



PROVISIONAL INSTITUTIONS OF SELF GOVERNMENT

KUVENDI I KOSOVËS
СКУПШТИНА КОСОВА
ASSEMBLY OF KOSOVO

Law No.2004/36

ON COMPETITION

The Assembly of Kosovo,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, "On the Authority of the Interim Administration in Kosovo," as amended; UNMIK Regulation No. 1999/24 of 12 December 1999, "On the Law Applicable in Kosovo," as amended; and UNMIK Regulation No. 2001/9 of 15 May 2001, "On a Constitutional Framework for Provisional Self-Government in Kosovo," especially Chapters 5.1(a) and (d), 5.7, 9.1.1, 9.1.26 (a), 9.3.3 and 11.2 thereof; and

Recognizing the need to bring the regulation of anti-competitive practices in Kosovo generally into compliance with European Union requirements and internationally recognized best standards and practices;

Hereby adopts the following:

LAW ON COMPETITION

TITLE I
GENERAL MATTERS

Purpose and Scope
Article 1

1.1. The purpose of the present law is to ensure the development of a sound market economy in Kosovo by prohibiting acts that restrict, suppress or distort competition.

1.2. The present law shall apply to all undertakings engaged in economic activity within, or having economic effects within, the territory of Kosovo.

1.3. The present law shall not apply to employer-employee relations.

Definitions Article 2

2.1. Wherever used in the present law, the following terms and phrases shall have the following meanings unless the context within which such term or phrase appears clearly intends another meaning:

“**Agreement**” means any contract, agreement, understanding or arrangement, whether or not in writing.

“**Concerted practice**” means an activity that involves informal cooperation between or among undertakings and that is not based on a formal agreement or decision.

“**KCC**” means the Kosovo Competition Commission established by Title V of the present law.

“**Person**” shall mean a natural person.

“**Present law**” means the present law and the subsidiary normative acts and instruments issued in furtherance of or under the authority of the present law, including the implementing rules issued pursuant to or under the authority of the present law.

“**Public authority**” shall mean any governmental executive authority, public body, ministry, department, agency, or other such authority that exercises executive, legislative, regulatory, administrative or judicial powers in the territory of Kosovo. The term “public authority” shall also include any otherwise private organization or establishment to the extent it exercises any of the afore-mentioned powers pursuant to a grant of authority under a normative or sub normative act or pursuant to a delegation of authority from another public authority.

“**Public enterprise**” shall mean a public authority or an undertaking owned, controlled or administered, in whole or in part, by a public authority, if such public authority or undertaking is engaged in the conduct of economic activity.

“**Relevant market**” shall mean the line of commerce in which competition has been restrained and to the geographic area involved, including all reasonably substitutable products and services and all competitors to which consumers could reasonably turn in the short term if the restraint or abuse results in a material increase in prices.

“**Undertaking**” shall mean (i) any enterprise (including a personal business enterprise), public enterprise, partnership, joint venture, legal entity, association (including an association of undertakings), project, branch, office, or other organization or establishment (regardless of ownership, domicile or place of business or establishment) engaged in economic activity, and/or (ii) any person acting on behalf of any of the foregoing.

2.2. More detailed definitions of the terms used in the present law, as well as definitions of other terms, may be established by or set forth in the sub normative acts implementing the present law; provided, however, that such more detailed definitions and definitions of other terms shall not impair the operation of any provision of the present law.

TITLE II COMPETITION

CHAPTER 1 FUNDAMENTAL PROHIBITION

Fundamental Prohibition of Agreements, Decisions by Associations of Undertakings and Concerted Practices that Restrict Competition

Article 3

3.1. An agreement between undertakings, a decision by an association of undertakings, or a concerted practice by undertakings is prohibited if (i) it may affect trade within Kosovo, (ii) it has as its purpose or effect an appreciable prevention, restriction or distortion of competition in Kosovo and (iii) it is, or is intended to be, implemented in Kosovo. The prohibition of this Article 3.1 applies equally to all such agreements decisions and practices, whether written or not.

3.2. Without prejudice to the general scope of Article 3.1, the prohibition established by that Article specifically applies to an agreement, decision or practice that:

- a. directly or indirectly fixes purchase or selling prices or any other term or condition of trade or business;
- b. limits or controls production, a market, technical development or investment;
- c. limits, divides or shares a market or one or more sources of supply;
- d. applies dissimilar conditions to like transactions with other undertakings, thereby placing them at a competitive disadvantage;
- e. makes the conclusion of a contract subject to acceptance by the other party of one or more supplementary obligations that, by their nature or according to usual practice, have no connection with the subject of such contracts.

3.3. An agreement or decision that is prohibited by Article 3.1 is null, void and unenforceable.

3.4. A person, undertaking or association of undertakings that attempts to execute, impose, implement and/or perform such an agreement, decision or practice shall be subject to the administrative and criminal penalties established by Title VI of the present law.

3.5. Unless the context clearly requires another interpretation, any provision of Title I of the present law that is stated to apply to, or in relation to, an agreement between undertakings shall be interpreted in a manner that ensures such provision applies equally to, or in relation to, a decision by an association of undertakings or a concerted practice by undertakings.

CHAPTER 2
EXCLUSIONS AND EXEMPTIONS

Excluded Agreements
Article 4

The prohibition of Article 3.1 does not extend to:

- a. an agreement between two or more undertakings if such undertakings form or are part of a single economic unit, even if such undertakings are legally distinct undertakings. In particular, an agreement between a parent and its subsidiary, or between two subsidiaries having a common parent, shall not be subject to the prohibition of Article 3.1 if such subsidiaries have no real freedom to independently determine the course of their actions on the market; or
- b. an agreement that has the purpose of effecting a merger of two undertakings; provided, however, that this exclusion only extends to the provisions of such an agreement that are directly related to and necessary for the implementation of the merger.

Exemption for Agreements on the Uniform Application of Standards
or Business Terms
Article 5

The KCC may exempt an agreement from the prohibition of Article 3.1 if the subject matter thereof deals exclusively with the uniform application of:

- a standards; or
- b general business, delivery and payment terms and conditions, including cash discounts; provided, however, that such an agreement or decision shall not relate in any manner to prices or price elements.

Exemption for Specialization Agreements
Article 6

The KCC may exempt an agreement from the prohibition of Article 3.1 if the subject matter thereof deals only with the rationalization of economic activities through specialization and such agreement meets the following criteria:

- a. the public economic benefits, especially consumer economic benefits, that are reasonably expected to result from such rationalization are substantial and clearly outweigh any negative economic effects that may result from the restraint on competition created by such agreement;
- b. such agreement does not impose on the concerned undertakings any restrictions that are not strictly necessary to the attainment of such rationalization;
- c. the restraint on competition created thereby does not lead to the creation or strengthening of a dominant position; and
- d. such agreement or decision does not afford the concerned undertakings the possibility of eliminating competition for a significant part of the concerned items

Exemption for Rationalization Agreements
Article 7

The KCC may exempt an agreement from the prohibition of Article 3.1 if such agreement clearly serves to rationalize economic activities by increasing the efficiency or productivity of the participating undertakings in technical, commercial or organizational respects and such agreement meets the following criteria:

- a. such agreement can reasonably be expected to significantly improve the satisfaction of demand;
- b. the public economic benefits, especially consumer economic benefits, that are reasonably expected to result from such rationalization are substantial and clearly outweigh any negative economic effects that may result from the restraint on competition created by such agreement;
- c. if such agreement aims to achieve the rationalization through the use of a joint purchasing or selling organization, there is compelling evidence to demonstrate that the desired rationalization cannot be achieved in any other manner;
- d. the restraint on competition created thereby does not lead to the creation or strengthening of a dominant position;
- e. such agreement does not impose on the undertakings concerned any restrictions that are not strictly necessary to the attainment of such rationalization; and
- f. such agreement or decision does not afford the undertakings concerned the possibility of eliminating competition for a significant part of the concerned items.

Exemption for Certain Other Agreements
Article 8

The KCC may exempt an agreement from the prohibition of Article 3.1 if such agreement will substantially contribute the improvement of the development, production, distribution, procurement, return or disposal of the items concerned and such agreement meets the following criteria:

- a. such agreement can reasonably be expected to result in substantial economic benefits for consumers of the concerned items;
- b. the public economic benefits, especially consumer economic benefits, that are reasonably expected to result from such rationalization are substantial and clearly outweigh any negative economic effects that may result from the restraint on competition created by such agreement;
- c. such improvement cannot be achieved by the participating undertakings in any other manner;
- d. the restraint on competition created thereby does not lead to the creation or strengthening of a dominant position;
- e. such agreement does not impose on the undertakings concerned any restrictions that are not strictly necessary to the attainment of such improvement; and
- f. such agreement does not afford the undertakings concerned the possibility of eliminating competition for a significant part of the items concerned.

Application for and Grant of Exemption
Article 9

9.1. The KCC may grant an exemption specified in Article 5, 6, 7 or 8 for a particular agreement if the KCC has (i) received an application for such an exemption that fully complies with the requirements of Article 9.2, (ii) has reviewed such application and investigated the matters set forth therein; and (iii) has determined that the criteria for granting the exemption are present.

9.2. An application for an exemption shall contain the following:

- a. The registered names and addresses of the participating undertakings;
- b. The name, address and contact information of the natural person who has been formally authorized by the participating undertakings to represent them in connection with the application;
- c. A copy of the concerned agreement; and
- d. A detailed explanation demonstrating that the criteria for granting the concerned exemption are present.

9.3. An application shall be complete and shall not contain any materially incorrect or misleading information. The KCC may request, and the participating undertakings shall provide, such additional information and material as the KCC deems appropriate.

9.4. After receiving an application for an exemption, the KCC shall review such application and conduct an investigation into the matters set forth therein. In conducting its investigation, the KCC shall solicit comments from the public and, in particular, affected consumers and undertakings.

9.5. If the KCC determines that the criteria for the requested exemption are not present, the KCC shall reject the application and formally notify the participating undertakings in writing of such determination.

9.6. If the KCC determines that the criteria for the requested exemption are present, the KCC shall formally issue to the participating undertakings a written instrument granting such exemption. An exemption shall take effect only after the KCC has formally issued such instrument to the participating undertakings.

9.7. The KCC may subject an exemption to any conditions and/or obligations that the KCC considers appropriate. The KCC shall specify such conditions and/or obligations in the written instrument granting the exemption.

9.8. The KCC shall specify a specific time period during which an exemption shall be effective. The KCC may specify any time period it considers appropriate; however, such period shall not exceed three (3) years. The KCC shall specify such time period in the instrument granting the exemption.

9.9. The KCC may revoke, modify or impose conditions and/or obligations on an exemption previously granted if the KCC determines that:

- a. the circumstances relating to the exemption have substantially changed;
- b. one or more participating undertakings have failed to observe a condition or obligation to which the exemption was subject;
- c. the exemption was obtained on the basis of incomplete or materially incorrect or misleading information;
- d. one or more participating undertakings have abused the exemption or the market position obtained as a result of the exemption, or
- e. the agreement to which the exemption applies is being implemented in a manner that constitutes an abuse of the market position obtained as a result of the exemption.

TITLE III VERTICAL AGREEMENTS

Fundamental Prohibition of Agreements that Restrict a Party's Freedom to Determine Prices and Terms in Third Party Transactions Article 10

An agreement between undertakings that concerns goods and/or services and affects a market within Kosovo is prohibited insofar as it restricts a party in its freedom to determine the prices charged to third parties or any material term of agreements concluded with third parties.

Control of the Abuse of Exclusive Dealing Agreements Article 11

An agreement between undertakings that involves goods and/or services and that imposes on one of the parties (i) a restriction on the freedom to use the goods supplied or other goods or services; (ii) a restriction on the freedom to purchase or sell other goods and/or services from/to third parties; (iii) a restriction on the freedom to sell the supplied goods to third parties; or (iv) an obligation to purchase goods or services that, by their nature or usual in commercial practice, are not related to the basic subject matter of such agreement, is prohibited if such restriction and/or obligation appreciably impairs the market for the concerned or other goods and/or services.

Agreements on Intellectual Property and Business Secrets Article 12

12.1. An agreement for the sale or licensing of intellectual property rights or business secrets is prohibited to the extent it imposes restrictions on the economic activities of the purchaser or licensee that are unrelated to the exploitation or protection of the concerned right or secret. Restrictions pertaining to the nature, extent, technical area of application, quantity, territory or time of exercise or exploitation of the concerned right or secret shall be not be deemed to be unrelated to the exploitation or protection of the concerned right or secret.

12.2. Agreements falling within the scope of Article 12.1 include:

- a. an agreement for the sale or licensing of a patent or utility model - whether issued or applied for - or a legally protected integrated circuit topography or genetic innovation;
- b. an agreement on the sale or licensing of legally unprotected inventions, manufacturing methods, designs, other achievements furthering technology, achievements furthering plant cultivation in the field of plant breeding, insofar as they represent essential business secrets and are reasonably identified in the agreement;
- c. a mixed agreement on the sale or licensing of both a protected right covered by item "a" above and an unprotected achievement covered by item "b" above; and
- d. an agreement on the sale or licensing of other intellectual property rights such as trademarks, registered designs, copyrights (including software copyrights), insofar as such agreement relates to an agreement on a protected right covered by item "a" above or an unprotected achievement within the meaning of item "b" above, or to a mixed agreement within the meaning of item "c" above, and contributes to the achievement of the primary purpose of the sale or licensing of industrial property rights or unprotected achievements.

12.3. Provided that the term of the concerned restriction or obligation does not exceed the term of the legally protected right, Article 12.1 shall not apply to an agreement that imposes upon the purchaser or licensee of a legally protected intellectual property right:

- a. a restriction on its ability to exploit the protected right, to the extent that such restriction is justified by the seller's or licensor's legitimate interest in a technically acceptable exploitation of the subject matter of the protected right;
- b. an obligation to exchange information on subsequent experience or to grant non-exclusive licenses with respect to resulting inventions, improvements or new applications, provided that any such obligation corresponds to a similar obligation on the part of the seller or licensor;
- c. an obligation not to challenge the validity of the right that has been licensed or acquired;
- d. an obligation to make minimum use of a licensed protected right or to pay a minimum fee; or
- e. an obligation to label the licensed products in a certain manner, provided that such obligation may not require the label to exclude reference to the manufacturer.

12.4. The KCC may grant an exemption for an agreement that is otherwise prohibited by Article 12.1 if the KCC has (i) received an application for such an exemption from one of the parties thereto, (ii) reviewed such application and investigated the matters set forth therein; and (iii) determined that the economic freedom of the purchaser or licensee or other undertakings is not unfairly restricted thereby and that competition on the concerned market is not significantly impaired thereby.

TITLE IV
ABUSE OF A DOMINANT POSITION AND OTHER RESTRICTIVE PRACTICES

CHAPTER 1
ABUSE OF A DOMINANT POSITION

Prohibition on the Abuse of a Dominant Position

Article 13

The abuse of a dominant position by one or more undertakings is prohibited.

Determining the Existence of a Dominant Position

Article 14

14.1. An undertaking has a dominant position if, as a supplier or purchaser of certain kinds of goods or services, it:

- a. is not exposed to substantial competition; or
- b. has a superior market power in relation to its existing or potential competitors; for this purpose, account shall be taken in particular of its share of and position in the relevant market, its financial power, its access to supplies or markets, its links with other undertakings, legal or factual barriers to market entry by other undertakings, actual or potential competition by undertakings established within or outside Kosovo, the ease or difficulty with which it may shift to the supplying or purchasing of other goods or services, as well as the ability of its suppliers or customers to transact business with other undertakings.

14.2. An undertaking is presumed to have a dominant position if it has a market share greater than 40%. This presumption shall not be applicable if the concerned undertaking can convincingly demonstrate that it is exposed to substantial competition or that it has no Superior Market Position in relation to its competitors, taking into account the factors specified in Article 14.1.b.

14.3. Two or more undertakings have a dominant position if, as purchasers or suppliers of certain kinds of goods or services, no substantial competition exists between them and they:

- a. are not exposed to substantial competition; or
- b. they jointly have a superior market power in relation to their competitors, taking into account the factors specified in item “b” of Article 14.1.b.

14.4. Two or more undertakings are presumed to have a dominant position if they have a combined market share of more than 40 percent. Five or fewer undertakings are presumed to have a dominant position if they have a combined market share of at least 70 percent. A presumption established by this Article 14.4 shall not be applicable if the undertakings concerned can convincingly demonstrate that the conditions of competition may be expected to maintain substantial competition between them or that, collectively, they do not have a paramount market position in relation to their remaining competitors, taking into account the factors specified in Article 14.1.b.

Determining the Abuse of a Dominant Position Article 15

A prohibited abuse of a dominant position exists if, as a supplier or purchaser of certain kinds of goods or services, one or more undertakings having a dominant position:

- a. negatively affects competition in a market by impairing the ability of other undertakings to compete in that market;
- b. demands payment or other business terms that differ from those that would very likely prevail if effective competition existed; in this context, the conduct of undertakings in comparable markets that are characterized by effective competition shall be taken into account;
- c. demands less favorable payment or other business terms than it demands from similar purchasers in comparable markets, unless there is an objective justification for such differentiation;
- d. refuses to allow another undertaking, in return for reasonable compensation, access to or the use of its networks or other infrastructure facilities, if such concurrent use or access is required by such other undertaking, for legal or factual reasons, to operate as a competitor of the dominant undertaking; however, this shall not constitute an abuse if the dominant undertaking convincingly demonstrates that for technical, operational or other such reasons the granting of such concurrent use or access is impossible or not commercially feasible; or
- e. uses its market position to cause other undertakings to grant him preferential treatment unless there is an objective justification for such preferential treatment.

CHAPTER 2 OTHER RESTRICTIVE PRACTICES

Prohibition of Discrimination, Prohibition of Unfair Hindrance Article 16

16.1. A dominant undertaking, an association of undertakings or an undertaking that sets retail prices shall not directly or indirectly hinder another undertaking in its business activities, or directly or indirectly treat it differently from similar undertakings unless there is an objective justification for such differentiation.

16.2. Article 16.1 shall apply also to undertakings and associations of undertakings insofar as small or medium-sized enterprises, as suppliers or purchasers of certain kinds of goods or services, depend on them in such a way that reasonable possibilities for resorting to other undertakings do not exist. A supplier of a certain kind of good or service shall be presumed to depend on a purchaser if such purchaser regularly obtains from such supplier special benefits that are not granted to similar purchasers.

16.3. Dominant undertakings and associations of undertakings shall not use their market position to cause other undertakings to grant them preferential terms unless there is an objective justification for such preferential treatment.

16.4. An undertaking having superior market power in relation to small and medium-sized competitors shall not use their market power directly or indirectly to hinder such competitors in an unfair manner. Such an unfair hindrance exists, in particular, if an undertaking, without objective justification, offers goods or services more than occasionally at a price that is less than the cost of such goods or services.

16.5. No association of undertakings, professional organization or quality-mark organization shall refuse to admit an undertaking to membership if such refusal would place the undertaking at a competitive disadvantage and there is no objective justification for such refusal.

Prohibition of Boycotts and other Restrictive Practices

Article 17

17.1. No person or undertaking shall request another person or undertaking to refuse to sell or purchase, with the intention of harming another person or undertaking.

17.2. No person or undertaking shall threaten or cause harm, or promise or grant advantages, to another person or undertaking to induce them to engage in conduct prohibited by the present law.

17.3. No person or undertaking shall cause or threaten any type of harm to another person or undertaking for the purpose of causing such other person or undertaking to refrain from filing a complaint, or pursuing a complaint already filed, with the KCC or the concerned District Court containing allegations of violations of the present law.

17.4. No person or undertaking shall take any action for the purpose of compelling a person or undertaking to:

- a. accede to an agreement or decision within the scope of Title II of the present law;
- b. to agree to a merger with another undertaking; or
- c. to take cooperative action in the market with the intention of restraining competition.

Prohibition of Recommendations

Article 18

18.1. No undertaking or association of undertakings shall make any recommendation that has as its object or effect the circumvention of a prohibition imposed by the present law.

18.2. No undertaking or association of undertakings shall make any recommendation to the purchasers of goods to demand or offer certain prices when reselling to third parties, to use certain methods to determine prices, or to observe certain maximum or minimum prices.

Non-Binding price recommendations for branded goods

Article 19

19.1. Article 18.2 shall not apply to non-binding price recommendations by an undertaking for the resale of its branded goods which are in substantial price competition with similar goods of other manufacturers, provided such recommendations:

- a. are expressly designated as non-binding, only indicate a specific price, and no economic, social or other pressure is applied to enforce them; and

- b. are issued with the expectation that the recommended price will correspond to the price likely to be charged by the majority of the addressees of the recommendation.

19.2. Branded goods within the meaning of Article 19.1 are products (i) the supply of which in consistent or improved quality is guaranteed by the price-recommending undertaking, and (ii) which feature a mark (a symbol, trademark or words) indicating their origin, supplier or manufacturer (a) on the goods themselves, (b) on their packaging as intended for delivery to consumers, or (c) on the containers from which they are sold to consumers.

19.3. The KCC may declare a recommendation of the kind described in Article 19.1 to be impermissible and may prohibit new and similar recommendations if the KCC determines that the recommendations constitute an abuse of the exemption established by Article 19.1. Such an abuse exists, in particular, if:

- a. the recommendation or its combination with other restraints of competition is likely to increase the price of the goods or to prevent their prices from decreasing, or to restrict their production or sale;
- b. the recommendation is likely to deceive consumers as to the price demanded by the majority of the addressees of the recommendation;
- c. the recommended price significantly exceeds, in the majority of cases, the prices actually demanded in Kosovo or in a substantial part thereof; or
- d. certain undertakings or certain groups of purchasers are excluded from the distribution of the goods by distribution arrangements or other measures taken by the recommending undertaking without any objective justification.

TITLE V THE KOSOVO COMPETITION COMMISSION

CHAPTER 1 ESTABLISHMENT, FUNCTIONS AND ORGANIZATION

Establishment of the Kosovo Competition Commission

Article 20

20.1. There shall be established, pursuant to Chapter 11.2 of UNMIK Regulation 2001/9, an independent competition regulatory body to be known as the Kosovo Competition Commission (the “KCC”). The KCC shall have the responsibility and authority to enforce the present law and to promote competition among undertakings and consumer welfare in Kosovo.

20.2. The KCC shall be staffed with a sufficient number of support personnel to enable it to efficiently and professionally carry out the functions specified in Article 20.1.

Monitoring Function Article 21

In addition to the functions assigned to it elsewhere in the present law, the KCC shall have the responsibility and authority to monitor competitive conditions in the economy of Kosovo as well as in specific sectors, industries and markets.

Investigative and Enforcement Functions Article 22

In order to carry out the functions assigned to it by the present law, the KCC shall have the investigative authority specified in Chapter 2 of this Title V. The KCC shall also have the enforcement authority provided for in Title VI.

Sub normative Act Function Article 23

23.1. The KCC shall develop, adopt and publish detailed sub normative acts for the implementation of the present law. If a provision of the present law explicitly requires the KCC to develop and adopt sub normative acts implementing or covering the subject matter of such provision, the KCC is specifically obligated to develop, adopt and publish such rules. If a provision of the present law does not explicitly state such a requirement, the KCC shall, if and to the extent it deems necessary, develop, adopt and publish sub normative acts implementing or covering the subject matter of such a provision. The KCC shall also have the authority to develop, adopt and publish sub normative acts that are reasonably within the scope of the present law but that are not explicitly covered by a provision of the present law.

23.2. All sub normative acts for the implementation of the present law shall be (i) consistent with the scope, language and purpose of the present law and (ii) otherwise consistent with the law and practice of the European Union regarding similar subject matter.

Other Functions Article 24

24.1. In addition to the matters specified above, the KCC shall:

- a. provide information and advice on the requirements of the present law to persons, undertakings and public authorities;
- b. hold seminars and training courses for the purpose of informing persons, especially legal and economic professionals, and undertakings, on the rights, obligations and subject matter established and/or covered by the present law;
- c. for each calendar year, prepare, publish and submit to the Assembly an annual report (i) analyzing the competitive conditions in the general economy of Kosovo as well as in specific sectors, industries and markets and (ii) summarizing all investigative and enforcement actions taken by the KCC during such calendar

year; provided however, that such report shall not include any reference to an on-going investigation to the extent such reference would jeopardize legitimate secrecy concerns of such investigation. Such annual report shall be published and submitted to the Assembly no later than the end of February of the following calendar year; and

- d. prepare, publish and submit to the Assembly, together with the annual report mentioned immediately above, any recommendations that the KCC may have for the improvement of the present law.

24.2. The concerned committees of the Assembly shall, after receiving the report and recommendations specified in Article 24.1 (c) and (d), or after the passage of the deadline for their submission, hold and conduct one or more hearings with the members and the staff of the KCC to discuss such report and recommendations. Such hearings may also cover other matters relating to the KCC's operations.

24.3. Interested persons and undertakings shall have the right to provide the concerned committees with their written views on such report and/or recommendations as well as on other matters relating to the operations of the KCC. If invited by such a committee to do so, such a person or undertaking may also orally present their views and testimony to such committee.

Appointment of Members Article 25

25.1. The KCC shall be comprised of five (5) members. All members shall be appointed as provided in this Article 25.

25.2. Each member of the KCC shall, at the moment of their appointment, acquire the status of a civil servant and shall not be subject to removal or suspension prior to the expiration of their term except (i) by an order of the Assembly as provided for in Article 28 of the present law, (ii) in accordance with the procedure established in the Law on the Civil Service.

25.3. The members of the KCC shall be appointed by the Assembly. The Government shall establish a professional independent committee to identify and interview individuals who are potential candidates for membership on the KCC. Such committee shall accept applications from and interview all interested persons. Such committee shall develop and submit to the Government a list containing the names of the 10 candidates that the committee has determined to be most qualified. The Government shall submit such list to the Assembly along with all supporting documentation on the candidates and the work of the committee. The concerned committees of the Assembly shall again interview the 10 candidates and shall jointly identify and recommend the five most qualified candidates to the entire Assembly. A candidate must receive a majority vote in the entire Assembly to be appointed. The Assembly shall have the right to reject any or all of the candidates submitted by the Government and to request the Government to identify and submit the names of other candidates. If the Government fails to fulfill its obligations under this Article 25.3 within 90 days, the concerned committees of the Assembly may independently identify, interview and recommend candidates to the Assembly.

25.4. No person may be appointed or serve as a member of the KCC if he/she:

- a. has any ownership interest in, or an employment or contractual relationship with, an undertaking or an association of undertakings that is established in Kosovo or that is engaged in economic activity having effects within Kosovo;
- b. is a member of a management or supervisory board of an undertaking or association of undertakings specified in point “a” ;
- c. has ever been determined by a court of competent jurisdiction to have committed a criminal or civil offence involving corrupt activities, money laundering, bribery or kickbacks under the laws or regulations applicable in Kosovo or anywhere else;
- d. has ever been determined by a court of competent jurisdiction to have committed a serious offence by participating in the activities of a criminal organization, defined as a structured association established over a period of time and operating in a concerted manner to achieve financial gain through activities that are criminal or otherwise illegal where they take place;
- e. been determined by a court of competent jurisdiction to have committed an act of fraud or an act equivalent to fraud; or
- f. been determined to have engaged in unprofessional conduct by a court of competent jurisdiction, administrative agency or organization responsible for enforcing standards of professional conduct.

25.5. The terms of the first five members of the KCC shall be as follows: one member shall be appointed for a term of one year, two members shall be appointed for a term of three years, and two members shall be appointed for a term of five years. Their successors shall all be appointed for a term of five years.

25.6. All members of the KCC are required to validly hold a university degree and not be ineligible by reason of Article 25.4.

25.7. One member of the KCC must possess the same qualifications as those required under the applicable law for a judicial appointment.

25.8. Three members of the KCC must be professional economists who (i) hold advanced university degrees evidencing substantial academic training in market economics and (ii) possess substantial experience in micro-economic analysis.

25.9. One member of the KCC must have professional legal training and experience in investigating and/or prosecuting economic crimes.

25.10. The members of the KCC shall elect one member of the KCC to serve as the Chairperson of the KCC. The Chairperson shall serve for a term of one year.

Organization and Voting
Article 26

- 26.1. The Chairperson shall represent, manage and organize the work of the KCC.
- 26.2. The Chairperson shall have the authority to designate an individual member to organize and manage the work of the KCC in a particular subject area.
- 26.3. The Chairperson shall convene meetings of the KCC when and as he/she considers necessary or when requested by two other members of the KCC.
- 26.4. The quorum for meetings of the KCC shall be three (3) members.
- 26.5. The Chairperson shall chair the KCC meetings. In exceptional cases where it is necessary for the KCC to meet in the absence of the Chairperson, the Chairperson shall authorize one of the other members of the KCC to chair the meeting.
- 26.6. All decisions shall require the affirmative vote of the majority of the members present and voting.
- 26.7. The KCC may establish, as it deems necessary, additional procedural rules to govern its operations. The KCC shall publish and provide to any person who so requests a copy of such rules.

Confidentiality
Article 27

- 27.1. All members, employees, staff and consultants of the KCC are required to take all appropriate measures to accord a high degree of protection to information developed or received by the KCC in the course of an on-going investigation. This requirement shall be strictly applied to all non-public information received by the KCC from persons and undertakings. Such measures shall be sufficient to ensure that such information is protected against intentional and/or negligent disclosure.
- 27.2. The KCC shall not designate as confidential any information the disclosure, publication, or public accessibility of which is required by the present law or any other law.
- 27.3. Any intentional violation or repeated negligent violations of the duty of confidentiality specified in Article 27.1 shall serve as sufficient basis for the removal of the concerned member or the termination of the concerned employee, staff or consultant.

Removal and Suspension of Members
Article 28

- 28.1. The Assembly may remove or suspend a member of the KCC through the adoption, by a majority vote, of a resolution calling for such removal or suspension.
- 28.2. The Assembly shall remove or suspend a member of the KCC if, after the conduct of a full and fair hearing on the issue, a court of competent jurisdiction makes a determination that demonstrates that the concerned member (i) does not meet, or no longer meets, the requirements for membership specified in Article 25, (ii) has committed a criminal or unethical act in the course of or relating to the conduct of his official duties,

or (iii) has intentionally violated or more than once negligently violated his/her duty of confidentiality specified in Article 27. If the court determination is subject to further judicial proceedings, the Assembly shall suspend the member until a final court determination on the issue is entered. If the court determination is not subject to further judicial proceedings, the Assembly shall issue an order removing the member.

28.3. If a member of the KCC becomes the subject of a court proceeding involving allegations that the member has committed a criminal or unethical act in the course of or relating to the conduct of his official duties, the court may issue an order suspending such member until the court has the opportunity to conduct a full and fair hearing on the allegations and to make a determination thereon.

28.4. A member of the KCC who is suspended pursuant to this Article 28 shall continue to receive his/her salary during the period of such suspension.

CHAPTER 2 OBTAINING INFORMATION

Authority to Obtain Information Article 29

29.1. To the extent necessary to perform the functions assigned to the KCC by the present law, the KCC shall have the general power and authority to:

- a. issue an order to any person, undertaking, or public authority requiring such person, undertaking or authority to submit and/or grant access to data, information, documents, materials and/or other items of movable and/or immovable property that the KCC considers, in the exercise of reasonable discretion, relevant to the conduct of those functions; and/or
- b. issue an order to any person to provide written or oral testimony or information regarding any matter that the KCC considers, in the exercise of reasonable discretion, relevant to the conduct of those functions.

29.2. Without prejudice to the general power and authority of the KCC under Article 29.1, the KCC shall have the specific power and authority to issue an order specified in Article 29.1 for the purpose of obtaining any information that the KCC reasonably considers necessary for:

- (i) conducting an analysis of the competitive situation in Kosovo; defining the relevant market for a product or service;
- (ii) reviewing an agreement, activity, practice or decision falling within the scope of the present law;
- (iii) deciding whether or not to grant an exemption provided for by the present law;
- (iv) determining whether one or more undertakings have a dominant position; and/or
- (v) monitoring the activities of one or more undertakings having a dominant position.

29.3. An order issued by the KCC pursuant to this Article 29 shall be in writing and shall set forth:

- (i) the purpose and legal basis for the order,
- (ii) the nature of the data, information, documents, items of movable and/or immovable property, and/or testimony required by the KCC,

- (iii) the period for compliance with the order, which shall not be less than ten (10) calendar days, and
- (iv) a notice of the possibility of administrative and criminal penalties for failure to comply with the order in a complete and non-misleading manner.

29.4. If an order is directed to a person, the KCC shall address such order to such person and shall deliver such order (i) directly to such person, (ii) to his/her office or place of business or employment, or (iii) to his/her home address. The person to whom such order is directed shall be considered to have personally received such order at the moment of such delivery.

29.5. If an order is directed to an undertaking or a public authority, the KCC shall address such order to a senior manager or official of such undertaking or public authority and shall deliver such order to the registered address of the central office of such undertaking or public authority.

Obtaining Oral Testimony or Information Article 30

30.1. If, pursuant to Article 29, the KCC issues an order requiring a person to provide oral testimony or information, such order shall set forth, in addition to the items specified in Article 29.3, (i) the name and, if known, official title of the person, (ii) the place and time of appearance, and (iii) a notice of his/her obligation under Article 30.2.

30.2. If, for good and compelling reasons, the concerned person is unable to appear at the place and time specified in the order, he/she shall provide the KCC with a written statement of such reasons within a reasonable time period after receiving the order. If the KCC, in the exercise of reasonable discretion, determines that the reasons provided justify the re-scheduling of the appearance, the KCC may amend the order to specify a different place and/or time for such appearance.

Obtaining Documents and Materials Article 31

31.1. If, pursuant to Article 29, the KCC issues an order requiring a person, undertaking or public authority to submit documents, drafts or other materials, the KCC shall have the right and authority to require either the originals of such items or copies thereof. If the KCC decides to accept copies thereof, it shall require the concerned person, undertaking or public authority to certify that such copies are true and accurate copies of the originals. The KCC shall continue to have the right and authority to, at any time, require the submission of the originals.

31.2. At the request of a person, undertaking or public authority that submits documents, drafts or other materials, the KCC shall issue a written receipt evidencing the receipt of such items materials.

31.3. If a person, undertaking or public authority submits originals of documents, drafts and/or other materials to the KCC, the KCC shall return such originals to such person, undertaking or public authority at the conclusion of its review of such items.

Authority to Inspect an Undertaking's Property and Places of Business and Storage
Article 32

32.1. If necessary to the conduct of an investigation into an alleged or suspected violation of the present law, the KCC may apply to the concerned District Court for an order authorizing officials of the KCC (i) to enter, without prior warning or special permission, an undertaking's main office and/or any other place or property owned or used by such undertaking for business activities or storage and (ii) to search and inspect items of movable and immovable property at such locations.

32.2. The concerned District Court shall have the authority to issue such an order to the KCC if the court determines that the KCC has fulfilled the same evidentiary and other requirements that are applicable to the issuance of similar orders to the police. The concerned District Court may impose reasonable restrictions on the scope of such an order and the times during which it may be executed.

Conduct of Search and Inspection of an Undertaking's Offices
and Places of Business
Article 33

33.1. Persons and undertakings are required to permit officials of the KCC who possess a court order issued under Article 32.2 to conduct the concerned inspection and to cooperate fully with such officials during the conduct of such search and inspection.

33.2. An owner, officer, manager or employee of the undertaking shall have the right to observe the conduct of the search and inspection. Immediately prior to commencing an inspection, the officials of the KCC shall inform an owner, officer, manger or employee of the undertaking of such right.

33.3. During such a search and inspection, the officials of the KCC have the right and authority:

- a. to immediately examine documents, drafts of documents, and other materials and objects relating to the activities of the undertaking;
- b. to immediately make or obtain, at the expense of the concerned undertaking, copies of such documents and drafts of documents and other written materials and items, the accuracy of which shall be certified by the senior manager or other duly authorized employee or officer of the undertaking and the person or persons preparing such copies;
- c. to immediately examine data and databases kept in electronic form, whether in a computer or stored on other electronic media, and
- d. to immediately make or obtain, at the expense of the concerned undertaking, printouts and electronic copies of such data and databases, the accuracy of which shall be certified by the senior manager or other duly authorized employee or officer of the undertaking and the person or persons preparing such copies.

33.4. Immediately after the conclusion of a search and inspection, an authorized official of the KCC shall prepare, on the spot, a report on such search and the inspection setting forth:

- a. the name of the undertaking;
- b. the location or locations inspected;
- c. the time and place of the inspection;
- d. the name and position of the owner, officer, manager or employee to whom the officials of KCC before undertaking the inspection, present the court decision or the authorization of the KCC.
- e. a detailed description of the course of the search and inspection and its results;
- f. a list of the documents and other materials obtained in the course of the search and inspection;
- g. if applicable, the name of any interpreter or translator who participated;
- h. if applicable, the name/position of any person who obstructed or interfered with, or attempted to obstruct or interfere with, the conduct of the search and inspection;

33.5. The report required by Article 33.4 shall be signed by an authorized official of the KCC. Such official shall immediately provide the undertaking with a copy of the report. The original of the report shall be delivered to the KCC.

33.6. The handling of all documents, materials and other evidence obtained in the course of a search and inspection shall be governed by rules that are equivalent in substance to those that must be followed by the police and the public prosecutor for the handling of similar evidence.

Seizures Article 34

34.1. The KCC may seize documents, materials and other items that it reasonably believes to have materially evidentiary value. The person or undertaking affected by the seizure shall be informed thereof without undue delay.

34.2. Within three (3) business days after such a seizure, the KCC shall apply to the concerned District Court to review the legal validity of the seizure. The person or undertaking affected by the seizure shall:

- (i) be informed of the time and place of the proceedings before such court and
- (ii) have the right to attend, or to be represented by a lawyer for the presentation of the evidences and to testify.

34.3. The decision of the concerned District Court on the legal validity of the seizure may be appealed to the Supreme Court. If the concerned District Court decides that the seizure was not legally valid, and the KCC informs such court that it intends to appeal such decision, the such court may – if it believes such action is necessary to ensure the integrity of the seized items or their presence in Kosovo pending such appeal – order that the seized items be sealed and impounded until such appeal has been decided.

34.4. Unless the concerned District Court or the Supreme Court issues an order specifying another disposition, all seized items must be returned to their owner upon the closure of the concerned investigation or within one year after their seizure, whichever occurs earlier. The concerned District Court or the Supreme Court may authorize the KCC to retain possession of seized items for a longer period if such court determines that this is necessary to avoid impairing or prejudicing the conduct of the concerned investigation or related judicial proceedings.

TITLE VI REMEDIAL AND PENALTY PROVISIONS AND FINAL MATTERS

CHAPTER 1 VIOLATIONS AND PENALTIES

Imposition of Administrative Fines and Other Remedies by the KCC Article 35

35.1. If the KCC determines that an existing or proposed agreement, decision or concerted practice violates the prohibition established by Article 3, 10, 11 or 12 of the present law, the KCC may, as appropriate under the circumstances, issue an order:

- a. requiring the concerned undertakings or association of undertakings to refrain from executing, implementing and/or performing such agreement, decision or practice;
- b. declaring such an agreement or decision, or any part thereof, to be null, void and unenforceable;
- c. requiring the concerned undertakings or association of undertakings to take any other action that the KCC, in its reasonable discretion, determines to be necessary to ensure (i) that the negative effects on competition caused by such agreement, decision or practice are eliminated or reversed and (ii) that the conduct causing such negative effects is not repeated;
- d. imposing a fine of up to 25.000 Euros on any person (i) who is an owner, officer or manager of any of the concerned undertakings or the association of undertakings and (ii) who was centrally involved in the decision-making process leading to such agreement, decision or practice; and/or
- e. imposing a fine of up to 100.000 Euros on (i) any undertaking involved in the execution, implementation or performance of such an agreement or practice, or (ii) any association of undertakings taking such a decision.

35.2. If the KCC determines that one or more undertakings or an association of undertakings has engaged in conduct that constitutes a violation of Article 13, 17 or 18 of the present law, the KCC may, as appropriate under the circumstances, issue an order:

- a. requiring the concerned undertakings to refrain from such conduct;
- b. requiring the concerned undertaking to take any other action that the KCC, in its reasonable discretion, determines to be necessary to ensure (i) that the negative effects of such conduct are eliminated or reversed and (ii) that such conduct is not repeated;

- c. imposing a fine of up to 20,000 Euros on any person (i) who is an owner, officer or manager of the concerned undertakings or association of undertakings and (ii) who was centrally involved in the decision-making process leading to the conduct; and/or
- d. imposing a fine of up to 100.000 Euros on any undertaking engaging in such conduct.

Criminal Penalties for Failure to Comply with an Order of the KCC Article 36

36.1. Any person who fails to comply fully and faithfully with an order validly issued by the KCC under the authority of the present law shall be criminally liable for such failure. If an undertaking fails to comply with such an order, the persons responsible for such failure shall be criminally liable for such failure.

36.2. Any person who interferes or attempts to interfere with the KCC during the carrying out of its official functions shall be criminally liable for such interference or attempted interference.

36.3. Any person convicted of an offense specified in Article 36.1 or 36.2 shall be subject to a criminal penalty of up to 100.000 Euros and/or three years imprisonment.

Claims for Damages, Injunctions, and Other Remedies Article 37

37.1. If a person or undertaking violates a provision of the present law or a decision or order of the KCC issued under the authority of the present law, and such violation causes, or threatens to cause, material economic harm (including lost profits) or other harm to a person or undertaking, the negatively affected party shall have the right to file a complaint with the concerned District Court requesting such court to issue, as may be appropriate under the circumstances, an order:

- a. requiring the violator to pay compensation for such harm;
- b. requiring the violator to cease the prohibited conduct or activity;
- c. requiring the violator to take positive action to cure the violation; and/or
- d. nullifying, modifying or adjusting an agreement, a decision, a practice or other conduct that is contrary to the present law.

37.2. The owners, directors and officers of an undertaking shall, together with the undertaking, be jointly and severally liable for any financial or other damage to third persons or undertakings caused by violations of the present law.

CHAPTER 2
FINAL PROVISIONS

Repeal of Former Legislation
Article 38

The present law and the implementing rules issued under the authority of the present law shall supersede all prior legislation and rules regulating competition in Kosovo. Such prior legislation and rules shall cease to have any force or effect in Kosovo as of the effective date of the present law.

Entry into Force
Article 39

The present law shall enter into force after adoption by the Assembly of Kosova on the date of its promulgation by the Special Representative of the Secretary-General.

Law No.2004/36
8 September 2004

President of the Assembly

Academic Nexhat Daci