁵³

The Commission is the primary executive body of the KCA, responsible for managing its operations. It consists of five members, including the President, who is appointed by the Kosovo Assembly upon the Government's proposal. Commission members and president must meet the following criteria:

- They must be citizens of the Republic of Kosovo.
- They must hold a high qualification in law, economics, or a related field.
- They must have at least seven years of professional experience in their field.
- They must not have had conflicts of interest or direct involvement in enterprises within Kosovo for a specified period.⁵⁴

The President of the Commission represents the KCA and coordinates its work, ensuring its professional accountability. The Commission is responsible for initiating investigations, imposing fines, approving or rejecting concentrations, and ensuring the effective restoration of competition. It also promotes public awareness about market competition and cooperates with international institutions on competition-related matters.⁵⁵ The KCA's role is essential in ensuring that concentrations do not harm competition or consumer welfare. The authority has the power to approve or reject mergers and acquisitions based on their potential impact on the market. In cases of prohibited concentrations, the KCA can impose fines. If a concentration is executed without KCA approval or violates the prohibition on harmful concentrations, the KCA can impose a fine of up to 10% of the global turnover of the participating enterprises for the previous financial year.

The penalty structure is designed to ensure that companies comply with competition laws. The penalty for less serious infringements is capped at no more than 1% of the total turnover of the preceding financial year, both in Kosovo and the EU. While this approach mirrors the EU's legal framework, it raises questions regarding its applicability in the context of Kosovo. Specifically, the EU's rules are designed for countries with more developed economies, whereas Kosovo's economy is relatively smaller. This discrepancy might raise concerns about whether the same penalty structures are appropriate for Kosovo's market size and economic realities. Kosovo's smaller economy may face challenges in absorbing such high fines, particularly for local companies with more limited financial capacities. Therefore, it may be necessary to evaluate whether the same penalty levels are entirely appropriate for Kosovo's market size and economic realities. Furthermore, the comparison to EU standards remains relevant as Kosovo continues to align its legal framework with EU regulations in the process of integration. However, there is a need to balance the ambition of harmonizing with EU standards with the practical considerations of Kosovo's market characteristics. From 2016 to August 2024, the KCA handled a total of 81 concentration cases. The number of cases handled has significantly increased in 2022, 2023, and 2024, likely reflecting higher economic activity and a growing number of concentrations in the market. The periods of non-functioning of the KCA in 2013-2016 and 2021-2022 have influenced the number of cases handled, as fewer cases were processed during those times.

In terms of decision outcomes, the KCA has approved a majority of the concentrations. Out of the 81 cases, 71 were approved, which may raise questions about the perceived permissive approach of the KCA. It is important to clarify that the high approval rate does not necessarily indicate a lack of rigor in the assessment process. The KCA evaluates each concentration thoroughly, and the high approval rate likely reflects that the majority of the cases did not present

⁵³ Regulation No.3-2018 (n45), art 11.

⁵⁴ Law no. 08/1-056 (n18) art 22-23.

⁵⁵ *Ibid*, art 26.

substantial risks to market competition. In these cases, the KCA determined that the concentrations did not harm or distort effective competition, in line with its mandate to protect the competitive process. While this high approval rate could be interpreted as a permissive approach, it is important to note that the KCA carefully examines each concentration on a case-by-case basis. In instances where there are concerns about potential anti-competitive effects, the KCA has initiated detailed investigations. Out of the 81 cases, 8 required detailed investigations, with five still ongoing as of 2024 (see Table 1). This demonstrates the KCA's proactive stance in investigating complex cases and ensuring that concentrations do not negatively impact competition. Only one case has been rejected, which indicates that the KCA has found very few concentrations to be harmful to competition. Furthermore, only one case was fined for failing to notify a concentration in 2023, underscoring the KCA's focus on ensuring compliance with procedural requirements.

Table 1: Number of Concentration Cases Handled by the Kosovo Competition Authority (2016-August 2024)

	2016	2017	2018	2019	2020	2021	2022	2023	August-2024
Number of Cases Handled	1	2	3	4	4	2	10	31	24
Approval	1	2	3	4	4	2	8	28	19
Rejection	-	-	-	-	-	-	-	1	-
A detailed investigation procedure has been initiated	-	-	-	-	-	-	2	1	5
Imposition of a fine	-	-	-	-	-	-	-	1	-

Source: Prepared by the authors based on the decisions published on KCA's official website.

In the following sections, we will review some of the major cases for which a detailed investigation procedure has been initiated, as well as the cases for which negative decisions or fines have been imposed.

VI. CASES WITH DETAILED INVESTIGATION PROCEDURE

Case 1: The Acquisition of 100% of the Shares of "Kujtesa Net" LLC by "Devolli Corporation" LLC

In Kosovo's telecommunications sector, "Kujtesa Net" LLC, a significant player in cable services, has been acquired by "Devolli Corporation" LLC. The KCA raised serious concerns regarding this transaction as it was completed without submitting the required notification as mandated by the LPC. This notification is a legal obligation aimed at enabling the KCA to assess the potential impact of the concentration on market competition and consumer interests.⁵⁶

The transaction in question could have significant consequences for competition in the cable telecommunications market. Specifically, the concentration of ownership could lead to a reduction in competition, potentially resulting in higher prices and lower service quality for consumers. As is known, the cable telecommunications sector in Kosovo is already concentrated, and market share consolidation between major players could lead to a situation where only a few dominant

⁵⁶ Kosovo Competition Authority. Conclusion No.32/2024, Date 20.03.2023, p. 2-3.

companies remain. This could create barriers to entry for new competitors and limit the potential for sectoral development.

The KCA's investigation will focus on assessing the possible effects this concentration could have on the competitive structure of the market. If the KCA determines that the transaction strengthens a dominant position or reduces competitive dynamics, it may seek to block the transaction or, in less severe cases, impose conditions that ensure competition is maintained.

Case 2: The Acquisition of Shares of Several Enterprises by "Artmotion LLC" and "Kujtesa Net LLC"

In December 2022, the KCA initiated an investigation into the share acquisition transactions between "Artmotion LLC" and "Kujtesa Net LLC". The KCA's inquiry was triggered by reasonable suspicions that these companies had acquired shares in several other enterprises without submitting the required mandatory notifications, as stipulated by the LPC. The failure to notify these acquisitions raises concerns, as such notifications are critical for the KCA to analyze the potential effects on market competition. A key concern in this case is that the KCA suspects the possibility of anti-competitive agreements or coordinated practices between the parties involved. These may include agreements or actions that directly or indirectly affect market prices, control over production and distribution, and allocation of market resources. Specifically, the KCA is investigating whether these companies have colluded to fix prices, divide markets, or engage in exclusionary practices that would harm competition in the relevant markets, which are primarily in the telecommunications and cable sectors.⁵⁷

The potential anti-competitive agreements, if proven, could have detrimental effects on market competition, especially in the cable telecommunications industry, which already faces challenges from limited competition. For consumers, this could lead to higher prices, reduced service quality, or fewer choices in the marketplace, as dominant firms may engage in practices that stifle innovation or block new entrants. Additionally, smaller competitors might be forced out of the market, further reducing the diversity of offerings available to consumers.

In its investigation, the KCA must carefully assess whether the share acquisitions were made with the intent or effect of creating a dominant position in the market. Such a position could harm the fair and free operation of competition by limiting the ability of other companies to compete effectively. Moreover, this case underscores the importance of maintaining a competitive environment in the telecommunications and cable markets, where market access is often already difficult due to high entry barriers and existing monopolistic or oligopolistic structures. By rigorously investigating these transactions and any suspected anti-competitive behavior, the KCA plays a crucial role in safeguarding a competitive and fair marketplace. This investigation is a critical step in ensuring that the market remains open to new players, that existing companies compete on a level playing field, and that consumers' interests are protected.

Case 3: Acquisition of Shares of "Fiberlink" LLC by "Elektra" Telkos LLC

In March 2024, during a routine preliminary market investigation into Kosovo's telecommunications and cable services sector, the Kosovo Competition Authority (KCA) raised concerns about a share acquisition transaction involving "Elektra" Telkos LLC and "Fiberlink" LLC. The transaction in question involved the purchase of shares in "Fiberlink" LLC, a company that operates within the telecommunications and cable services sector. The KCA found that this

⁵⁷ Kosovo Competition Authority. Conclusion No.58/22, Date 20.12.2022, pp. 1-3.

acquisition was completed without submitting the mandatory notification to the KCA, as required under the Law on Protection of Competition (LPC). This failure to notify is significant because the mandatory notification serves as a critical mechanism for ensuring that the KCA can examine the potential effects of such acquisitions on market competition.⁵⁸

The KCA's concerns primarily revolve around the impact of this acquisition on the level of competition in the relevant market. In markets like telecommunications, where competition is already somewhat limited, reducing the number of independent competitors can have far-reaching negative effects. When competition diminishes, consumers may face higher prices, reduced service quality, and fewer choices in the marketplace. The transaction may also lead to the creation or strengthening of a dominant position within the market, further diminishing the prospects for fair competition and leaving consumers at a disadvantage. In its investigation, the KCA is assessing whether this acquisition could significantly alter the competitive dynamics of the telecommunications and cable services market in Kosovo. Specifically, the authority will evaluate whether the concentration has the potential to reduce competition by enabling "Elektra" Telkos LLC to hold excessive market power. A key concern is that this concentration could result in a monopoly or an oligopoly, which would harm market efficiency, reduce innovation, and lead to less favorable outcomes for consumers. This case illustrates the importance of regulatory oversight in maintaining healthy competition in the telecommunications sector. By failing to submit the mandatory notification, "Elektra" Telkos LLC has raised significant concerns regarding market concentration and its potential to harm consumers and competitors alike. The KCA's investigation will be essential in determining the long-term impact of this transaction and whether any remedial actions are necessary to preserve a competitive market environment.

Case 4: Acquisition of Shares in "NKL Limited" by "Balfin Group"

The acquisition of shares in NKL Limited by Balfin Group has raised significant concerns for the KCA due to potential issues related to market concentration and compliance with legal notification requirements. In this case, Balfin Group has acquired shares in NKL Limited, a company that directly controls New Co Ferronikel L.L.C, which is involved in the mining and processing of nickel. Given the size and scope of the transaction, the KCA has initiated a review to ensure that the acquisition complies with the LPC and that the required concentration notification was submitted to the KCA. In 2018, the KCA had previously approved the concentration involving the acquisition of 100% of the shares in New Co Ferronikeli Complex LLC by NKL Limited, but at that time, Balfin Group was not a shareholder in NKL Limited. The inclusion of Balfin Group in this new transaction raises questions about their role in the current acquisition and whether it creates any undue market effects or conflicts with the prior regulatory approval. This discrepancy has led the KCA to scrutinize the transaction closely, especially since Balfin Group's new involvement could significantly alter the competitive landscape in the relevant markets.⁵⁹ Key Competition Concerns:

- The acquisition by Balfin Group could result in increased concentration within the relevant market, which is especially critical in industries such as mining and processing, where high barriers to entry and limited competition already exist. If the transaction results in the creation of a dominant player, it could lead to the reduction of competitive pressures in the market.;

⁵⁸ Kosovo Competition Authority. Conclusion No.28/24, Date 13.03.2024, pp. 1-3.

⁵⁹ Kosovo Competition Authority. Conclusion No.31/23, Date 17.03.2023, pp. 2-3.

- The transaction involves the vertical integration of Balfin Group into a company that already controls significant mining and processing operations (through New Co Ferronikel L.L.C). This could potentially limit the ability of other companies to access necessary resources or distribution channels, particularly if Balfin Group seeks to leverage its increased market power to hinder competitors' access to critical inputs or markets;
- Given that Balfin Group is a large and influential conglomerate with significant control over multiple sectors, including mining and retail, the acquisition may lead to the creation or strengthening of a dominant market position;
- By not notifying the KCA about the acquisition, the parties involved potentially bypassed an important regulatory step that allows the KCA to assess the impact of the transaction on market competition. This failure could delay the KCA's ability to monitor and regulate the transaction effectively, leaving the market vulnerable to anti-competitive behavior.

The KCA's investigation is key to ensuring that the acquisition does not negatively affect market competition or consumer welfare, thereby maintaining a fair and competitive environment in Kosovo.

Case 5: Acquisition of Shares of "Spar Kosova JSC SHA" by "Meridian Corporation SHPK"

In this case, we are dealing with an investigation by the KCA concerning a significant transaction in the wholesale and retail sector in the Republic of Kosovo. It is suspected that "Meridian Corporation" LLC has acquired the shares of "Spar Kosova JSC" JSC. "Spar Kosova JSC" JSC is engaged in the wholesale and retail trade of products in the Republic of Kosovo. KCA has raised a reasonable suspicion that the transaction was carried out without submitting the mandatory notification for the concentration, as required by the LPC.⁶⁰ Therefore, a detailed investigative procedure has been initiated to analyze the potential impact of the transaction on market competition. If the KCA finds no legal violations and determines that the transaction does not harm competition, the investigation may be concluded. However, if violations are found, the KCA may seek to block or modify the transaction to maintain fair competition in the market. The KCA's investigation is a crucial step to ensure that large transactions in the retail sector do not undermine fair competition. A careful and thorough analysis of the impacts of this transaction is essential to preserve market integrity and protect consumer interests.

Case 6: Acquisition of Shares of "Kumanova Cable" SH.P.K by "AE Holdin" L.L.C

The KCA is investigating the acquisition of shares in Kumanova Cable SH.P.K by AE Holdin L.L.C, as it suspects that AE Holdin did not notify the KCA of the transaction, as required by the LPC.⁶¹

The LPC mandates that businesses notify the KCA of any concentration that could affect market competition. Failure to submit the notification prevents the KCA from assessing the potential impacts on market competition, making it more difficult to ensure that the market remains open and competitive.

The KCA is concerned that the acquisition may reduce market competition by reducing the number of competitors, potentially leading to a dominant position for AE Holdin, which could harm the market. A detailed investigation has been initiated to evaluate the transaction's impact. If violations are found, the KCA may impose fines or corrective measures to maintain fair competition.

⁶⁰ Kosovo Competition Authority. Conclusion No.47/24, Date 13.05.2024, pp. 1-2.

⁶¹ Kosovo Competition Authority. Conclusion No.29/24, Date 13.03.2023, pp. 1.

VII. NEGATIVE DECISION

Rejected Case: Acquisition of 100% of the Shares of "NET PLUS D.O.O" by "MTS D.O.O"

After receiving the notification request regarding the acquisition of 100% of the shares of NET PLUS D.O.O by MTS D.O.O, the KCA has initiated the procedure to evaluate this transaction. The notification request was made because both parties involved in the transaction, MTS D.O.O and NET PLUS D.O.O, are registered companies in the Republic of Kosovo and operate in the sector of providing internet and cable television services.⁶² According to the KCA's assessment, this transaction has the potential to create and reinforce a dominant position in the relevant market. The KCA has reviewed the possible impact of the transaction and found that market concentration in the area where these businesses operate is already high. The transaction would lead to an increase in market concentration in this area, given the limited number of operators providing internet and cable television services. Based on market analysis, the KCA has determined that high concentration in this sector could restrict competition and harm consumers by creating a situation where a limited number of operators have significant dominance. For this reason, the KCA has decided to block the concentration involving NET PLUS D.O.O and MTS D.O.O regarding the acquisition of 100% of the shares of NET PLUS D.O.O. The KCA's decision to block the concentration is justified and supported by the market analysis. The decision aims to protect market competition and ensure that consumers have access to high-quality services at reasonable prices.

VIII. FINING DECISION

Fined Case: The company "MT D.O.O" has been penalized with a fine of €1,563,959

The KCA has found that MTS D.O.O has completed the acquisition of 100% of the shares in four companies: VGN NET d.o.o, LIKA (IMPULS), P.P., RKDS-IMPULS, and HERC INTERNATIONAL d.o.o. The KCA conducted a single procedure for all these transactions due to the similarity in factual and legal circumstances, aiming to streamline the process and manage the case more efficiently. The KCA determined that MTS D.O.O carried out these transactions without submitting the mandatory notification for the concentration, as required by the LPC. This constitutes a significant violation of competition protection rules and the legal procedure for registering concentrations. MTS D.O.O has been fined €1,563,959.⁶³ This decision has been made to ensure that businesses adhere to legal procedures and to prevent practices that could harm market competition. The amount of the fine is significantly high, reflecting the seriousness of the violation and the effort to compel businesses to comply with competition rules. Such fines are a tool to ensure that all businesses follow legal procedures and to maintain a fair and open market. A positive aspect of the case is the cooperation of MTS D.O.O with the KCA during the investigation and the timely provision of the required documents. The KCA considered MTS D.O.O's cooperation with the authority during the investigation as a mitigating circumstance, including the timely submission of all requested documents. This cooperation helped expedite the investigative process and resolve the case. This case serves as an important example of the application of competition protection law and the impact of punitive measures in maintaining a fair and open market. The analysis of this case highlights the importance of adhering to legal procedures and cooperating with authorities to ensure a competitive and balanced market environment.

⁶² Kosovo Competition Authority. Decision No.114/23, Date 12.12.2023, pp. 2-3.

⁶³ See Kosovo Competition Authority. Decision No.120/23, Date 18.12.2023, p. 1.

IX. APPROVAL DECISION

Case 1: Acquisition of 100% of the Shares of "Hygea Hospital" by "American Hospital"

This transaction involved the acquisition of a hospital established in Albania and has potential implications for the healthcare market in both Albania and Kosovo. "American Hospital," based in Albania, is involved in medical and health services, managing private hospitals and clinics, including "American Hospital Kosova Sh.P.K." in Kosovo. "Hygea Hospital Tirana" is a hospital in Albania owned by "Diagnostic and Therapeutic Center of Athens Hygeia SA," a Greek company. Hygeia Tirana operates in Albania in the field of providing healthcare services. Hygeia Tirana does not operate in Kosovo, although it has established a branch in Kosovo, "Hygea Hospital Tirana Branch in Kosovo," which is solely for market research and public opinion surveys. "American Hospital" S.A. has acquired 100% of the shares of "Hygea Hospital" S.A., thus becoming the sole owner of this hospital. The KCA has determined that the acquisition of "Hygea Hospital" by "American Hospital" will not create a dominant position in Albania or Kosovo. The market structure, post-concentration, will remain at similar levels, and competition in the market will not be negatively affected. Considering that "Hygea Hospital" does not provide active services in Kosovo and "American Hospital Kosova" operates as a separate entity, the KCA assessed that this transaction will not have a significant impact on the Kosovar market. According to the LPC, large concentrations and acquisitions require mandatory notification to allow for the assessment of potential market impact. In this case, the parties followed the necessary procedures and provided the required information for evaluation. While the transaction price has been kept confidential, the LPC and administrative guidance do not require price transparency for such concentrations unless it is important for assessing market impact. The KCA has considered all circumstances of the case, including the potential harmful weight on the concentration participants and the effects on competition.⁶⁴ The KCA's assessment indicates that this transaction has been thoroughly reviewed, and there are no indications of negative impacts on market competition. However, it is important for the KCA to continue monitoring and evaluating the potential effects of concentrations in the future. In conclusion, the KCA has approved the transaction involving the acquisition of "Hygea Hospital" shares by "American Hospital," based on a detailed analysis of market impacts and ensuring that competition remains unaffected. This case reflects the KCA's commitment to protecting competition and consumer interests by adhering to the standards and procedures set forth in the LPC.

Case 2: Sale of Shares of "NLB" and "KBC" by Sava Re d.d. and NLB Vita d.d.

In this case, Nova Ljubljanska Banka (NLB) and KBC Insurance NV (KBC) decided to sell their shares in the Slovenian joint life insurance venture, NLB Vita, to Sava Re, one of the three largest insurance groups in the Adriatic region. Sava Re, a joint-stock company registered in Slovenia, operates in Kosovo through various entities such as Illyria Sh.A., Illyria Life Sh.A., and Illyria Hospital Sh.P.K. The KCA has analyzed that NLB Vita does not have a branch in Kosovo and does not have horizontal or vertical interactions with Sava Re entities in the Kosovar market. The activities of the companies involved in this concentration are distinct and operate in different markets. The KCA has concluded that there are no horizontal overlaps (in the same field of insurance) or vertical effects (impact on a related sector) that could affect competition in the Republic of Kosovo. Based on the examination of data and analyses, the KCA has determined that this concentration will not result in negative effects on competition in Kosovo. None of the parties

⁶⁴ Kosovo Competition Authority. Decision No 59/18, Date 15.08.2018, pp. 2-4.

involved in the transaction has any direct impact on the Kosovar market that could lead to unusual dominance or harm fair competition.⁶⁵ Even though Illyria Hospital is registered, it currently does not conduct the declared activities in Kosovo, and thus has no direct impact on the local market. The KCA has approved the concentration, concluding that this transaction does not have any negative effects on market competition in the Republic of Kosovo. The decision was made considering the market structure and the potential impact of the concentration on the relevant sectors. This decision illustrates the KCA's commitment to protecting fair competition and ensuring that international market developments do not harm consumer interests and competition at the local level.

Case 3: Acquisition of 41% of Shares by Deutsche Lufthansa AG (Buyer) in Italia Trasporto Aereo S.p.A. (Target) and the Ministry of Economy and Finance of Italy (Seller)

This case involved a transaction where Deutsche Lufthansa AG (DLH) acquired 41% of the shares in Italia Trasporto Aereo S.p.A. (ITA), within the context of ITA's privatization. DLH is one of the largest airlines in Europe, operating services to over 320 destinations in 104 countries with a fleet of more than 700 aircraft. ITA is a company established by the Italian government and is active in the passenger air transport industry both nationally and internationally. DLH has purchased 41% of ITA's shares with the possibility of acquiring additional shares in the future and obtaining special decision-making and veto rights. This transaction is part of ITA's privatization process, which has thus far been government-owned.⁶⁶ The reason for the notification request to the KCA is that the notifying party, DLH, provides air services in Kosovo. AKK has confirmed that ITA does not currently offer air services in Kosovo and has no plans to do so in the future. Therefore, this acquisition will not have a direct impact on competition in the Kosovo market. KCA has analyzed that this transaction will not alter the horizontal (competition between similar companies) or vertical (various links in the supply chain) structure in the Kosovo market. KCA has also assessed that the transaction will not reinforce a dominant position for DLH in the Kosovo market and will not have negative effects on competition in this market.⁶⁷ In conclusion, this transaction has been approved as it does not pose threats to competition in the Kosovo market. Although DLH will become a significant shareholder in ITA and may have the opportunity to increase its investment in the future, this is not expected to negatively impact competition in Kosovo due to ITA's lack of direct presence in this market. Overall, this case illustrates how competition analyses can assess potential impacts at various market levels and how privatization policies and international investments can influence competition dynamics.

Case 4: Acquisition of 50% of Beta Pura by "Helix Beteiligungs GmbH" and "Agrana Sale & Marketing"

This case involved the acquisition of 50% of Beta Pura GmbH by two related enterprises: Helix Beteiligungs GmbH and Agrana Sale & Marketing (ASM). Helix Beteiligungs GmbH is a company established under Austrian law and is involved in various fields. Similarly, Agrana Sale & Marketing (ASM) is also established in Austria and has a registered subsidiary in Kosovo, Argana Student Kosovo L.L.C, which primarily engages in the sale of sugar in Kosovo. Beta Pura GmbH is a company registered in Austria, co-owned by Agrana Sale & Marketing and Amalgamated Sugar Company (USA).⁶⁸ The notification of the concentration to the KCA was made because the

⁶⁵ Kosovo Competition Authority. Decision No.20/2020, Date 02.03.2020, pp. 1-3.

⁶⁶ Kosovo Competition Authority. Decision No.42/24, Date 29.04.2024, pp. 2-3.

⁶⁷ *Ibid*, 4

⁶⁸ Kosovo Competition Authority. Decision No 37/23, Date 14.04.2023, p.1.

acquiring party has an indirect presence in Kosovo through sales, while the party that remains a 50% shareholder in the target company has subsidiaries registered in Kosovo. KCA has assessed that the transaction does not affect any relevant markets and does not have negative effects on competition in Kosovo. The participants in the concentration do not operate in the same sector in Kosovo, and no changes in the competitive structure in this market are expected.⁶⁹In conclusion, the transaction involving the sale of 50% of Beta Pura GmbH's shares does not negatively impact competition in the Kosovo market. Given that Beta Pura is not active in Kosovo and the other involved parties operate in different sectors within the Kosovar market, the overall effect is minimal. The transaction is primarily guided by international frameworks and regulations, resulting in negligible significance for competition in Kosovo.

Case 5: Acquisition of 100% of Braingroup AG by Netcetera Group AG

Netcetera Group AG, a software company registered in Switzerland that provides IT development services for its clients, has acquired 100% of the shares of Braingroup AG, also a Swiss-registered company, which offers financial software consulting and digital transformation services. Since Netcetera Group AG operates in Kosovo and generates revenue through its authorized distributors there, the transaction was notified to the KCA. This notification was made to assess the potential impact of the concentration on competition in the Kosovar market. According to the KCA's assessment, this transaction will not have negative effects on competition in the Kosovar market. The KCA concluded this because the transaction does not enhance the dominant position of Netcetera Group AG in the Kosovar market among economic operators or consumers.⁷⁰This assessment is important to ensure that the new buyer does not unfairly benefit from a strong position that could harm local market competition. This case underscores the importance of evaluating the impacts of concentrations on local markets even when transactions occur abroad. The KCA has conducted a careful assessment and concluded that this transaction will not adversely affect market competition in Kosovo, thus ensuring that competition rules are respected and consumer protection is upheld.

X. CONCLUSIONS

This paper has examined the role and impact of concentrations in the Kosovo market, focusing on practical cases handled by the Competition Authority and the analysis of the regulatory framework. Based on the findings, several important conclusions can be drawn:

- Concentrations, including mergers and acquisitions, represent an important mechanism for the growth and consolidation of companies in Kosovo. They expand market influence but simultaneously pose potential risks to fair competition.
- The legal framework on antitrust and concentrations in Kosovo is undergoing continuous harmonization with EU standards.
- The KCA has increased its activity and investigative scope, especially in cases of failure to notify concentrations, with the telecommunications and internet sectors showing recurring challenges.
- While most concentrations were approved, KCA has also taken corrective actions, including sanctions, which demonstrate a growing awareness of the need to enforce compliance.

⁶⁹ *Ibid*, 2-3.

⁷⁰ Kosovo Competition Authority. Decision No 117/2023, Date 18.12.2023, pp. 1-3.

Nevertheless, the enforcement of merger control in Kosovo has been hampered by periods of inactivity within the Competition Commission, the KCA's executive decision-making body. Delays in appointments and recurring non-functionality have limited the Authority's capacity to assess concentrations effectively and consistently. This institutional weakness poses a challenge to fully implementing the LPC and achieving the intended level of market oversight, which could undermine the predictability and credibility of competition enforcement in Kosovo.

In conclusion, while concentrations are essential for economic development, their regulation and oversight remain crucial to safeguard fair competition. Strengthening Kosovo's legal and institutional framework in line with EU standards, combined with active engagement by KCA, will ensure a competitive, transparent, and sustainable market environment. Future studies should expand comparative analyses between Kosovo and EU member states, focusing on the effectiveness of enforcement mechanisms. Additionally, empirical research on the economic impact of concentrations in Kosovo's key industries could provide valuable insights for policymakers and practitioners.

KEYWORDS

Concentrations, Mergers, Kosovo, Case analysis, Enforcement, Market competition, Kosovo Competition Authority, Consumer protection

KLÚČOVÉ SLOVÁ

koncentracie, fúzie, Kosovo, analýza prípadov, presadzovanie, trhová súťaž, Kosovský úrad pre hospodársku súťaž, ochrana spotrebiteľa

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