

BOGA & ASSOCIATES

NEWSLETTER

To keep you up to date with the latest legal and economic developments, this newsletter prepared by our Team provides information that may affect the operation of your business in Kosovo.

New Law “On Protection of Competition”



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The Assembly of Kosovo approved on 13.05.2022 Law no. 08/L-056 “On Protection of Competition” (“**New Law**”). The New Law was published in the Official Gazette on 07.06.2022 and upon its entry into force (15 days after its publication) abolishes Law No. 03/L -229 “On Protection of Competition” and Law no. 04/L-226 “On Amending and Supplementing the Law No. 03/L-229 “On Protection of Competition”.

The New Law aims to supplement and clarify the legal framework in compliance with the *acquis communautaire*, by partially aligning the European Union acts:

- Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty;
- Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation);
- Commission Regulation (EU) No 330/2010 of 20 April 2010 on application of Article 101 (3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices;
- Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No.139/2004 of 20 January 2004 on the control of concentrations between undertakings.

Violations of free competition are identified by analyzing the relevant market (both the relevant product and geographical market) and consist in prohibited agreements (cartels), misuse of dominant position and concentrations/mergers of enterprises. The legal provisions apply to all forms of prevention, limitation or abuse of the competition by enterprises, in the territory of the Republic of Kosovo or outside the territory of Kosovo, if these actions have impacts in Kosovo.

In light of the new amendments, the following group of agreements are exempted from the general prohibition rules, insofar as their effects meet the exemption conditions:

- vertical agreements - in particular exclusive distribution agreements, selective distribution agreements, exclusive purchase and exclusivity agreements;
- horizontal agreements - in particular research, development and specialization agreements;
- agreements for transfer of technology;
- agreements for the distribution and servicing of vehicles;
- insurance agreements;
- agreements between enterprises in the transport sector.

The New Law stipulates that the authority by sub-legal act determines the categories of agreements and the circumstances in which the agreement meets the conditions to not be considered a prohibited agreement.

The legal provisions on prohibited agreements also do not apply to agreements of minor importance, where both parties to the agreement and the enterprises they control have an insignificant market position and their common market share does not exceed:

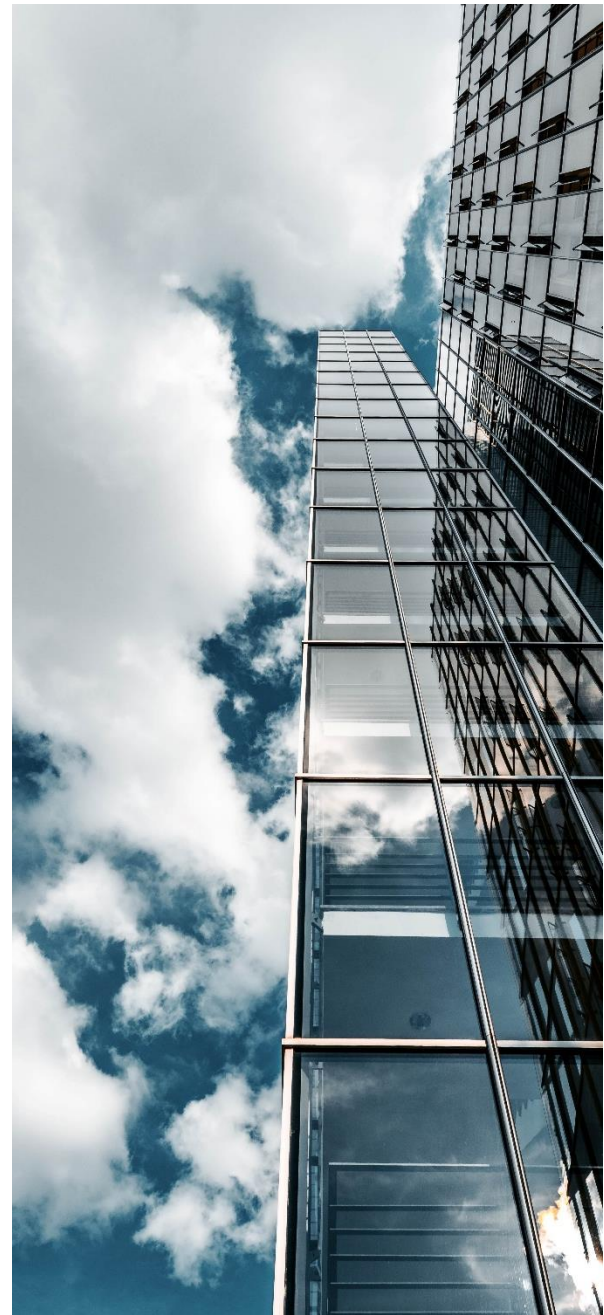
- 10% - in horizontal agreements;
- 15% - in vertical agreements;
- 10% - if the agreement has characteristics of horizontal and vertical agreements or it is difficult to determine whether the agreement is vertical or horizontal;
- 30% - if the agreements between different participants have a significant effect on the market and the individual participation of each participant does not exceed 5% of each individual market where the effects of the agreement appear.

Further, an enterprise is considered to be in dominant position as long as it has a market share of 40% or more in the relevant market. This is also applicable to legally independent economic enterprises if their joint market share exceeds 60%, they operate together and significantly independently of competitors, consumers, purchasers or suppliers.

The New Law introduces significant amendments to the thresholds required for concentration participants to seek prior permission from the Competition Authority, as follows:

- they have a total turnover of over EUR 20 million in the international market and one concentration participant has a turnover of over EUR 1 million in the domestic market; or
- at least 2 concentration participants have over EUR 3 million turnover in the domestic market.

Referring to penalties, the New Law specifically provides that the fines should apply in consideration of the worldwide turnover (*e.g.*, a fine of up to 10% of the total turnover realized worldwide in the last year for which the financial report has been concluded is imposed on the entity that participates in the execution of concentration without submitting a request for permitting the concentration). In addition, fines for minor offenses against an enterprise or group of enterprises are now set at 1% of the total turnover realized worldwide in the last year for which the financial report has been concluded. Besides, the responsible person of the enterprise or state body is also fined from EUR 1,000 to EUR 4,000 in case of either serious or minor offences.





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Chambers Europe 2022: Ranked **Band 1** in 3 practice areas

The Legal 500 2022: Ranked **Tier 1** in Legal Market Overview

Benchmark Litigation Europe 2022: Top Ranked in Dispute Resolution

WTR1000 2022: Top Ranked in Trademarks

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Boga & Associates

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The firm's particularity is linked to the multidisciplinary services it provides to its clients, through an uncompromising commitment to excellence. Apart from the widely consolidated legal practice, the firm offers the highest standards of expertise in tax and accounting services, with keen sensitivity to the rapid changes in the Albanian and Kosovo business environment. The firm delivers services to leading clients in major industries, banks and financial institutions, as well as to companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods.