

Public Policy STUDY



Competition policy:
Key to a market
economy



СЕКРЕТАРИЈАТ
ЗА ЕКОНОМСКИ ПРАШАЊА



SEKRETARIATI
PER ÇESHTJE EUROPIANE



Public Policy **STUDY**

*Competition policy:
Key to a market economy*

Center for Economic Analysis - CEA



Skopje,
MARCH, 2020



СЕКРЕТАРИЈАТ
ЗА ЕКОНОМСКО ПРАШАЊА



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Competition policy: Key to a market economy

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СЕКРЕТАРИЈАТ
ЗА ЕВРОПСКИ АФАРИ
SEKRETARIATI
REP. OF NORTH MACEDONIA



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■ Summary

The purpose of this public policy study is to provide an overview of the current state of competition protection and state aid control policies in the Republic of North Macedonia, identifying and addressing the key obstacles that hinder the proper application of competition rules and state aid control, but also to give recommendations for their promotion. This goal is an integral part of a broader overall goal – to identify a possible gap with European policies and to facilitate harmonization and approximation of the European integration process for the relevant negotiating chapter 8 Competition Policy.

The study focuses on the legal and institutional set-up of competition rules and their application, in order to understand their place and importance in creating a functioning system in line with EU requirements and standards, with the study highlighting the shortcomings and opportunities. Based on the presented findings, this study contains conclusions and recommendations for improvement in this area aimed at decision makers, implementers of the legal framework and policies, and the general public.

This study takes into account the context and the environment and does not go into a detailed analysis of individual issues or cases nor the quality of the decisions made for the implementation of the legal framework. The focus of the study is on the need for public advocacy for enhanced implementation of policies in practice.

The primary methodological approach in conducting the research as part of this study is qualitative, while the quantitative method has an additional function. The research methodology consisted of collecting secondary data mainly prepared by the competent body – the Commission for Protection of Competition (CPC) – and of directly collecting information and opinions through semi-structured interviews with stakeholder representatives. Documents developed / possessed by the Secretariat for European Affairs (SEA), such as self-screening tables, European Commission's (EC) screening presentations, previous reports, etc., were also reviewed.

In the context of the broader goal - approximation to EU standards and rules - it is important to note that the policies, i.e. the legislative framework in the RNM referring to Chapter 8, are entirely based on the EU Competition Policy, and consequently their form, modality and rules including institutional set-up are a reflection of it. The process of transposing competition rules and building a modern legislative framework in this area began in 2005 in RNM, with the adoption of the Law on the Protection of Competition. This law repealed the previous Law against the Restriction of Competition and the previous Antitrust Authority, which was a body within the Ministry of Economy. In 2010, it adopted a new basic Law on the Protection of Competition and a new Law on State Aid Control. As of 2010, significant changes were made, which achieved a high degree of compliance in the area of antitrust and merger control, while the law on state aid control was not amended.

Numerous challenges remain on the way to building a modern and efficient system, which will be fully aligned with the European model. The study identifies several challenges related to insufficient coordination among relevant state administration bodies, insufficient stakeholder consultation and the strategic approach to public policy making. From a formal-legal point of view, it should be emphasized that the existing legislation is evaluated positively in comparison with the

EU acquis, although there are still open questions and a need to align with the latest EU legal acts. The remarks and recommendations of the EC regarding the legislative framework for the protection of competition in the past years emphasize the need for a strengthened enforcement record in the field of antitrust. In the field of state aid, the main remarks are on the limited capacities and the need for improvement in terms of clarity and transparency of the rules for granting state aid, state aid control, its scope and, above all, the transparency and accountability of the granted state aid.

On the other hand, it should be noted that the CPC, with its institutional and functional set-up, is an independent institution reporting to the Parliament of the RNM. Although there is a significant need to strengthen the institutional capacity of the CPC, the institution is well established with well-defined processes, procedures and organization. Practice speaks to the capabilities of the institution, but also to its limitations in terms of scope and / or quality of implementation of all its functions (control, analytical, decision-making, consultative, coordinative, normative and advocacy). According to the CPC, the institution lacks human, financial and technical resources. First and foremost, it is necessary to strengthen the capacities for economic analyses, the application of regulatory policy, and cooperation with other bodies.

The CPC demonstrates a satisfactory degree of operational transparency in the field of antitrust, which is one of the basic requirements for a good competition policy. The situation differs in the area of state aid, where transparency is low. There is no specialized permanent professional platform for exchange of experiences or information in the field of competition protection. The Commission does not develop training programs or other forms of capacity building to promote a culture of competition among government bodies and the business community.

As a result of the situation and the established challenges, we singled out the following recommendations to improve policies as part of Chapter 8:

- 1. Advancing toward an integrated and strategic approach** for a better understanding of the level of importance of competition: for economic development, for the reduction of corruption, for the increased trust in the institutions, for the creation of public policies for protection of competition, and for their support and promotion.
- 2. Establishing an integrated, strategic approach** for the allocation of public funds as state aid at a high level, while considering the assessment of planned or granted state aid in every form and meaning: including the effects that are positive, but also the possible negative implications on competition, the free market and market economy.
- 3. Supplementing and fully harmonizing with the EU acquis** on competition and state aid from primary and secondary legislation and other sources of EU law.
- 4. Improving the degree of financial independence of the CPC and strengthening the capacities.** As a separate state budget beneficiary, a significant level of independence is achieved. However, the level of financial independence and professional capacity of the CPC should be improved in order to create the conditions for the performance of the complex functions prescribed by law currently insufficiently or inappropriately enforced.

5. **Strengthening the capacity of the courts** through specialization to handle the cases for the protection of competition in the Administrative Court.
6. **Increasing the oversight role of the Parliament** over the work of the CPC by increasing the capacity and knowledge of the subject; namely, the current legal framework regarding oversight is applied only in terms of the final report conclusions. Increasing the oversight role of the Parliament over the work of the CPC by strengthening the staff capacities and their knowledge of the relevant issues and the existing legal framework. The oversight is carried out only through the CPC annual report conclusions tool.
7. **Strengthening the practice / application**, especially in cases of non-compliance with the principles of competition and in relation to improving the quality of decisions, through a more detailed explanation, based on facts established with certainty and appropriate economic analysis.
8. **Strengthening the function of economic analytics** for conducting sectoral analyses that are considered particularly vulnerable to distortions of competition. Economic analysis is needed in the area of competition protection and in the area of granting state aid.
9. **Strengthening the normative and consultative functions of the CPC as well as cooperation with other institutions** and state bodies such as the government and ministries, policy makers and supporters of regulation, through strong normative and consultative functions, by giving opinions on draft regulations, participation in policy and legislation development.
10. **Raising the level of professional culture of dialogue**: further opening of the CPC to the public, especially to the professional public and the business community. Creating a mechanism for the exchange of opinions and experiences is essential when reviewing the practice of the Commission, then the explanation of the decisions made, discussion of procedures and relevant market movements, the reasons for the adoption of detailed decisions, processes, but also relevant market occurrences.
11. **Strengthening advocacy for competition protection** through carefully set and continuous activities to raise awareness of the importance of competition advocacy in order to foster a culture of competition, and thus a real change in the market.
12. **Improving the transparency** of the CPC is needed in several directions: in regard to the cases initiated and completed in the process of violation of the principles of free competition through systematization and greater visibility for the general public, while for state aid, first through the creation of a register of approved and granted aid according to the guidelines and best practices of the EU member states.

■ Introduction

Competition policy covers the rules and mechanisms of institutional action that provide protection of competition in the market, i.e. protection of the market structure, by sanctioning cartels and abuse of a dominant position, control of market concentration, as well as rules for state aid restriction and control for participants.

Competition, as a process of rivalry among undertakings, is considered a driving force in functional markets, but also a factor in stimulating productivity and economic growth, which is strongly supported by theoretical and empirical evidence.¹ At the same time, the evidence suggests that countries with lower levels of market regulation provide conditions for stronger competition and therefore tend to have higher levels of productivity growth.²

An effective and efficient competition law that protects the process will facilitate productivity growth and help distribute wealth more evenly. In addition to the evidence that there is a general link between competition and productivity growth, studies show direct effects of competition law and market deregulation.³ However, competition law alone is not enough as it can only be effective if properly implemented. Law enforcement requires adequate resources and a qualified oversight body that is free to fulfill its mandate without political interference. This competition authority / institution must also have the necessary power as well as tools to detect illegal practices and to impose sanctions for identified violations, to prevent mergers that could lead to reduced competition and to represent free competition (OECD, 2018).

The legislative framework for competition protection and the key institutions for enforcement of the policy for competition protection and state aid control were largely set in RN Macedonia in 2010 with the adoption of the then new Law on the Protection of Competition and the adoption of the Law on State Aid Control.

In RN Macedonia, in accordance with the provisions of the Law on Competition Protection (LCP), the primary objective of the application of the law is "ensuring free competition on the domestic market to encourage economic efficiency and welfare of consumers." At the same time, an integral part of competition policy is state aid control. The Law on State Aid Control aims at "establishing a legal basis and rules for reporting, approval, granting and supervision of state aid, in order to implement the principles of market economy, ensure free competition and meet the obligations undertaken by international agreements ratified by the Republic of Macedonia that contain provisions for state aid."

The role of the CPC as an independent body arises from the legal set-up, which: "controls the application of the provision and regulations adopted based on the Law for the protection of competition, to monitor and analyze the market developments with the aim of reaching a free and efficient competition, conduct procedures and make decisions in accordance with the provisions of the Law", i.e. to perform the task of "supervision and state aid control in the Republic of North⁴ Macedonia"⁵

1) For example: Ahn, S. (2002), Meyer and Vickers (1997), Schmidt (1997), McKinsey Global Institute (2010b), Arnold, Nicoletti et al. (2008), OECD (2011), Dutz et al. (2011), Gilbert (2006), OECD (2011).

2) For example, CMA (2015), OECD (2014).

3) Ibid.

4) Article 28, Law on the Protection of Competition, Off. Gazette of the RM nr. 145 / 2010, ... 83/18 and the description "for us" on the page of the CPC at <http://kzk.gov.mk/%D0%B7%D0%B0-%D0%BD%D0%B0%D1%81/>

5) Article 10, Law on State Aid Control, Off. Gazette of the RM nr. 145 / 2010, ... 83/18 and the description "for us" on the page of the CPC at <http://kzk.gov.mk/%D0%B7%D0%B0-%D0%BD%D0%B0%D1%81/>

The purpose of this study is to review the current state of development of public competition policies and state aid in RN Macedonia and to identify key obstacles that hinder the proper application of competition protection rules. The study focuses on the legal and institutional set-up of competition rules and their application, in order to understand their place and importance in creating a functioning system in line with EU requirements and standards, with the study highlighting the shortcomings and opportunities. Based on the findings presented in the following text, this study provides an overview, conclusions and recommendations for improvement in this area, which in turn are addressed to decision makers, implementers of the legal framework, but also to the general public.

This study considers the environment and has no pretensions to engage in research on individual issues and cases or to enter into the quality of decisions. The focus of the study is on the need for advocacy to improve the application of competition policy in practice. In that context, Center for Economic Analyses (CEA) prepares a monitoring of the CPC operation on a quarterly basis including special reports in the area of measuring:⁶

- I. The capacities of the CPC
- II. Execution of competition protection by the CPC
- III. Execution of state aid control by the CPC
- IV. Transparency of the CPC

The primary methodological approach in the conducted research is a qualitative method used to gain insight into the key issues as well as the reasons arising from the findings in order to formulate the proposed recommendations. Qualitative data were collected through a review of the regulation and other available materials, data and information by policy makers and implementers, supplemented by interviews with various stakeholders. The quantitative part of the study is based on availability and is taken primarily from the annual reports of the Commission for the Protection of Competition. The study also used the reports from the SEA twinning project for Chapter 8 and the internal SEA self-screening tables for Chapter 8 Competition Policy.

6) The monitoring will be performed on the basis of a specially developed Monitoring Matrix of the CPC work.

1. STRATEGIC AND INSTITUTIONAL SET-UP

1.1. Competition and socio-economic context

Competition and consumer protection play a direct and important role in promoting economic growth and reducing poverty. Competition stimulates innovation, productivity and competitiveness, contributing to an effective business environment, which in turn creates economic growth and employment. It also creates opportunities for small and medium enterprises, removes **barriers protecting "elites" and reduces opportunities for corruption.**⁷

Therefore, competition increases the attractiveness of the country as a destination by attracting both domestic and foreign investment. Competition also benefits consumers through lower prices, improved services and more choice. In this sense, competition generates the full well-being of consumers. It also contributes to creating a level playing field for businesses that need to apply common standards that are in favor of supporting competition.

Despite the benefits of competition, anti-competitive practices are common, generally for two main reasons: **(1) Business conduct that restricts competition** - this includes business entities agreeing not to compete (which is illegal), through cartels, pricing and territorial divisions for example; businesses can also make formal groupings, such as boards and cooperatives that can act as cartels; and **(2) Government policies that burden competition** - through restrictive licensing regimes for certain sectors and products.

Emerging economies are particularly vulnerable to anti-competitive practices - poor business infrastructure and complex regulatory and licensing rules can make it difficult for companies to enter markets; their policies, laws and regulations are often not stable enough, while enforcement agencies / bodies lack the capacity to detect and deal with such practices effectively and in a timely manner. The cross-border component also faces challenges. Companies and supply chains are international, while competition laws and enforcement bodies are national. The countries themselves are trying to address anti-competitive practices at the international level, which in turn requires regional and global cooperation to set and enforce competition rules.

Competition policy aims to overcome this anti-competitive environment by applying a set of rules that guarantee equal / fair play for all businesses. Successful implementation of competition policy results in the elimination of anti-competitive regulation and unnecessary barriers to greater competition imposed by government policies. Anti-competitive business practices are also reduced and discouraged through the effective enforcement of competition rules.

1.2. State Aid Control

State aid is of particular importance within the EU as part of competition policy. The rules for state aid regulate situations in which the public sector receives assistance from the budget, i.e. public funds.

State aid is defined as an advantage in any form, which is granted on a selective basis to enterprises / economic agents by public authorities. Therefore, subsidies granted to individuals or general measures that are open to all enterprises are not state aid (e.g. general tax measures or employment legislation).

The main reason why state aid is controlled is that any enterprise / business entity that receives support from the state (at any level) gains an advantage over its competitors. Therefore, the

⁷) UN Conference on Trade and Development, Why Competition and Consumer Protection Matter, <https://unctad.org/>

Treaty for the Functioning of the EU - TFEU⁸ - generally prohibits state aid, unless justified by reasons of achieving general economic development.⁹ In order to ensure compliance with this prohibition and the rules of exemption, the EU legal acts apply equally to the whole of the EU, and the European Commission (EC) is responsible for ensuring that the granted state aid complies with EU rules.

According to the EC, for a measure to be state aid,¹⁰ it should have the following characteristics:

- *There is an intervention by the State or through State resources which can take a variety of forms (e.g. grants, interest and tax reliefs, guarantees, government shares of all or part of a company, or providing goods and services on preferential terms, etc.);*
- *The intervention gives the recipient an advantage on a selective basis, for example to specific companies or industry sectors, or to companies located in specific regions;*
- *Competition has been or may be distorted;*
- *The intervention is likely to affect trade among Member States.*

Despite the general ban on state aid, in some circumstances, state interventions are necessary for the proper functioning and existence of a fair economy. Therefore, the Treaty leaves room for a large number of policy objectives for which state aid can be considered compatible or allowed in the internal market in line with EU rules.¹¹ It is necessary to regularly review the national legislation in order to improve its efficiency as well as compliance with the EU recommendations for state aid, which is smaller in scope but better targeted. In accordance with the EC recommendations, it is necessary to adopt amendments to the Law on State Aid Control and to the Regulation on the conditions and procedure for granting aid of minor importance (de minimis). In the context of harmonization, when it comes to transparency of state aid confirmed with the findings of CEA's publications of 2013 and 2016, the transparency of aid granted is needed.^{12/13}

8) Treaty on the functioning of the EU, TFEU, Lisbon Treaty.

9) Article 107 (3) of the Lisbon Treaty states that the following may be considered to be compatible with the common market: a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation; b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State; c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest; d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest; e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

10) European Commission, Competition, State Aid Control, seen February 2020, available at https://ec.europa.eu/competition/state_aid/overview/index_en.html

11) European Commission, Competition, State Aid, State Aid Procedures, available at https://ec.europa.eu/competition/state_aid/overview/state_aid_procedures_en.html

12) Парламентарен надзор над политиките за конкуренција, државна помош и за привлекување странски директни инвестиции во земјите во Западен Балкан, ЦЕА, 2013 година, М. Николов, В. Гарванлиева, К. Цуцулоска, види на: <http://www.cea.org.mk/documents/6354NPCtoolkitMK-FINAL.pdf>

13) Бенефити и трошоци од странските директни инвестиции во технолошко-индустриските развојни зони Случај: Македонија за периодот 2007-2014 година, В. Гарванлиева, М. Николов, et al. види на: <https://cea.org.mk/wp-content/uploads/2016/04/1.-Analiza-Benefiti-od-FDI-TIRZ-Makedonija.pdf>

1.3. Strategic framework: NPAA in RN Macedonia for Chapter Eight

As a candidate country expecting the start of negotiations with the EU, RNM almost entirely, as well as historically, bases its legislation and competition policy on the policies of the European Union. Also, this area is regulated and prescribed by the provisions of the Stabilization and Association Agreement between the RNM and the EU.

The National Program for the Adoption of the Acquis (NPAA) in RN Macedonia is a comprehensive medium-term document that defines *the dynamics of the adoption of EU law, strategic directions, policies, reforms, structures, resources and deadlines* that should be realized in order for the Republic of North Macedonia to meet the conditions for membership in the European Union.

The NPAA is the result of mutual cooperation of all competent institutions in RN Macedonia in a process coordinated by the Secretariat for European Affairs (SEA), and it will serve to formulate the negotiating positions of RN Macedonia after the start of negotiations for membership in the European Union. This program, first adopted in 2006, is reviewed and updated annually with activities and measures arising from the European Commission's regular progress reports on RN Macedonia, as well as the short-term and medium-term priorities of the Accession Partnership.¹⁴

The NPAA is a document of strategic importance for the planning and monitoring of the necessary changes in the legislation in an integrated way by all competent stakeholders. This program from 2009 until now is the only extensive and detailed document that, on a three-year basis, provides an overview with an annual plan and a three-year plan that is updated every year. According to the SEA, the NPAA:

- *"establishes a detailed plan and schedule for harmonization of the national legislation with the EU law (acquis communautaire) and determines the competent institutions and bodies for its preparation and implementation;*
- *places special emphasis on the administrative structures for implementation of the legislation in order to establish new or reform the existing institutions, and to provide adequate trained staff;*
- *covers funds from the budget and foreign support funds needed to implement the envisaged tasks, as a basis for further strategic planning and budget planning of the Republic of Macedonia; and*
- *clearly sets the deadlines for the adoption of EU law".¹⁵*

The latest version of the NPAA was prepared in January 2017 for 2017 to 2019 and an NPAA audit for 2017, but there is no publicly available information on the audits, i.e. on the adoption of annual programs after 2017. In the last (publicly available) revision of the NPAA for 2017, the new approach of the European Commission was incorporated for the realization of the priorities.¹⁶

The reason for the postponement of the NPAA development after 2017 is not known. The lack of this kind of document reduces the possibility for external monitoring of the progress in a highly systematized and integrated way of the harmonization of the regulation because, according to the SEA, the information and progress reports are regularly submitted to the Government of RNM. Any information submitted to government sessions publicly available makes it difficult to access it in a systematic manner. **Consequently, the reactivation of the regular review process of**

14) Partnership for accession 2007 Republic of Macedonia, available at:

https://www.sobranie.mk/WBStorage/Files/Partnerstvo_za_pristapuvanje_2007_so_Republika_Makedonija%2015.02.08.PDF

15) National Program for the Adoption of the Acquis (NPAA), revision 2017-2019, from January 2017, with all annexes and parts, SEA, Government of RN Macedonia, available at: <http://www.sep.gov.mk/content/?id=13#.XkqCg2hKg2y>

16) National Program for the Adoption of the Acquis (NPAA), revision 2017-2019, from January 2017, with all annexes and parts, SEA, Government of RN Macedonia, available at <http://www.sep.gov.mk/content/?id=13#.XkqCg2hKg2y>

the NPAA on an annual basis and its promotion in the direction of ongoing and ex-post monitoring is needed, i.e. it would be useful to report on progress in a more transparent and facilitated way by keeping track of EU approximation reforms.

In the last NPAA report from 2017 the narrative part of the report, **which refers to the competition policy, singles out the plans for:** cooperation with the Financial Police Directorate, the training needs of the CPC in the procedure of obtaining on-sight evidence. In 2017, it was envisaged to adopt a Regulation for granting aid of minor importance that does not significantly restrict competition, “according to Article 7, paragraph 1, of the Law on the Protection of Competition (de minimis), will be harmonized with the EC Communication 2014 / C 291/01, and the Regulation on the application of Article 7, paragraph 3, of the Law on the Protection of Competition for categories of technology transfer agreements, which will be harmonized with Regulation 2014/0316”. In 2018, it was planned to amend the Law on the Protection of Competition in order to further align it with EU rules and practices.¹⁷ According to the current information through the availability of the amendments to the above Regulations and the information of the CPC, these changes have not been done (by the end of February 2020). The section regarding Chapter 8 of the findings from the EC progress report from 2016 and the following reports (for 2016, 2017, 2018, and 2019) note the need for additional enforcement efforts: “to strengthen the enforcement track record of the Commission for Protection of Competition (CPC); to increase the transparency of state aid granted by the Government”.¹⁸

Consequently, the priorities outlined in the NPAA for 2017 remain to be implemented as outlined below in the study. We would also like to emphasize that according to the CPC, the changes provided for in the NPAA 2017 (Decrees and amendments to the laws) are again intended to be implemented according to the NPAA 2020-2023.¹⁹

17) National Program for the Adoption of the Acquis (NPAA), revision 2017-2019, from January 2017, with all annexes and parts, SEA, Government of RN Macedonia, available at <http://www.sep.gov.mk/content/?id=13#.XkqCg2hKg2y>

18) EC Reports on Macedonia's progress toward the European Union, for different years 2016-2019, available at https://ec.europa.eu/neighborhood-enlargement/countries/package_en

19) During the implementation of the analysis until the end of February 2020, a newer NPAA after 2017 was not available, although the existence of the NPAA 2020-2023 is also mentioned.

Review: Short-term and medium-term priorities for legislation and implementation of competition protection, excerpt from the last NPAA of 2017

Short-term priorities		Medium-term priorities	
Legislative framework	Implementation	Legislative framework	Implementation
<ul style="list-style-type: none"> ● New Regulation on contracts of minor importance that do not significantly restrict competition under Article 7, paragraph 1, of the Law on the Protection of Competition (de minimis), which will be harmonized with the EC Communication 2014 / C 291/01. ● New Regulation for application of Article 7, paragraph 3, of the Law on the Protection of Competition for categories of technology transfer agreements, which will be harmonized with Regulation 2014/316. 	<ul style="list-style-type: none"> ● In order to strengthen the administrative capacity of the CPC for implementation of the Law on the Protection of Competition, TAIEX trainings, national trainings and trainings organized by RCC-OECD / GVH will be realized. ● In 2017 and 2018, it is planned to open new positions in the CPC and conduct procurements of IT equipment and furniture necessary for the realization of the planned ongoing activities. ● The CPC will continue to work closely with other regulatory bodies in the country, in particular with the Energy Regulatory Commission, the Agency for Electronic Communications, the Agency for Audio and Audiovisual Media Services, the Public Procurement Bureau, the Railway Regulatory Agency and the Ministry of Interior, in accordance with the signed memoranda of cooperation, as well as cooperation within the Competition Network of the Energy Community. 	<p>In 2018, it is planned to adopt a Law amending the Law on the Protection of Competition in order to comply with EU rules and practices (amendment of Article 8 to define the agreement of minor importance, amendment of Article 64, paragraph 5, item 1, insertion of provisions that will regulate and specify the procedure for obtaining evidence dawn raid and other amendments).</p>	<p>The administrative capacities of the CPC will be continuously strengthened with new employments and TAIEX trainings for the employees in the professional service of the CPC. At the same time, it is planned to introduce the position of Chief Economist in the CPC in order to perform economic analysis and collect economic evidence and data in cases of prohibited agreements and cartels, as well as abuse of a dominant position.</p> <p>There will be awareness raising activities of government institutions and the business sector by issuing brochures, organizing conferences and public debates on issues in the field of antitrust and concentrations, if a budget is provided for them. It is also planned to strengthen the capacity of the judiciary to decide on complex cases in the field of competition protection, by organizing public debates and conferences, with the assistance of foreign experts in the field of European competition law.</p>

Review: Short-term and medium-term priorities for legislation and implementation of state aid, last NPAA of 2017

Short-term priorities		Medium-term priorities	
Legislative framework	Implementation	Legislative framework	Implementation
<ul style="list-style-type: none"> In 2017, an analysis will be done for possible amendments to the Law on State Aid Control and the Decree on Minor Aid with the participation of all stakeholders (providers and recipients of state aid). It will aim to set a possible new threshold for minor assistance in the country. 	<ul style="list-style-type: none"> In 2017, advanced training will be realized with a study visit of the employees in the professional service of the CPC. In 2017 and 2018, it is planned to open new employments in the CPC and conduct procurement of IT equipment and furniture necessary for the realization of the planned ongoing activities. 	<ul style="list-style-type: none"> By the end of 2019, amendments to the existing regulations will be adopted, as follows: the Decree on the manner and procedure for submitting notification for granting state aid, the Decree on terms and procedure for granting regional aid, the Decree on terms and procedure for granting horizontal aid and the Regulation for determining the conditions and the procedure for granting aid for rescue and restructuring of enterprises with difficulties due to compliance with the relevant EU rules and practices.²⁰ 	

Source: Excerpt from the Chapter 8, NPAA, for 2017, SEA

The lack of a strategic framework and integrated approach leaves room for creating unequal conditions for all economic agents in the market, or creating barriers for new students to enter the market, market distortions, political influence on market regulation through the allocation of funds, and other interventions that are detrimental to the promotion of competition as a key form for greater efficiency and free market - a functioning market economy.

1.4. Division of roles and responsibilities - institutional framework

Competition policy, including state aid, covers activities and measures within the competence of several institutions, among which the Government holds a particularly important place, as the holder of responsibility for creating competition protection policies. The Commission for the Protection of Competition is a key institution for the application of the rules for the protection of competition and state aid control. Competent courts, as well as other relevant institutions and bodies with varying degrees of powers and responsibilities, also have a role.

²⁰ National Program for the Adoption of the Acquis (NPAA), revision 2017-2019, from January 2017, with all annexes and parts, SEA, Government of RN Macedonia, available at <http://www.sep.gov.mk/content/?id=13#.XkqCg2hKg2y>

1.4.1. Government, Ministries and Governmental Bodies

The Government of the RNM is the holder of executive power and shall define and manage policies in the country according to the Constitution, the Law on the Government, Article 4: "*Within the rights and duties established by the Constitution and by law, the Government shall define the economic and development policy, define measures for implementation of the policies and shall propose measures to the Parliament for implementation of the policy within its competency; define the policy for implementation of the laws and other regulations of the Parliament, monitors the implementation and performs other tasks stipulated by law*".²¹

Ministries and other executive bodies shall participate in the creation of government policy by preparing draft laws, other regulations and general acts for the Government and proposing development strategies.²² At the level of the Government or the ministries, although there is a significant number of strategic documents related to the purpose and role of competition, its protection and implementation, as well as strategic documents, plans and policies that are supported by state aid interventions, **there is no comprehensive document** that addresses specifically and exclusively the strategic plans and priorities for the policy for the protection of competition or for state aid control, in general or by sectors.

The Secretariat for European Affairs (SEA) was established as a special expert service of the Government with the mission to provide expert support and coordination of the work of state administration bodies and other bodies and institutions to prepare RN Macedonia for membership in the European Union. The SEA is an expert service of the Government of RN Macedonia headed by a member of the Government in charge of European Affairs who has the rights and duties of an official who manages a body of state administration. The SEA has a horizontal coordination function on issues related to the preparation for RN Macedonia's membership in the European Union.

In the context of Chapter 8 Competition Policy, the SEA is part of the Subcommittee on Internal Market and Competition, and is the main point of contact for compliance with this chapter with the EC as well as with the relevant institutions preparing and implementing the regulation. Also, the SEA is in constant communication with the CPC on the degree of achievement of the planned compliance activities in the NPAA where the holder of that working group (3.08) is the CPC, until 2019 with the creation of new working groups where the holder for this chapter becomes the Ministry of Economy.

According to the SEA, there are internal procedures and a process of regular monitoring of compliance and the level of implementation of the planned activities and the draft plan of the NPAA for 2019-2021 (which is not adopted by the Government), but the reports are not publicly available. According to the competent ministries,²³ although the NPAA as a strategic and integrated document has not been adopted in recent years, the ministries have submitted and are submitting plans for the NPAA and are in constant communication with the SEA regarding the NPAA.

The Working Committee on European Integration consists of working groups for the preparation of the National Program for the Adoption of the Acquis (NPAA) and the preparation of the negotiating positions with the European Union in the event of the start of the process. The role of the working groups includes: planning the activities and determining the proposed priorities for translation and harmonization with the law of the European Union; preparation of the NPAA; estimation of the costs and necessary resources for capacity building for implementation of the undertaken obligations from the negotiations; following and regularly updating the part of the NPAA that refers to the chapter for which they are responsible; assessment of the necessary resources (human, material, technical, etc.) for capacity building for law enforcement; submitting reports on the implementation of the relevant chapters of the National Program

21) Article 4 and Article 8 of the Law on Government, Off. Gazette of the Republic of Macedonia (59/00, 26/01, ... 98/19) available at: <https://bit.ly/394Z5Gi>

22) Law on organization and operation of the state administration bodies, Off. Gazette of the Republic of Macedonia (58/2000, ... 96/19) available at: <https://bit.ly/2G0DvKj>

23) Ministry of Economy, 10.2.2020

for the Adoption of the Acquis to the European Union to the Working Committee for European Integration and to the Negotiating Group for the Accession of the Republic of Northern Macedonia to the European Union; giving recommendations on the draft laws and bylaws that harmonize with the law of the European Union that fall in their chapter to the proposer, to the Secretariat for European Affairs and to the Negotiating Group for accession of the Republic of North Macedonia to the European Union.²⁴

Regarding Chapter 8, in the Annual Plan of the Government for 2019, there is a plan for the preparation of a Draft Regulation for the application of Article 7, paragraph 3, of the Law on the Protection of Competition for categories of technology transfer agreements, in accordance with the initiative arising from the National Program for the Adoption of the EU Acquis 2019 - 2021 (NPAA) and Plan 18,²⁵ where the proposers are the Ministry of Economy together with the CPC.²⁶ **However, the NPAA is not available for the given period, and Plan 18 does not state strategic priorities for reforms in the field of competition protection.**

Accordingly, based on the so-called portfolio for the implementation of the laws that are subject to these policies, it is indicative that the shortcomings of RNM are to a lesser extent due to the harmonization of the legislation, and more due to the lack of enforcement of the legislation, i.e. the actual implementation of the policy for protection of competition and state aid control as well as the low level of transparency.²⁷

Regarding the competencies for the competition protection (CP) and state aid control (SAC), according to the law on PC, the Commission (CPC) through its expert service prepares proposals of the bylaws determined by the provisions of the Law on State assistance (Article 29 LSA, paragraph 2, item 2), while on their proposal, the Decrees that regulate this topic are adopted by the Government of RNM. Additionally, in order to respect one of the basic principles for the protection of competition, all ministries or institutions that prepare draft laws and bylaws in their competence can / should consult with the CPC on the compliance of those acts with the LCP and LSAC. The Government²⁸ reviews the Annual Report on the work of the CPC and determines the opinion, i.e. gives remarks regarding the Report if there are any.²⁹

1.4.2. Commission for Protection of Competition

The CPC was established in 2005 as a body accountable to the Parliament of the Republic of Macedonia, to which it submits an annual report by March 31 of the following year. The work of the Commission is financed from the budget of the Republic of Macedonia.³⁰ The Commission for the Protection of Competition is responsible for the implementation of the Law on the Protection of Competition and the Law on State Aid Control. The main competencies of the Commission for the Protection of Competition are: control of the application of the provisions and regulations adopted on the basis of the Law on the Protection of Competition, monitoring and analysis of the market conditions to the extent necessary for the development of free and efficient competition, conducting procedures and making decisions in accordance with the provisions of the Law.

24) Decision on establishing working groups for the development of the National Program for Adoption of the Acquis of the European Union and preparation of the negotiating positions for negotiations for membership in the European Union, of the Government of RNM, 9/7/2019, session 143

25) Plan 18, Government of the Republic of Macedonia, adopted on 30.10.2018, last seen on 28.1.2020, available at: <http://www.sep.gov.mk/data/file/Dokumenti/Plan.18.MKD.pdf>

26) Work program of the Government of RN Macedonia for 2019, available at: https://vlada.mk/sites/default/files/programa/2017-2020/Programa_na_Vladata_2019.pdf, p. 202, Draft Regulation for the application of Article 7, paragraph 3, of the Law on the Protection of Competition for categories of technology transfer agreements

27) We reiterate the indications and the need to open the data for granted state aid, as a request from the civil sector recorded in the CEA analysis <https://cea.org.mk/wp-content/uploads/2016/04/1.-Analiza-Benefiti-od-FDI-TIRZ-Makedonija.pdf>, but also in discussions on open government partnership.

28) Minutes of the Government session 131, for the Annual Report on the work of the Commission for the Protection of Competition for 2018, available at: <https://vlada.mk/sednica/131>

29) Materials from the session of the Parliament from the Committee on Economic Affairs for the Annual Report on the work of the Committee for the Protection of Competition for 2018, available at: <https://www.sobranie.mk/materialdetails.aspx?materialId=95d92828-72d9-46be-aafc-28f114b9221c>

30) Law on the Protection of Competition, Off. Gazette of the Republic of Macedonia (145/2010, ... 83/18)

The Commission is an independent state body with the capacity of a legal entity, independent in its work and in making decisions within the competencies provided by Law. The Commission is composed of a President and four members appointed and dismissed by the Parliament of the Republic of North Macedonia, for a period of five years with the right of reappointment.³¹ The CPC President and two members are full time staff. The total number of employees (according to the report for 2018) is 27 - the President of the CPC, two members of the Commission and 24 members of the professional staff, with only a few of them working on the implementation of the CPC, and even fewer on the Law on State Aid Control.

According to the law, the CPC has several competencies and functions:

- 1) **Controlling / Supervisory** - to control the activities on the territory of RNM regarding the application of provisions and regulations in the field of competition and state aid, i.e. regulations adopted under these laws. The Commission is also responsible for evaluating and monitoring any form of state aid.
- 2) **Analytical** - to monitor and analyze market, competitive conditions for free and efficient competition, to conduct research and determine market conditions, regardless of the specific procedures it conducts.
- 3) **Decision making** - to conduct proceedings and make decisions on administrative proceedings for the protection of competition and state aid, and initiate misdemeanor proceedings, issue misdemeanor sanctions, conduct administrative proceedings to determine the concentrations and existence of misdemeanors specified in the LCP. To decide and approve by adopting decisions for state aid and to initiate a procedure for the assessment of the admissibility of granting state aid.
- 4) **Consultative** - to give opinions on draft laws and other acts and to assess the impact on competition and to give expert opinions on issues in the field of competition policy, protection of competition and granting of state aid.
- 5) **Coordinative** - to cooperate with state organs and bodies in order to protect competition and to cooperate with state bodies and organs that are required to submit data and information necessary to perform its competencies, including cooperation with international institutions. To lead regional working groups on negotiating Chapter 8.
- 6) **Normative** - to participate in the preparation of regulations in the field of competition by proposing them to the Government and adopting bylaws and guidelines for the implementation of the law. The Government of the Republic of Macedonia, upon the proposal of the Commission for the Protection of Competition, shall prescribe in detail the manner and procedure for submitting a state aid notification, the procedure for supervising the existing state aid, the conditions and the procedure for granting a licensed state aid, the conditions and the procedure for granting assistance of minor importance.
- 7) **Informative / advocacy** - to undertake activities to increase capacity and inform all stakeholders to protect competition.

The main remarks in the annual progress reports by the European Commission on RNM in the past years almost exclusively refer to the lack of enforcement record in the area of competition and lack of capacities, i.e. lack of transparency regarding the granting of state aid.

On the other hand, the annual reports of the CPC for a long period of time indicate the lack of human resources that would address the recommendation to create a credible implementation track record. Regarding state aid and its transparency, the CPC refers to the limiting factors concerning the disclosure of confidential data. The reference to the confidentiality of data is based on Article 30 of the LCP, which refers to Article 57 of the LCP.

³¹ Law on the Protection of Competition, Off. Gazette of the Republic of Macedonia (145/2010, ... 83/18)

For the first time after many years of indications, the report on the work of the CPC for 2018 lists the granted state aid to foreign investor donors and provides an overview - a list of recipients of state aid. In previous reports, the review was cumulative without listing donors and recipients. However, such information is still inconsistent and far from the needed detailed review of the assistance provided on different grounds and in different structures.

The requirement for transparency according to the LCP³² is that the decisions of the CPC are published in the Official Gazette, while the decisions, judgments and decisions of the court are published on the website of the CPC. According to the LCP,³³ the decisions of the Commission for the Protection of Competition and the Commission for deciding on misdemeanors are published in the Official Gazette, and the verdicts, i.e. the decisions of the court, and the notifications for the concentrations are published on the website. In the coming period, the CEA monitoring reports will provide more detailed information about these publications.

The CPC does not prepare a work plan or program, but prepares Strategic Medium Term Plans. The last strategic plan refers to the period 2020-2023, and it is not publicly available on the CPC website.³⁴

1.4.3. Parliament of RN Macedonia

Apart from decisions, judgments and other information that should be published by the CPC to inform stakeholders, the public and the media, one of the duties of the CPC is to inform the Parliament about the results of the CPC's work in a timely manner. According to Article 26 of the LCP: "***The Commission for Protection of Competition is accountable for its work to the Parliament of the Republic of Macedonia and presents an annual report on its work to the Parliament of the Republic of Macedonia no later than March 31st.***"

The CPC provides support to the Parliament in fulfilling its responsibilities by providing opinions on laws and on other issues in the areas of competition policy, competition protection and state aid control. Cooperation between the CPC and the Parliament takes place in accordance with the Law on PC:

- *The Parliament appoints and dismisses the President and the members of the Commission for Protection of Competition;*
- *CPC submits an annual report on its work to the Parliament for consideration by March 31 for the previous year,³⁵ and the Parliament adopts conclusions thereon;*
- *At the request of the Parliament (as well as the Government of the Republic of Macedonia, other state bodies, enterprises or ex officio), the Commission for Protection of Competition gives expert opinions on issues in the field of competition policy, protection of market competition and granting state aid.*

The Parliament in the plenary session reviews the Annual Report, the Opinion of the Government and the Report of the Committee on Economic Affairs, addressed by the President of the CPC who elaborated the report. After the final debate on the Annual Report, the draft Conclusion contained in the report of the Committee on Economic Affairs, as the main working body, is put to a vote after which the Parliament adopts the proposed conclusion. As confirmed by the CPC, there is no other type of cooperation or obligation of the CPC to the Parliament other than the submission of the annual report.

32) Article 28 and 29, Law on State Aid Control, Off. Gazette of the Republic of Macedonia (145/2010, ... 83/18)

33) Article 67, Law on the Protection of Competition, Off. Gazette of the RM (145/2010, ... 83/18)

34) According to the CPC, strategic medium-term plans are being prepared, and a request has been sent for its submission, but until the moment of closing the report it is not available, 20/03/2020.

35) The report of the CPC for 2017 was reviewed by the parliament at the plenary session 58 from 29.08.2018, continuation on 30.8.2019, after the conclusion of the Committee on Economic Affairs is voted, <https://bit.ly/2OomDhF>

1.4.4. Committee on Economic Affairs

The Committee on Economic Affairs reviews the annual report at regular committee hearings once a year, after the Report has been submitted by the CPC. After the debate, a proposal is voted on to decide whether the Parliament should adopt the conclusion, with which the Commission proposes to the Parliament to adopt conclusions regarding the report. The Committee on Economic Affairs when considering the conclusions has the Government's Opinion on it available. After the committee debate, the annual report is placed on the agenda of a parliamentary session and the Parliament reviews, discusses and votes on the adoption of the conclusion of the Committee on Economic Affairs.³⁶

Example, Conclusion from 2018, after the Report of the Committee on Economic Affairs from the 33rd session from 15 May 2019 for a report from 2018, prepared by the Committee on Economic Affairs and submitted to the President of the Parliament.

Заклучок

1. Собранието на Република Северна Македонија го разгледа Годишниот извештај за работата на Комисијата за заштита на конкуренцијата за 2018 година.

2. Овој заклучок заедно со извештајот на Комисијата за економски прашања на Собранието на Република Северна Македонија да се достави до Владата на Република Северна Македонија, Министерството за економија и Комисијата за заштита на конкуренцијата.

According to the minutes of the Parliament of the RN Macedonia, the Committee on Economic Affairs holds discussions in the form of questions by the members, seeking certain explanations and adopting conclusions.

According to the available information to the Parliament of the RNM and the conversation with the services of the Committee, in the past years there has been no case in which, apart from presenting the annual report on the work of the competencies of the CPC, was discussed in depth. Although reports are submitted to the Parliament and the Government on time, the CPC report is often reviewed later (two to six months), after being placed on the agenda of the Committee on Economic Affairs.

For comparison purposes, the picture below presents the supervisory elements of the reports from the State Audit Office (SAO) and the elements in the reports of the CPC, in accordance with the different legal provisions and competencies. The differences are in the opinion of the Government, but also in the conclusions of the Committee on Finance and Budget (KFB),³⁷ where in addition to the annual report on the work of the SAO, the report on audits and the conclusions of the parliamentary committee are considered in the essence of the report, i.e. performance evaluation and recommendations in the field of operation.

36) Materials from the session of the Parliament from the Committee on Economic Affairs for the Annual Report on the work of the Committee for the Protection of Competition for 2018, available at: <https://www.sobranie.mk/materialdetails.aspx?materialId=95d92828-72d9-46be-aafc-28f114b9221c>

37) Materials from the session of the Parliament from the Committee on Finance and Budget for the Annual Report on the work of the SAO for 2018, available at: <https://www.sobranie.mk/materialdetails.aspx?materialId=ebbbb660-8247-4f9b-a2e1-a601472c54b3>

Illustration: Comparative approach to parliamentary oversight of the conclusions it draws on the CPC and SAO annual reports

CPC	SAO
Submits Annual Report to the Parliament of RNM	Prepares GI for the performed audits and for the work of the SAO and submits for consideration to the Parliament of RNM
Committee on Economic Affairs - CEA	Committee on Finance and Budget – KFB
Material:	Material:
<ul style="list-style-type: none"> - Opinion from the Government, that there are / there are no remarks on the text, and - GI on the work of the CPC 	<ul style="list-style-type: none"> - Opinion from the Government by going into the substance of the work, - GI on the work, - Report from conducted audits, - Audit report, etc.
1. Introductory explanation	1. Introductory explanation
2. Discussion	2. Discussion
Adopts or does not adopt conclusions	Adopts or does not adopt conclusions
The conclusions are:	The conclusions are:
/ Reviewed the GR /	/ Reviewed the GR /
	/ Adopts or does not adopt conclusions /
	/ Gives evaluation, recommendations, etc. in a list of conclusions /
/ Proposes to the Parliament to adopt the conclusion /	/ Proposes to the Parliament to adopt the conclusion /

Source: View of the authors in accordance with the legal provisions and the practice from the minutes of the sessions of the Government and the Parliament.

1.4.5. Justice

The misdemeanor proceedings are initiated by the CPC, i.e. through the Commission on Misdemeanors (CoM). According to the law on misdemeanors for PC, the Commission for misdemeanors on PC decides on and imposes a misdemeanor sanction. The Commission for deciding on misdemeanors is composed of a President and the two members of the Commission for the Protection of Competition who are full time staff of the Commission for the Protection of Competition. The Commission for deciding on misdemeanors works and decides at a session, by a majority vote of the total number of members. A member of the Commission for deciding on a misdemeanor may not abstain from voting. During the misdemeanor procedure, the Commission for deciding on misdemeanors appropriately applies the provisions of the Law on General Administrative Procedure, unless otherwise determined by the Law on Misdemeanors³⁸ and the Law on the Protection of Competition.

The Commission for deciding on a misdemeanor starts the misdemeanor procedure with a conclusion, against which no appeal is allowed, nor a lawsuit for initiating an administrative dispute. After the Commission for Decision on Misdemeanors has fully determined the factual situation relevant for proper decision-making, it adopts: a decision stating that the person against whom the procedure was initiated

38) Law on Misdemeanors, Off. Gazette of RN Macedonia 96/2019

committed a misdemeanor provided by the provisions of the law and pronounces an appropriate misdemeanor sanction or a decision that determines that the person against whom the procedure has been initiated has not committed a misdemeanor provided by the provisions of this Law.

The decisions of the Commission for deciding on misdemeanors are final. Such decisions may be challenged before a competent court.

Judicial control over the acts of the CPC is exercised in an administrative procedure, i.e. a dispute. The procedure examines the legality of the decision on a lawsuit by a person who considers that a certain right or interest has been violated by the given act. The Administrative Court of the RNM has jurisdiction to decide on administrative disputes.

The administrative procedures are led by the President and the four members of the Commission for the Protection of Competition. Decisions in administrative procedures and decisions relating to the ongoing operation of the Commission for the Protection of Competition are made by the President and the four members of the Commission for the Protection of Competition at a session, by a majority vote of the total number of members.

The Law on Misdemeanors (Article 23, paragraph 5) determines the amount of the fine for misdemeanors in the field of competition (among other areas), according to which legal entities can be imposed a fine in a percentage amount, but up to 10% of the income of the legal entity realized in the previous fiscal year.

The prevention, restriction or distortion of competition is also regulated in the Criminal Code, where Article 283 states: "The responsible person in the legal entity who shall conclude an agreement or shall participate in the concluding of an agreement, decision or agreed behavior, prohibited by law, and aiming to prevent, limit or cause competition disorder, and thus the legal entity obtains property benefit of greater extent or causes damage of greater extent, shall be sentenced to imprisonment of one to ten years."

1.4.6. Other institutions and bodies

Business associations, including all forms of association such as chambers, clusters, professional and sectoral associations, are forms of organizing the business sector of RN Macedonia and act in the direction of advocacy for the promotion of the business environment.

In that direction, *associations and chambers* of business entities in any branch or sectoral organization are the primary channel of communication in conditions when it is necessary to strengthen knowledge and understanding of the topic and regulation, awareness of the need for enhanced competition and undertaking activities for public advocacy in the field of competition, which is an important component of the work of a body such as the Commission for the Protection of Competition.

The *Public Procurement Bureau* is an important institution that cooperates / should cooperate with the CPC in the field of competition protection regarding the award of public procurement contracts (for protection against bid rigging). The Public Procurement Bureau, if necessary, requests an opinion from the CPC on issues within their competence.³⁹ Additionally, in 2014, the PPB and the CPC prepared a Guide for Detection of Illegal Contracts in Public Procurement Procedures.⁴⁰ The Public Procurement Bureau (PPB) can contribute to the protection of competition by exchanging information and techniques for detecting cartels in public procurement in cooperation with the Commission for the Protection of Competition. The PPB should analyze the annual complaints reports and prepare / propose necessary amendments to the Law on Public Procurement to strengthen the competition aspect. Pursuant to the Law on Public Pro-

39) Opinion of the CPC published on PPB, <http://www.bjn.gov.mk/novosti/mislenje-k/>

40) Guide for detecting illegal contracts in the procedures for awarding public procurement contracts, CPC, PPB, 2014, available at: <http://www.bjn.gov.mk/wp-content/uploads/2018/11/Vodic-za-zastita-na-konkurencijata-za-web.pdf>

curement, sectoral activities directly exposed to competition, the contracting authority that considers that the activity in question is directly exposed to competition on the market, may submit a request to the CPC to determine direct exposure to competition in terms of the law on PP.⁴¹ According to the representatives of the PPB, there is a possibility and need for greater cooperation between the two institutions, especially in order to prevent the negotiation of procedures for awarding public procurement contracts (bid rigging).

The State Audit Office (SAO), as the supreme audit institution responsible for conducting the state audit when it notices the existence of obstacles in awarding contracts in cases that distort competition, needs to cooperate with the CPC and inform it. Having in mind that RN Macedonia is a candidate country for EU membership and is working on alignment with the EU acquis and the EU practice, it is especially important to strengthen the cooperation between the CPC and the SAO, especially in order to prepare ex-post assessments of the effects of state aid,⁴² where synergies can be found with SAO performance audits. Moreover, the findings of these audits may reveal elements of risk that would contribute to the inclusion of some entities in the SAO's annual audit programs. According to the SAO, in the past there has been no intensive cooperation with the CPC, but there are opportunities and forms for promotion in the future.

Other collaborations realized by the CPC, according to their reports, are mainly with the regulation bodies for energy and for telecommunications and media, while collaboration with other institutions and ministries is realized at the initiative of the institutions or at the initiative of the CPC.

1.4.7. Civil society sector

Regarding the civil society sector, and in the context of the subject of this research, it is worth mentioning a few organizations (think tanks) that have a certain capacity and some activities in this domain, though the interest, capacities and activities in this part are significantly smaller compared to other topics from the process of starting negotiations with the EU. This may be due to the fact that Chapter 8 is one of the negotiation chapters taking the longest time to finish, hence perhaps the reduced interest in monitoring these areas. In the context of the involvement of the civil society sector in the changes needed to move closer to the EU, an establishment of negotiating groups where all stakeholders including the civil society sector will be presented is expected. Among other things, the Center for Economic Analysis in 2015 pointed out the need to introduce transparency in state aid.⁴³ Additionally in 2015, the CEA in cooperation with the WFD prepared a manual for the Parliament of RNM⁴⁴ on the oversight of competition protection policies and state aid control related to attracting foreign direct investments in the Western Balkans.

41) Law on Public Procurement, Article 26, Official Gazette of RNM 24/19, available at: <http://www.bjn.gov.mk/category/zakon-zavni-nabavki/>

42) Ex-post assessment of the impact of state aid on competition, final report, Oxera, European Commission, 2017

43) See more at: Бенефити и трошоци од странските директни инвестиции во технолошко-индустриските развојни зони Случај: Macedonia for the period 2007-2014

44) See more at: Parliamentary oversight of competition policies, state aid and attracting foreign direct investment in the Western Balkans

2. CHALLENGES IN THE PROCESS OF POLICY MAKING AND NORMATIVE FRAMEWORK

2.1. Policy making process

The process of defining and implementing competition protection policy, including state aid as part of it, should be followed in a broader institutional framework for defining public policies and preparing sectoral regulations. Therefore, it is necessary to take into account the situation in the cycle of planning, formulation and coordination of public policies at the Government level. Policy planning, especially in this area, is a relatively underdeveloped function, built on the activities and initiatives of the line ministries and on the priorities at the Government level. Existing planning instruments through the Strategic Priorities of the Government,⁴⁵ the work program of the Government of RNM,⁴⁶ the Annual programs of the Government, the National Program for harmonization with the legislation of the European Union (NPAA), and financial planning instruments in accordance with the budget system are often not properly connected. The policy formulation is mainly absorbed by the legislative initiative process of the line ministries and, having this in mind, it can be concluded that the consequence is an underdeveloped competition policy. Namely, in 2018 (according to the CPC report) opinions were given on only two laws regarding competition issues and 23 opinions on legal acts from state aid providers. In 2018, without reviewing the adopted laws, including changes in absolute number, it was 248 laws.⁴⁷ However, in the opinion of the CPC, the intensity of requests for opinions on certain laws / legal changes by the authorities is at a satisfactory level.

2.2. Challenges arising from the legal framework

Multi-year efforts have been made in Macedonia to align with the EU acquis on Chapter 8 Competition Policy. The level of harmonization of the national legislation in this area with the EU acquis is at a relatively high level. The biggest challenges in achieving compliance with EU requirements are the implementation of the rules, the creation of a credible track record, as well as consistent and uniform application of the rules. For that purpose, it is necessary to strengthen the capacities of the Commission for the Protection of Competition (CPC) as well as the state aid providers / institutions that report state aid to the CPC.

Given that the regulation on competition and state aid is constantly being improved at the EU level, there is a need for constant harmonization of domestic legislation in this area, especially with secondary and tertiary regulations. Hence, the challenge is the necessary transposition of the "new" legal acts and assessment of the impact of their application on the Macedonian economy. It is also necessary to strengthen the capacities of the overall negotiating group for Chapter 8 in order to prepare for the forthcoming EU membership negotiations.

2.2.1. Current state of national competition protection legislation (antitrust and merger control)

The Republic of North Macedonia has a comprehensive Law on the Protection of Competition,⁴⁸ which contains norms for antitrust and the control of concentrations based on EU rules. The following secondary legislation was adopted:

1. Decree on group exemption of certain types of contracts for distribution and servicing of motor vehicles (Official Gazette of RM 41/2012) - this Decree harmonizes with (EU) Regulation No. 461/2010 of the

45) Government Program, Strategic Priorities, Work Program of the Government of RNM 2017-2020, available at <https://vlada.mk/strateshki-prioriteti?ln=mk>

46) Work program of the Government of RNM 2017-2020, available at https://vlada.mk/sites/default/files/programa/2017-2020/programa_na_vladata_2020.pdf

47) The number of laws adopted in summary procedure is reduced, Pravdiko online portal, available at <https://www.pravdiko.mk/se-namaluva-brojot-na-zakoni-doneseni-vo-skratena-postapka/>

48) Official Gazette of RNM, 145/2010, 136/2011, 41/2014, 53/2016, 83/2018

Commission as of 27 May 2010 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union concerning categories of vertical agreements and agreed practice in the motor vehicle sector (Text with EEA relevance), CELEX No. 32010R0461;

2. Decree on the closer conditions for group exemption of certain types of research and development agreements (Official Gazette of RM 41/2012) - this Decree achieves alignment with Regulation (EU) No. 1217/2010 of the Commission of 14 December 2010 on application of Article 101 (3) of the Treaty on the Functioning of the European Union relating to certain categories of research and development agreements (Text with EEA relevance), CELEX No. 32010R1217;
3. Decree on Immunity of fines and reduction of fines and procedure of the Misdemeanor Commission for granting immunity or reduction of fines (Official Gazette of RM 41/2012);
4. Decree on group exemption of certain types of vertical agreements (Official Gazette of RM 42/2012) - this Decree harmonizes with Regulation (EU) No. 330/2010 of the Commission from 20 April 2010 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union concerning categories of vertical agreements and agreed practice in the motor vehicle sector (Text with EEA relevance), CELEX No. 32010R0330;
5. Regulation on the form and content of the notification on concentration and the necessary documentation that is submitted together with the notification (Official Gazette of RM 44/2012) - this Regulation is harmonized with the Commission Regulation (EC) No. 802/2004 of 7 April 2004 implementing Council Regulation (EC) No. 139/2004 on control of concentration between undertakings, CELEX No. 32004R0802;
6. Decree on group exemption of certain types of insurance agreements (Official Gazette of RM 44/2012) - this Decree harmonizes with Commission Regulation (EU) No. 267/2010 of 24 March 2010 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector (Text with EEA relevance), CELEX No. 32010P0267;
7. Decree on closer terms for contracts of minor importance;⁴⁹
8. Decree on more detailed requirements for block exemption of certain types of horizontal agreements for specialization (Official Gazette of RM 44/2012) - this Decree harmonizes with Regulation (EU) No. 1218/2010 of the Commission of 14 December 2010 on application of Article 101 (3) of the Treaty on the Functioning of the European Union relating to certain categories of specializations agreements (Text with EEA relevance), CELEX No. 32010R1218;
9. Decree on more detailed requirements for block exemption of certain types of technology transfer agreements, licenses or know-how (Official Gazette of RM 44/2012) - this Decree harmonizes with Commission Regulation (EC) No. 772/2004 of 27 April 2004 on the application of Article 81 (3) of the Technology Transfer Agreement Category, CELEX No. 32004R0772, and the Correction to Commission Regulation (EC) No. 772/2004 of 27 April 2004 for the application of Article 81 (3) of the Agreement for categories of technology transfer agreements with CELEX No. 32004R0772 (01).

In addition to the decrees, numerous instructions, guidelines and other legal acts have been adopted. In general, the existing legislation is in line with the EU acquis.

2.2.2. Current state of national state aid legislation in force

Regarding the regulation of state aid, the Republic of North Macedonia has a Law on State Aid Control.⁵⁰ Based on the law, the following bylaws have been adopted:

49) Official Gazette of RMN, 44/2012

50) Official Gazette of RNM, 145/2010

1. Decree on determining the conditions and the procedure for granting aid for rescue and reconstruction of firms with difficulties (Official Gazette of RM 81/2003, 83/2007);
2. Regulation on the conditions and procedure for granting assistance of minor importance (de minimis) (Official Gazette of RM No. 141/2011) - this Regulation is harmonized with Commission Regulation (EC) No. 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid CELEX No. 32006 R1998;
3. Decree on the Manner and Procedure for Notification of State aid and procedure for supervising the existing state aid (Official Gazette of RM No. 142/2011) - this Decree harmonizes with Regulation (EC) Council Regulation (EC) No. 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, CELEX No. 31999R0659, amended by the Regulation with CELEX No. 32006R1791 (01) and the act with CELEX No. 12003TN02 / 05 as well as Commission Regulation (EC) No. 794/2004 of 21 April 2004, implementing Regulation (EC) No. 659/1999 of the Council laying down the rules for the application of Article 93 of the Treaty establishing the European Community, CELEX No. 32004R0794, amended by the regulations with CELEX numbers: 32006R1627, 32006R1935 (with its correction 32006R1935 (01)), 32008R0271, 32008R1147, 32009R0257, 32009R1125 and corrections with CELEX numbers: 32004R0794 (02) and 32004R0794 (04);
4. Decree on the conditions and procedure for granting regional aid (Official Gazette of RM 109/2013) - this Decree harmonizes with the Council Regulation (EC) No. 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (general group exemption regulation);
5. Decree on the conditions and procedure for granting horizontal assistance (Official Gazette of RM 3/2014).

In addition to the decrees, numerous instructions, guidelines and other legal acts have been adopted. In general, the existing legislation is in line with the EU acquis.

2.2.3. Recommendations from the European Union in the Progress Reports for chapter 8

The Republic of North Macedonia has an adequate degree of compliance with the EU acquis on Chapter 8 Competition Policy. An indicator of the level of compliance are the numerous annual progress reports from the European Commission assessing the country as moderately prepared for this chapter.

According to the latest EC Progress Report for 2019,⁵¹ the Republic of North Macedonia is moderately prepared in the field of competition policy. Significant efforts are needed to implement legislation in this area.

In the future, the Republic of North Macedonia should pay special attention to:

- improving the implementation record of the Commission for the Protection of Competition (CPC) including the most problematic cases;
- increasing transparency of state aid granted by the Government;
- ensuring independence and strengthening the capacities of the CPC.

The legislative framework in the field of antitrust and merger control is generally harmonized with Articles 101 (restrictive agreements) and 102 (abuse of a dominant position) of the Treaty on the Functioning of the European Union and the corresponding provisions of the SAA. Existing norms prescribe ex-ante merger control, in accordance with the principles of the EU Merger Regulation. Some bylaws have yet to be

⁵¹ North Macedonia 2019 Report accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2019, Communication on EU Enlargement Policy {COM(2019) 260 final}, pg. 64-65.

aligned with the EU acquis. The following sections of this analysis present an overview of EU acts with which national legislation is harmonized (in whole or in part), the acts with which the national legislation should be harmonized, and a review of acts for which transposition is not required at the moment.

In terms of the institutional framework, the CPC is responsible for implementing the Law on the Protection of Competition and secondary legislation. Formally speaking, the CPC is an operatively independent body competent to make enforcement decisions in the field of antitrust and merger control. The CPC has a President and four members who are appointed by the Parliament of the Republic of Macedonia. The current composition of the CPC was appointed in October 2018 for a term of five years. The delay in the appointment of new members caused a delay in the handling of cases. The CPC is not adequately staffed, and the level of expertise needs to be improved through training. The budget allocated to the CPC is not sufficient to perform the tasks and varies over the years, which raises concerns about the independence of the institution and creates staffing problems. The technical equipment is outdated. The CPC acts on complaints, notifications or on its own initiative. The CPC may issue a request for information, conduct unannounced on-site inspections, and conduct surveys of specific sectors. In case of violation of competition legal provisions, the CPC can impose sanctions and propose legal remedies. There is a policy of exempting or reducing the fine for whistleblowers in the case of cartels, but so far this policy has never been enforced. The CPC may approve mergers, with or without conditions, or may prohibit them. The CPC also submits opinions on draft legislation that may affect competition. Appeals against the CPC decisions may be lodged with the Administrative Court.

Regarding the implementation of the legislation, the number of merger decisions increased from 50 in 2017 to 61 in 2018. On the other hand, the number of cartel decisions and abuse of a dominant position has decreased from 7 in 2017 to 5 in 2018. Guidelines for defining the level of sanctions have not yet been adopted. The CPC must strengthen enforcement policy by increasing the number of on-site investigations and promoting the implementation of a policy of exempting or reducing the fine for whistleblowers in the case of cartels. Also, the CPC should continue to apply the possibility of imposing sanctions, if the conditions for that are met in a transparent manner. The EC also expresses concern about the lack of independence and the capacity of the courts to deal with antitrust cases. The CPC consults on draft legislation that has an impact on competition.

The legislative framework for state aid is generally harmonized with Articles 107 and 108 of the Treaty on the Functioning of the European Union and with the corresponding provisions of the SAA. It is necessary to adopt amendments to the Law on State Aid Control (Official Gazette of RM 145/2010, 136/2011, 41/2014, 53/2016, 83/2018) and to the Decree on the conditions and procedure for granting assistance of minor importance (*de minimis*) (Official Gazette of RM 141/2011). The implementation of legal acts for certain forms of assistance and specific sectors needs to be aligned with the acquis. The inventory of state aid measures and the regional aid map are not updated and are not transparent. The following sections of this analysis present an overview of EU acts with which national legislation is aligned (in whole or in part), the acts with which the national legislation should be aligned, and a review of acts for which transposition is not required at the moment.

In terms of the institutional framework, the CPC is responsible for implementing the Law on State Aid Control. State aid grantors must notify the CPC of their plans to grant new or alter existing state aid so that it can assess their compatibility with state aid rules. In cases where the state aid measure has not been notified, the CPC has the authority to conduct an *ex-officio* investigation (*ex-officio*), and may order a refund. However, the administrative capacity of the CPC to enforce state aid control and state aid legislation remains insufficient with only three employees, equipment that is out of date, and budget constraints. During the past year, several decisions were made in the field of implementation of state aid legislation. State aid that has been notified and approved represents 0.2% of the GDP for 2018. In relation to individual cases, the Ministry of Transport and Communications established a state aid scheme for air transport from 2012 to 2014, from 2015 to 2018, and from 2018 to 2021 to support one airline. The com-

pliance of these state aid schemes with the principle of a market economy operator, aviation guidelines and SAA provisions needs to be confirmed. The Law on Financial Support of Investments (Official Gazette of RM 83/2018, 98/2019, 124/2019) was adopted in June 2018 in order to provide government support to the private sector. However, this scheme is not in line with the state aid acquis. In the future, the implementation of state aid rules should be monitored by the CPC in major cooperation projects with third countries. Safeguards need to be put in place to ensure that state aid measures are not the product of a conflict of interest.

2.2.4. Alignment of national legislation with the EU antitrust acquis

2.2.4.1. EU antitrust acquis with which national legislation is fully aligned

The purpose of the EU antitrust acquis is to ensure smooth competition within the EU internal market. Businesses need to operate independently. Competitive pressure from other companies should play a decisive role in their operations.

EU competition rules prohibit agreements between two or more undertakings that restrict competition (Article 101 of the Treaty on the Functioning of the European Union - TFEU). The rules also prohibit companies with a dominant market position from abusing it (Article 102 of the TFEU).

The main procedural rules for the effective implementation of EU competition rules are laid down in Council Regulation (EC) No. 1/2003. Many notices and guidelines have been adopted based on this regulation. National courts also play an important role in enforcing antitrust rules.

National competition institutions (bodies) in the EU have the authority to enforce antitrust rules and have a number of investigative options to achieve this (e.g. inspection powers, written information requests, etc.). Institutions must have these powers in order to prevent and discontinue practices that distort competition, including the right to impose a sanction that is sufficiently intimidating.

In the field of antitrust, the following sources of EU law have been fully transposed into domestic law:

Primary sources of law

Article 101 TFEU; Article 102 TFEU Articles 101 and 102 of the Treaty on the Functioning of the European Union - transposed into the Law on the Protection of Competition

Procedural norms

52006XC1208(04) Commission Notice on Immunity from fines and reduction of fines in cartel cases - transposed into the Law on the Protection of Competition and the Regulation on closer conditions for exemption or reduction of fines and the procedure under which the Commission for deciding on a misdemeanor decides on the exemption or reduction of the fine

52006XC0901(01) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No. 1/2003 - transposed into the Law on the Protection of Competition (LCP) and Guidelines on the method of setting fines imposed pursuant to the LCP

Material norms

i) General notices

31997Y1209(01) Commission Notice on the definition of relevant market for the purposes of Community competition law - transposed into the Law on the Protection of Competition and Guidelines for defining the relevant market pursuant to the LCP (adopted in May 2011)

52001XC1222(03) Commission Notice on agreements of minor importance which do not appreciably restrict

competition under Article 81(1) of the Treaty establishing the European Community (de minimis) - transposed into the Law on the Protection of Competition and the Decree on more detailed conditions for agreements of minor importance

[52004XC0427\(07\)](#) Notice from the Commission: Guidelines for the application of Article 81 (3) of the Agreement - transposed into the Guidelines for the application of Article 7 (3) of Law on the Protection of Competition (adopted in March 2012)

ii) Vertical contracts

[32010R0330](#) Commission Regulation (EU) No. 330/2010 of 20 April 2010 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices - transposed into the Decree on block exemption of certain types of vertical agreements

[32010R0461](#) Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector - transposed into the Decree on block exemption of certain types of distribution and servicing agreements of motor vehicles

iii) Horizontal cooperation agreements

[32010R1217](#) Commission Regulation (EU) No. 1217/2010 of 14 December 2010 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements - transposed into the Regulation on more detailed requirements for block exemption of certain types of research and development agreements.

[32010R1218](#) Commission Regulation (EU) No. 1217/2010 of 14 December 2010 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements - transposed into the Regulation on closer conditions for group exemption of certain types of research and development agreements.

iv) Sector-specific rules

Insurance

[32010R0267](#) Commission Regulation (EU) No. 267/2010 of 24 March 2010 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector (Text with EEA relevance) - transposed into the Decree on group exemption of certain types of insurance contracts

[31991R1534](#) Commission Regulation (EU) No. 267/2010 of 24 March 2010 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector - transposed into the Law on the Protection of Competition and the Decree on block exemption of certain types of insurance agreements

2.2.4.2. EU antitrust acquis with which national legislation is partially harmonized

In the field of antitrust, the following pieces of EU law have been partially transposed into domestic law:

Procedural norms

[32003R0001](#) Council Regulation on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty - transposed into the Law on the Protection of Competition. The regulation is partially transposed - certain provisions, e.g. periodic payments of fines (Article 24) as well as cooperation with national competition institutions from other EU Member States (Chapter V of the Regulation), are not transposed. Chapter V will be applicable after the accession of the Republic of Macedonia to the EU.

Material norms

i) General notices

[52014XC0830\(01\)](#) Communication from the Commission - Notice on agreements of minor importance that do not appreciably restrict competition under Article 101 (1) of the Treaty on the Functioning of the European Union (De Minimis Notice) - transposed into protection of competition and the Decree on more detailed requirements for agreements of minor importance

ii) Technology transfer agreements

[32014R0316](#) Commission Regulation (EU) No. 316/2014 of 21 March 2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements (Text with relevance for the European economic area) transposed domestically to the Decree on the detailed conditions for block exemption of certain types of agreements for transfer of technology, license or know-how. The CPC will analyze this regulation and assess whether the existing legal framework needs to be amended in order for it to be transposed.

iii) Sector-specific rules

Transport

[32009R0487](#) Council Regulation (EC) No. 487/2009 of 25 May 2009 on the application of Article 81 (3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector - transposed into the Law on the Protection of Competition

2.2.4.3. EU antitrust acquis with which national legislation is not harmonized

In the field of antitrust, the following sources of EU law have not been transposed into domestic law:

Procedural norms

[32004R0773](#) Commission Regulation (EC) No. 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty - transposition of this act requires experts and technical assistance to analyze the act

[52004XC0427\(04\)](#) Commission Notice on the handling of complaints by the Commission under Articles 81 and 82 of the EC Treaty - transposition of this act requires experts and technical assistance to analyze the act

[52008XC0702\(01\)](#) Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No. 1/2003 in cartel cases - transposition of this act requires experts and technical assistance for analysis of the act

Material norms

i) General notices

[52011XC1020\(02\)](#) Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 of the TFEU - transposition of this act requires experts and technical assistance for analysis of the act.

[52001XC1222\(03\)](#) Commission Notice on agreements of minor importance that do not significantly restrict competition under Article 101 (1) of the TEFU (de minimis).

[52004XC0427\(06\)](#) Commission Notice: Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty - transposition of this act requires experts and technical assistance to analyze the act.

[52004XC0427\(05\)](#) Commission Notice on informal guidance relating to novel questions concerning Articles 81 and 82 of the EC Treaty that arise in individual cases - transposition of this act requires experts and technical assistance to analyze the act.

ii) Vertical contracts

[52010SC0411](#) Commission notice - Guidelines on Vertical Restraints - planned to be transposed into domestic law

iii) Horizontal cooperation agreements

[52011XC0114\(04\)](#) Communication from the Commission - Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union - planned to be transposed into domestic law.

iv) Technology transfer agreements

[52004XC0427\(01\)](#) Commission Notice - Guidelines on the application of Article 81 of the EC Treaty to technology transfer agreements

v) Sector-specific rules

Insurance

[52010XC0330\(02\)](#) Communication from the Commission on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector

Transport

[32009R0169](#) Council Regulation (EC) No. 169/2009 of 26 February 2009 applying rules of competition to transport by rail, road and inland waterway - transposition of this act requires experts and technical assistance to analyze the act; this act is in the competence of the Ministry for Transport and Communications and the CPC

[32009R0246](#) Council Regulation (EC) No. 246/2009 of 26 February 2009 on the application of Article 81 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) (Codified version)

[32009R0906](#) Commission Regulation (EC) No. 906/2009 of 28 September 2009 on the application of Article 81 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) - transposition of this act requires experts and technical assistance to analyze the act; this act is under the competence of the Ministry of Transport and Communications and the CPC

Commission Communication: Clarification of the recommendations of the Commission for application of the competition rules to new transport infrastructure projects - transposition of this act requires experts and technical assistance to analyze the act; this act is in the competence of the Ministry of Transport and Communications and the CPC

2.2.5. *Alignment of national legislation with the EU acquis in the field of merger control*

2.2.5.1. *EU acquis in the field of merger control with which the national legislative is fully aligned*

The main purpose of EU merger rules is to control all concentrations in terms of their effect on the competition structure in the EU. Companies are not allowed to merge if it significantly distorts effective competition, in the common market or in a significant part of the market, especially as a result of strengthening their dominant position.

Merger rules are laid down in EC Merger Regulation and Implementation Regulation. The Merger Regulation lays down the main provisions for the assessment of concentrations, while the Implementation Regulation contains the procedural rules (notifications, deadlines, right to be heard, etc.). Based on these legal acts, many notices and guidelines that play a significant role in the interpretation of the merger regulation have been adopted.

In the field of merger control from the EU acquis, the following sources of law have been fully transposed in the domestic legislation:

Framework legal acts

[32004R0139](#) Regulation of the Council for control of concentrations between enterprises - transposed into the Law on the Protection of Competition

Notifications and guidance

[52004XC0205\(02\)](#) Guidelines on the assessment of horizontal mergers under the Council Regulation No. 139/2004 on the control of concentrations between undertakings - transposed into the Guidelines for the Assessment of Horizontal Concentrations for the Purposes of the Law on the Protection of Competition (adopted in 2007)

[52008XC1018 \(03\)](#) Guidelines on the assessment of non-horizontal mergers under the Council Regulation No. 139/2004 on the control of concentrations between undertakings - transposed into the Guidelines for the Evaluation of Vertical and Conglomerate Concentrations (adopted in 2008)

[52008XC1022 \(01\)](#) Commission notice on remedies acceptable under Council Regulation (EC) No. 139/2004 and under Commission Regulation (EC) No. 802/2004 - transposed into the Guidelines on Remedies Relating to Concentrations Accepted under the Law on the Protection of Competition (adopted in 2009)

[52005XC0305\(02\)](#) Commission Notice on restrictions directly related and necessary to concentrations - transposed into the Guidelines on restrictions directly applicable and necessary for concentrations (adopted in 2009)

2.2.5.2. *The alignment of national legislation with the EU acquis in the field of merger control which is partially aligned*

In the field of merger control from the EU acquis, the following sources of law have been partially transposed in the domestic legislation:

Implementation rules

[32004R0802](#) Commission Regulation (EC) No. 802/2004 of 7 April 2004 implementing Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings - transposed into the Regulation on the form and content of the concentration notification and the required documentation to be submitted with the notification

Notices and guidelines

[52008XC0416\(8\)](#) Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings - transposed into the Concentration Concept Guidelines (adopted in March 2010). These guidelines are fully in line with Part B of the Commission Notice.

[52013XC1214 \(02\)](#) Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No. 139/2004 - transposed into the Guidelines for Simplified Procedure in Dealing with Certain Concentrations (adopted in June 2012)

2.2.6. National legal framework compliance with the EU acquis in the area of state aid control

2.2.6.1. EU acquis on State aid with which national legislation is fully aligned

The purpose of EU state aid rules is to prohibit the granting of preference in any form, granted on a selective basis to enterprises by public institutions, which may distort competition. In certain justified cases (depending on certain policy objectives), state aid may be considered compatible. The State Aid Acquis contains exceptions that specify in what circumstances state aid may be granted.

The European Commission ensures compliance with the state aid ban and the proper application of the exceptions.

The task of the national state aid monitoring body in the pre-accession period is to assess and control the compatibility of state aid with the criteria deriving from the relevant EU acquis. The national state aid monitoring body should receive all the necessary information from the granting state institutions and have the power to effectively control all existing and new aid. The body should also fulfill its obligations regarding reporting and providing the necessary information to the European Commission.

In the field of state aid, the following sources of EU law have been fully transposed into domestic law:

Primary sources of law

[Article 107 TFEU](#) and [Article 108 TFEU](#) (Articles 107 and 108) of the Treaty on the Functioning of the European Union - transposed into the Law on State Aid Control

Recover policy

[52007XC1115\(01\)](#) Notice from the Commission - "Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid"

Horizontal rules

i) Training assistance

[52009XC0811\(01\)](#) Communication from the Commission - Criteria for analysis of the compatibility of state aid cases that are subject to individual notifications - transposed into the Decree for the requirements and procedure for granting horizontal aid

ii) Assistance for workers with disabilities

[52009XC0811\(02\)](#) Communication from the Commission - Criteria for analysis of the compatibility of state aid for employment of workers with disabilities that are subject to individual notifications - transposed into the Decree for the conditions and procedure for granting horizontal assistance

Services of general economic interest

[Article 106 TFEU](#) Article 106 of the Treaty on the Functioning of the European Union - Enterprises with exclusive or special rights and services of general economic interest - transposed into the Regulation on the conditions and the procedure for granting horizontal assistance

[52012XC0111\(02\)](#) Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest - transposed into the Regulation on the conditions and procedure for granting horizontal assistance

[32012D0021](#) Commission Decision of 20 December 2011 on the application of Article 106 (2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest - transposed into the Regulation on the conditions and procedure for granting horizontal assistance

2.2.6.2. EU acquis on State aid with which national legislation is partially aligned

In the field of state aid, the following sources of EU law have been partially transposed into domestic law:

Procedural norms

[31999R0659](#) Council Regulation (EC) No. 659/1999 of 22 March 1999 laying down the detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union and the amendments to this Regulation - transposed into the Decree on the manner and procedure for the submission of notices for granting of State aid, and the procedure for supervision of existing state aid as well as the Law on State Aid Control. The Decree and its amendments are partially transposed because some of the provisions are applicable only to the EU member states, and the Republic of Macedonia will transpose them upon accession to the EU. Certain provisions are not transposed into state aid legislation under the Law on State Aid Control and are under the jurisdiction of the CPC - these provisions should be transposed into domestic law.

[32004R0794](#) Commission Regulation (EC) No. 794/2004 of 21 April 2004 implementing Council Regulation (EC) No. 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the Treaty establishing the European Community (EC) - transposed into a Decree on the manner and procedure for the submission of notices for granting of State aid, and the procedure for supervision of existing state aid. The Regulation is partially transposed because some of the provisions are applicable only to the EU member states, and the Republic of Macedonia will transpose them upon accession to the EU. Certain provisions are not transposed into state aid legislation under the Law on State Aid Control and are under the jurisdiction of the CPC - these provisions should be transposed into domestic law.

Regional assistance

[52013XC0723\(3\)](#) Guidelines for regional state aid for 2014-2020

Horizontal rules

i) Research and development and innovation assistance

[52014XC0627\(01\)](#) Communication from the Commission - Framework for State Aid for Research and Development and Innovation - partially harmonized; part of the provisions have been transposed into the Decree on the manner and procedure for the submission of notices for granting of State aid, and the procedure for supervision of existing state aid. Further alignment with the new legislation will be required. Domestic legislation is aligned with [32008R0800](#): Council Regulation (EC) No. 800/2008 from 6 August 2008, which declares certain categories of assistance to be compatible with the common market in the application of Articles 87 and 88 of the Agreement (Regulation on General Block Exemptions).

ii) Environmental protection assistance

[52014XC0628\(01\)](#) Communication from the Commission - Guidelines on State aid for environmental protection and energy 2014-2020 - further alignment with the new legislation is needed

[52012XC0605 \(01\)](#) Communication from the Commission - Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012 - further legislation is required

iii) Assistance in case of a venture capital

[52014XC0122\(04\)](#) Communication from the Commission - Guidelines on State aid to promote risk finance investments - partial alignment of the domestic legislation 32008R0800: Council Regulation (EC) No. 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation). Some of the provisions are transposed into the Decree on the conditions and procedure for granting horizontal assistance. Further alignment with the new legislation will be required.

iv) Rescue and reconstruction assistance to enterprises

[52014XC0731\(01\)](#) Communication from the Commission - Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty - further alignment is needed with the new legislation

v) Transport and infrastructure

Air transport

[52014XC0404\(01\)](#) Guidelines on State aid to airports and airlines - further alignment with new legislation is needed

Regulation on general group exemptions, de minimis assistance and definition of small and medium-sized enterprises

[32014R0651](#) Commission Regulation (EU) No. 651/2014 of 17 June 2014 for declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty - transposed into the Decree on the requirements and procedure for granting regional aid and the Decree on the requirements and the procedure for granting horizontal assistance. Further alignment of domestic legislation with the EU acquis is needed.

[32013R1407](#) Commission Regulation (EU) No. 1407/2013 of 18 December 2013 on the application of Articles 87 and 88 of the Treaty on European Union of de minimis aid - further harmonization of domestic legislation with the EU acquis is required

Services of general economic interest

[52012XC0111\(03\)](#) Communication from the Commission - European Union framework for State aid in the form of public service compensation - transposed into the Decree on granting conditions and procedure. Further alignment of domestic legislation with the EU acquis is needed.

2.2.6.3. EU acquis on State aid with which national legislation is not aligned

In the field of state aid, the following sources of EU law have not been transposed into domestic law:

Recovery policy

[52002XC0522\(04\)](#) Commission notice on the determination of the applicable rules for the assessment of unlawful State aid - this act introduces the principle that the Commission should always assess the compatibility of unlawfully allocated state aid with the essential criteria established by any legal act in force

at the time the assistance was granted. The EC recommends that this principle be introduced in the Republic of Macedonia before joining the EU. For that purpose, an analysis should be made, and expert assistance is needed to transpose this act into domestic law.

Rules relating to a specific sector

i) Audiovisual production

[52013XC1115\(01\)](#) Communication from the Commission on State aid for films and other audiovisual works

ii) Broadcasting

[52009XC1027\(01\)](#) Communication from the Commission for application of the state aid rules on the public broadcasting service

iii) Broadband networks

[52014XC0627\(02\)](#) Communication from the Commission - EU Guidelines for the application of state aid rules regarding the rapid establishment of broadband networks

iv) Postal services

[31998Y0206\(01\)](#) Notification of the Commission for application of the rules of competition in the postal sector and for assessment of certain measures for state aid related to postal services - it is necessary to transpose this act into the domestic legislation

v) Transport and infrastructure

Rail, road and inland waterway transport

[32007R1370](#) Regulation of the European Parliament and of the Council Regulation (EC) No. 1370/2007 of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulation (EC) No. 1191/69 and 1107/70 - it is necessary to transpose this act into the domestic legislation

[52008XC0722 \(04\)](#) Communication from the Commission - Community Guidelines for State Aid to Railway Companies - this act needs to be transposed into domestic law

Instruments for special types of state aid

i) State guarantees

[52008XC0620\(02\)](#) Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees - this act needs to be transposed into domestic law

ii) Sales of state-owned land

[31997Y0710\(01\)](#) Commission Communication on State aid elements in sales of land and buildings by public authorities - it is necessary to transpose this act into domestic legislation

iii) Fiscal assistance - direct business taxation

[31998Y1210\(01\)](#) Commission Notice on the application of the State aid rules to measures relating to direct business taxation - it is necessary to transpose this act into domestic legislation

Reference rates / discount rates and interest rates on refunds

[52008XC0119\(01\)](#) Communication from the Commission on the revision of the method for setting the reference and discount rates - it is necessary to transpose this act into domestic legislation

Services of general economic interest

[32012R0360](#) Commission Regulation (EU) No. 360/2012 of 25 April 2012 on the application of Articles

107 and 108 of the Treaty on the Functioning of the European Union for de minimis aid granted to undertakings performing services of general economic interest - it is necessary to transpose this act into domestic law

2.2.6.4. EU acquis in the field of state aid that is not subject to transposition into domestic law prior EU accession / applicable after EU membership

In the field of state aid, the following sources of EU law are not subject to transposition into domestic law before accession to the EU / are applicable after the accession of the Republic of North Macedonia to the EU:

Procedural norms

[52009XC06169\(01\)](#) Notice from the Commission for simplified procedure for treatment of certain types of state aid - this act is not transposed because the provisions are applicable only to the EU member states, and the Republic of Macedonia will transpose it upon accession to the EU

[52009XC0616 \(02\)](#) Notice from the Commission on the Code of Best Practices for Implementing State Aid Control Procedures - this act has not been transposed as the provisions are applicable only to EU member states, and Macedonia will transpose it with the accession to the EU

[52009XC0409 \(01\)](#) Commission notice on the enforcement of State aid law by national courts - this act has not been transposed as the provisions are applicable only to EU member states, and Macedonia will transpose it with the accession to the EU

Rules relating to a specific sector

i) State aid for the coal sector

[32010D0787](#) Council Decision No. 78787/2010 of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines - this act is not transposed because the provisions are applicable only to EU member states, and the Republic of Macedonia will transpose it upon accession to the EU

ii) Stranded costs

Communication from the Commission regarding the methodology for analysis of state aid related to stranded costs - this act has not been transposed because the provisions are applicable only to EU member states, and the Republic of Macedonia will transpose it upon accession to the EU

iii) Shipbuilding

[52011XC1214\(03\)](#) Framework on State aid to shipbuilding - this act is not transposed because the provisions are applicable only to EU member states, and the Republic of Macedonia will transpose it upon accession to the EU

iv) Transport and infrastructure

Maritime transport

[52004XC0117\(01\)](#) Community guidelines on State aid to maritime transport - this act is not transposed because the provisions are applicable only to EU member states, and the Republic of Macedonia will transpose it upon accession to the EU

[C2008 / 317/08](#) Communication from the Commission providing guidance on State aid complementary to Community funding for the launching of the motorways of the sea - this act has not been transposed as the provisions apply only to EU member states, and the Republic of Macedonia will transpose it upon accession to the EU

52009XC0611(01) Communication from the Commission providing guidance on State aid to ship management companies - this act has not been transposed as the provisions apply only to EU member states, and the Republic of Macedonia will transpose it upon accession to the EU

Regulation on general group exemptions, de minimis assistance and definition of small and medium-sized enterprises

31998R0994 Council Regulation (EC) No. 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid and amendments to this Regulation - this act has not been transposed as the provisions apply only to EU member states, and the Republic of Macedonia will transpose it with EU accession

Interim rules in response to the economic and financial crisis

52009XC0115(01) Communication from the Commission - The recapitalization of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition - this act has not been transposed as the provisions apply only to EU member states, and the Republic of Macedonia will transpose it upon accession to the EU

52009XC0326 (01) Communication from the Commission on the treatment of impaired assets in the Community banking sector - this act has not been transposed because the provisions are applicable only to EU member states, and the Republic of Macedonia will transpose it upon accession to the EU

52009XC0819 (03) Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid - this act is not transposed because provisions are applicable only to EU member states, and the Republic of Macedonia will transpose it upon accession to the EU

52013XC0730(01) Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favor of banks in the context of the financial crisis - this act is not transposed because provisions are applicable only to EU member states, and the Republic of Macedonia will transpose it upon accession to the EU

Instruments for special types of state aid

i) Export credit

52012XC1219(01) Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance - this act is not transposed because provisions are applicable only to EU member states, and the Republic of Macedonia will transpose it upon accession to the EU

Transparency of financial relations between member states and public undertakings

32006L0111 Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings - this Directive has not been transposed because its provisions are applicable only to EU member states, and the Republic of Macedonia will transpose it upon accession to the EU

2.3. Challenges arising from the application of competition and state aid rules

2.3.1. Organization, capacity, practice and transparency of the CPC

The CPC is an institution founded in 2005 and is a respectable institution. According to the annual reports, since its establishment until now, the CPC has continuously faced understaffing and financial difficulties due to insufficient budget. Consequently, a detailed needs analysis for a possible systemic reorganization is needed, in order to create a credible implementation record of the institution. According to the report for 2018, the Commission for the Protection of Competition had 27 employees (president, two expert members), i.e. 26 people from the beginning of 2020. This is the structure of the professional service staff:

	Number of employees:
President and two expert members (COP)	3
Secretary-General	1
Department for General and Legal Affairs	4
Department for analysis and evaluation of concentrations	4
Department for misdemeanor proceedings	4
State Aid Control Department	4
Department for International Cooperation and Application of EU Law	3
Human Resources Department	-
Internal Audit Department	-
Unit for Financial Affairs	3
TOTAL	26

Source: Commission for the Protection of Competition, February 2020.

According to the organizational chart, the institution has a total of 40 positions.⁵²

Budget

The CPC is fully funded from the budget of the RNM and is a separate budget user. The CPC generates revenue in the budget from fees for mergers in decision-making and from misdemeanor fines. The forms of financing of the competent bodies for the protection of competition vary from country to country⁵³ and depend to a large extent on several factors, such as the role of the institution, scope of activities, legal context, size of the economy, level of development and the like.⁵⁴ According to practice in some other countries, and in the direction of greater independence and financial sustainability, contrary to the CPC's commitment to larger budget funds, it is desirable to consider the possibility of generating own revenues that would be spent on operations.⁵⁵ Additionally, it is necessary to reconsider the amount of the fees, the administrative fees, which according to the experiences from the region and the available

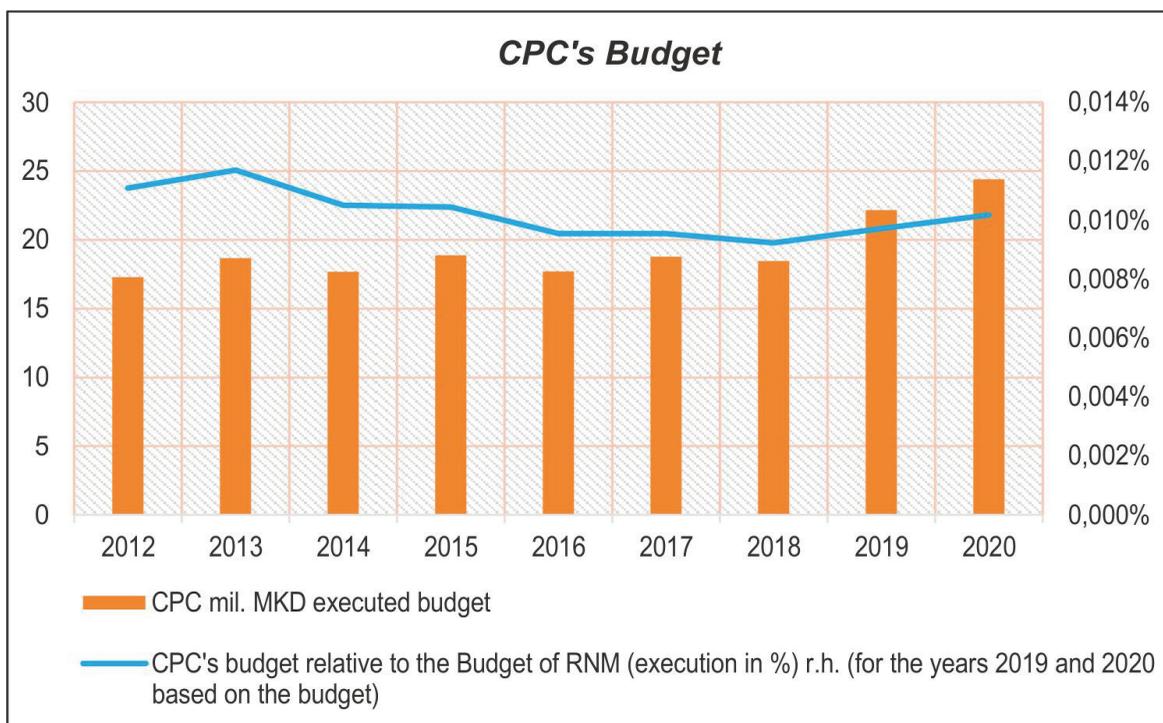
52) In the period of the research, we received data on the total number of planned jobs according to the organizational chart of the body, and we are expecting to receive the information about the anticipated positions.

53) OECD (2016), "Independence of competition authorities: From designs to practices", [https://one.oecd.org/document/DAF/COMP/GF\(2016\)5/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2016)5/en/pdf), како и OECD (2016), Being an Independent Regulator, The Governance of Regulators, OECD Publishing, Paris. <http://www.oecd.org/gov/regulatory-policy/being-an-independent-regulator-9789264255401-en.htm>.

54) Jenny, F. (2016), 'Institutional Designs of Competition Authorities: Debates and Trends' in Competition Law Enforcement in the BRICS and in Developing Countries: Legal and Economic Aspects, ed. by Frederic Jenny and Yannis Katsoulacos, pp 1-59.

55) OECD Study (2016), "Independence of competition authorities: From designs to practices", [https://one.oecd.org/document/DAF/COMP/GF\(2016\)5/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2016)5/en/pdf), cites examples such as Turkey, Portugal, Canada and other countries with different forms of financing authorities for the protection of competition

information from other competent bodies in the neighborhood are higher.⁵⁶ The amount of tariffs and instructions of the CPC in RNM are not publicly available on the website, while the amount of fees can be seen in the issued decisions⁵⁷ where it is recorded that the amount of fees has not changed in the last decade.



Source: Calculations based on the budget and final accounts of the budget of RNM for 2012-2020.

At the same time, it should be noted that there is considerable room and need for strengthening the institutional capacity of the Commission. In other words, the institution has been built and defined, procedures and organization of work have been established, and the current practice testifies to its possibilities, but also to the limitations regarding the scope of implementation of its functions, primarily the supervisory / control function.

The focus of the Commission's activities in the past period has been the creation of a credible enforcement track record in the field of competition protection and in accordance with the EU recommendations. According to the CPC, there is an opportunity to think about greater financial independence through additional funding, following the example of other EU countries, from the collection of administrative fees and increasing them with amounts that would not flow into the state budget, but into the budget of the institution.

Practice: Protection of competition

The basic activities performed by the Commission in accordance with the LCP are:

- 1) conducting procedures for establishing misdemeanor offences provided for by the LCP;
- 2) conducting administrative procedures for the assessment of concentrations;

56) Commission for the Protection of Competition of the Republic of Serbia, <https://www.kzk.gov.rs/tarifnik-komisije>, Agency for the protection of competition R Montenegro <http://www.azzk.me/1/doc/unutrasnji%20akti%20Agencije/tarifnik/Tarifnik%20AZZK.pdf>

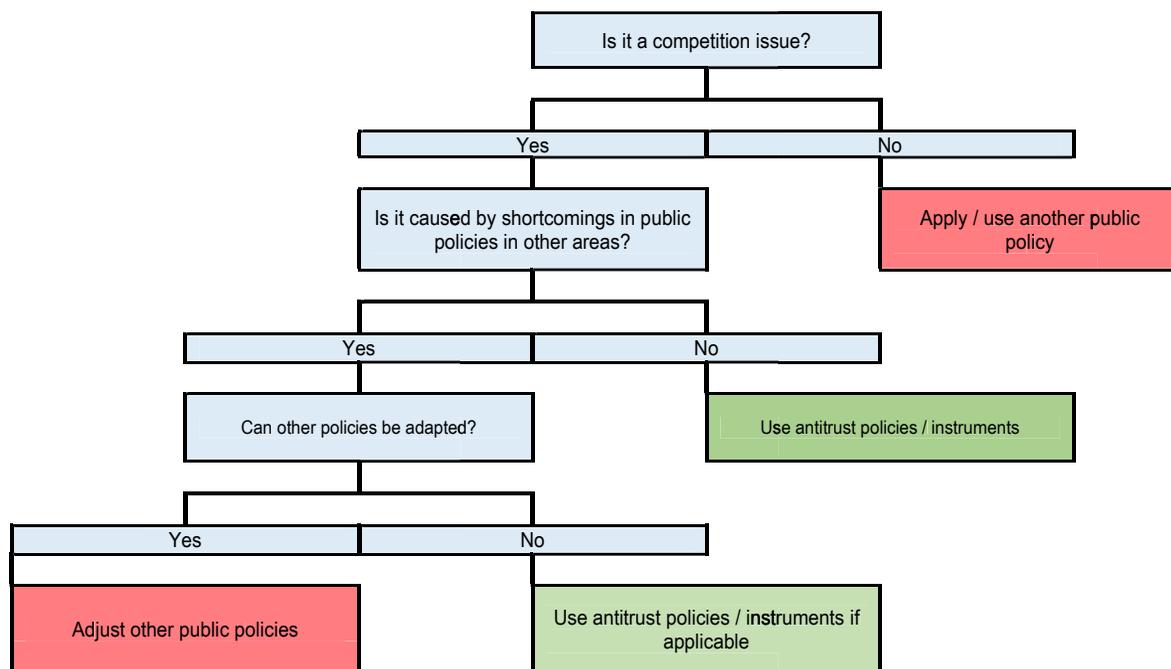
57) Reviewed a series of decisions and solutions published by the CPC on the website, last checked for availability of the tariffs on 06.02.2020, as well as other internal acts of the CPC <http://kzk.gov.mk/>

- 3) analyzing the situation in certain markets; and
- 4) giving opinions.

The LCP identifies three basic forms of action by companies that can prevent, restrict or distort competition in the market.

- 1) prohibited contracts;
- 2) abuse of a dominant position; and
- 3) prohibited concentrations.

Illustration: Decision Tree for Evaluating Intervention with Public Competition Policies



Source: taken from *Challenges for Competition Policy in a Digitalized Economy*, study, European Parliament, 2015, ECON Committee.⁵⁸

In the past period (last five years between 2014-2018) and according to the annual reports, the enforcement record of the CPC of RNM shows that on the basis of prohibited agreements, 3 to 6 fines were imposed annually, and 1 to 4 per year for abuse of a dominant position. According to the CPC, a significant challenge they face in terms of a credible enforcement record for the application of the provisions of competition protection (cartels / abuse of a dominant position) is the lack of case handlers and the need to purchase forensic equipment for the collection of data during the on-site search.

CoM - misdemeanor decisions / fines	2018	2017	2016	2015	2014
Prohibited agreements (misdemeanors)	4	6	3	3	4
Abuse of a dominant position (misdemeanors + administrative)	2	1	2	2	4

The number of decisions on notifications for concentration ranges from 30 to over 60 annually and is increasing every year. Most of these cases are unconditionally approved concentrations, with one decision per year of conditionally approved concentrations, and rarely one decision for prohibited concentrations.

58) *Challenges for Competition Policy in a Digitalized Economy*, study, 2015, Directorate General for internal policies, Policy Department A: Economic and scientific policy, ECON Committee

Regarding the issuance of opinions on certain laws or other acts by competent authorities that may have an impact on competition, the following opinions on laws and other acts are given:

	2018	2017	2016	2015	2014
Concentrations - decision (administrative procedures)	61	50	31	42	29
Unconditionally approved concentrations	60	48	30	40	28
Conditionally approved concentrations	1	0	0	1	0
Prohibited concentrations	0	1	0	0	1
Concentrations that do not fall under the LCP	0	0	0	0	0
Canceled decisions after previously approved concentrations	0	0	0	1	0
Notifications that are not complete and rejected with a decision	0	1	1	0	0
Submitter withdraws the notification for concentration	3	0	0	0	0

The CPC has almost no activities consisting of analysis of certain markets, economic analysis, analysis of sectors, etc., i.e. this function is neglected. According to the CPC, no sectoral economic analysis has been conducted in the last two years, and the main reason is the lack of a sufficient number of professional staff.

	2018	2017	2016	2015	2014
Opinion regarding certain laws	2	1	0	1	0
Opinions on other than laws	4	3	4	3	4

Below is an illustration, presenting the countries in the region that we consider as "peers", namely Montenegro and Serbia, that have started the process of negotiations for EU membership, but have not opened Chapter 8 yet, and Slovenia as a comparable (in size) country that is an EU member state, in the form of quantitative performance in the last five years.

Compared to Macedonia, the number of decisions for prohibited agreements and abuses of a dominant position does not differ significantly, and they range from one to four per year. In Slovenia, in the years 2015 and 2016, the number of decisions for prohibited agreements and abuse of a dominant position is significantly higher, after ten years. The number of banned concentrations in the region and in our country is zero or one per year.

Table: Review of adopted decisions for abuse of a dominant position and prohibited agreements for countries in the region for the period 2014-2018

Serbia

Misdemeanors / decisions / fines	2018	2017	2016	2015	2014
Prohibited agreements (misdemeanors / decisions)	2	3	2	2	0
Abuse of a dominant position (misdemeanors + administrative)	1	1	1	0	1

Serbia	2018	2017	2016	2015	2014
Concentrations - decision (administrative procedures)	160	141	111	101	97
Unconditionally approved concentrations*	158	139	110	101	95
Conditionally approved concentrations	1	1	1	0	2
Prohibited concentrations	0	1	0	0	0
Concentrations that do not fall under the LCP	1				
Canceled decisions after previously approved concentrations					
Notifications that are not complete and rejected with a decision					
Submitter withdraws the notification for concentration		2		4	

Source: Annual reports of the competent body for the protection of competition, <http://www.kzk.org.rs/>.

Montenegro

Misdemeanors / decisions / fines	2018	2017	2016	2015	2014
Prohibited agreements (misdemeanors / decisions)	2	2	3	1	4
Abuse of a dominant position	2	2	2	2	3

Montenegro	2018	2017	2016	2015	2014
Concentrations - decision (administrative procedures)	46	38	28	34	25
Unconditionally approved concentrations*	46	37	28	33	25
Conditionally approved concentrations	0	0	0	0	0
Prohibited concentrations	0	1	0	1	0

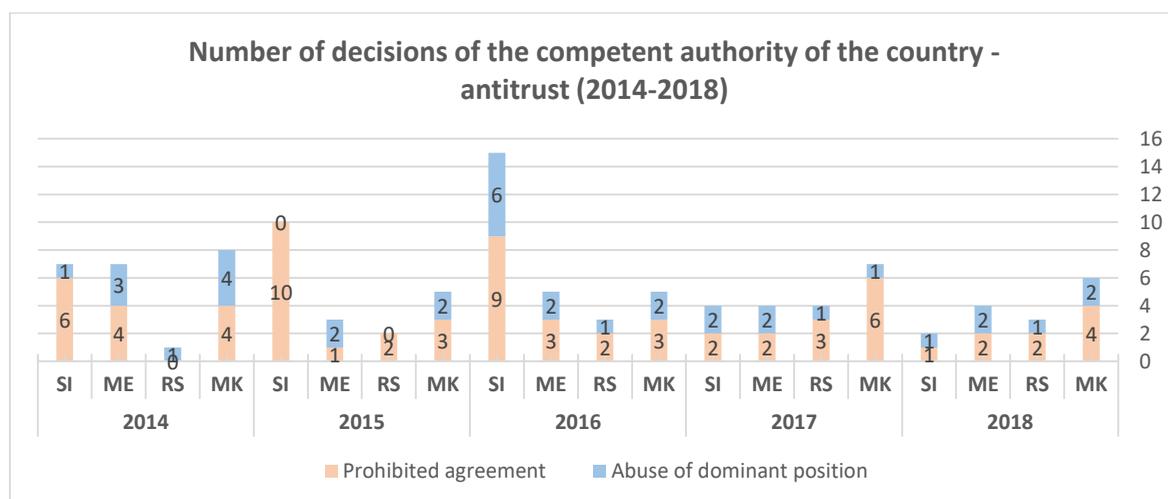
Source: Annual reports of the competent body for the protection of competition, <http://www.azzk.me/>.

Slovenia

Misdemeanors / decisions / fines	2018	2017	2016	2015	2014
Prohibited agreements (misdemeanors / decisions)	1	2	9	10	6
Abuse of a dominant position	1	2	6	0	1

Slovenia	2018	2017	2016	2015	2014
Concentrations - decision (administrative procedures)	41	26	34	23	25
Unconditionally approved concentrations	26	22	28	15	22
Conditionally approved concentrations	1	0	0	4	0
Prohibited concentrations	1	0	0	0	0
Concentrations that do not fall under the LCP	13	4	6	4	3

Source: Annual reports of the competent body for the protection of competition and OECD for Slovenia, <http://www.varstvo-konkurence.si/>



Извор: Годишни извештаји на надлежно тело за заштити на конкуренција во дадена земја

	2018			2017			2016			2015			2014							
	MK	RS	MESI	MK	RS	MESI	MK	RS	MESI	MK	RS	MESI	MK	RS	MESI					
Conditionally approved concentrations	60	158	46	26	48	139	37	22	30	110	28	28	40	101	33	15	28	95	25	22
Unconditionally approved concentration	1	1	0	1	0	1	0	0	0	1	0	0	1	0	0	4	0	2	0	0
Forbidden concentrations	0	0	0	1	1	1	1	0	0	0	0	0	0	0	1	0	1	0	0	0

Извор: Годишни извештаји на надлежно тело за заштити на конкуренција во дадена земја

Practice: State aid

State aid control is the responsibility of the CPC and is prescribed by the Law on State Aid Control. In this regard, special treatment should be given to sectoral state aid, the link with regional or horizontal assistance, government assistance and assistance from other providers that may cause significant distortion of competition.

Information on the annual trends of the approved state aid by decisions that are publicly available, which are reported in the annual reports of the CPC, is available only for the last few years, and the amount significantly increases in value and in share of the GDP. From the aspect of frequency, this fact may indicate an increased number of submitted requests for approval of state aid as a result of increased awareness among state aid providers and greater utilization of the granted funds, i.e. planned to be granted as state aid. Planned and approved state aid was⁵⁹ 0.2% in 2016 and 0.78% in 2018.

APPROVED state aid	2019	2018	2017	2016	2015...2009
decisions for approved SA	Not available	19	7	11	no data
amount of approved SA EUR	Not available	79,602,626	18,630,807	21,633,678	no data
% of GDP		0.78%	0.18%	0.20%	no data

The annual trends for the granted state aid are from the decisions of the CPC from the publicly available data from the annual reports. There is also a trend of a multiple increase in state aid in the last decade, in absolute terms, and expressed as a percentage of the GDP.

Namely, the granted aid until 2014 was around 0.1% of the GDP (up to 8 million EUR, with the exception of the high new state aid in 2011 and the low level in 2010) and then reaches 0.37% of the GDP projection in 2018, i.e. a total value of 10 million EUR. Again, this may indicate two things: an increase in the submitted requests for compliance with the LSAC by the providers who were not previously informed or did not report on the granting of state aid, and / or a significant increase of budget expenditures by budget users who allocate funds as state aid in accordance with the LSAC.

GRANTED state aid	2019	2018	2017	2016	2015	2014
decisions for awarded SA	Not available	Not directly available from AR	Not directly available from AR	Not directly available from AR	25	11
amount of awarded SA EUR	Not available	40,191,913	29,686,187	no data	12,683,652	7,289,055
% of GDP		0.37%	0.29%	no data	0.14%	0.08%

GRANTED state aid	2019	2018	2017	2016	2015	2014
decisions for awarded SA	5	10	12	5	4	6
amount of awarded SA EUR	7,865,683	7,769,937	26,716,970	588,639	6,644,672	5,838,528
% of GDP	0.10%	0.10%	0.39%	0.01%	0.09%	0.09%

59) The amount of the planned aid is submitted by the providers to the CPC, while the granting of state aid by the state aid provider may differ from the realization of the granted aid.

Thus, there are two potential challenges: state aid that is subject to control and state aid that has not been notified. In the first instance, most would be cases at the request of the state aid providers themselves and, in exceptional cases, at the initiative of the CPC. It is not known whether and to what extent the ex-post reports of state aid providers are made and harmonized (by the deadline of March 1) and whether they are handled by the CPC.

There is no information on whether timely and complete donors submit state aid reports to the CPC with the necessary information and requests. There are no decisions or conclusions on the CPC website regarding state aid, so no qualitative conclusions on this issue can be seen and made.⁶⁰

Consequently, it can be assumed that part of the state aid may be "unrecorded" by the CPC, without submitting a request for information from the competent institution. If a certain decision is made only after the conclusion of the Government, the CPC does not have a mechanism for control, sanctioning, and claiming responsibility in granting state aid contrary to the law and bypassing the CPC.⁶¹ However, the CPC, considers that the state aid providers are well acquainted with their obligations in the field of granting state aid, and have no records of state aid that has been granted without informing the CPC, and believe that notifications are submitted in a timely and complete manner. When conducting ex-post control, the CPC compares the adopted decisions for approval of granted state aid with the submitted annual reports. According to the experience so far, the CPC has not recorded a case or decision without a negative decision for non-approval of state aid nor inadequate implementation of state aid by the public sector / providers.

The lack of transparency about the granted state aid is an issue that has been discussed for a long time, which is required and recorded in the EU reports and in the CEA study from 2015. Namely, in the annual report for 2018, the amount granted as state aid to foreign companies by donors is stated for the first time as a total amount with the list of companies that received assistance. Although there is considerable room for improvement, the publication of these data is a step forward. However, given that there were no legal changes on this issue, the question arises of the possible political influence of the executive in the public pressure to disclose or not disclose information.

According to the CPC register (inventory) for aid granted in 2019, it was submitted to a meeting of the Subcommittee on Internal Market and Competition, but it is not available as public information for the current or previous period.⁶²

The CPC's review of enhanced transparency should follow the guidelines and rules used by EU Member States that provide an overview on a variety of grounds and have adequate coverage of aid granted under a different basis and scheme, as well as a state aid transparency portal that provides full access to state aid granting data in line with European state aid transparency requirements: "*Citizens and companies can easily access information on granted aid: user name, amount, location, sector and purpose. The purpose of the transparency requirements is to promote accountability of the competent authorities and to reduce asymmetries in the state aid market. Additional information on all authorized EU state aid, including information on the request for transparency, can be found in the Competition Case Database (ISEF⁶³ European Commission Register)*".⁶⁴ Additionally, the EU practice for the preparation of the so-called Scoreboard⁶⁵ is a form that provides a clear overview of the various grounds for granting state aid by country and at the EU level. Hence, the recommendation for the need to conduct state aid assessments as an established practice among EU members and aspirants has not yet been implemented in RNM.⁶⁶

60) During the preparation of the report until the end of February 2020, CPC representatives were not available for confirmation or comment on this assumption.

61) The CPC has been requested to submit the specified register for 2019 and for previous periods, but the information was not received by March 2020.

62) European Commission, Competition, All cases, ISEF registry <https://ec.europa.eu/competition/elojade/isef/>

64) "As of 1 July 2016 the new transparency requirements for state aid enter into force and become mandatory based on Article 9 and annex III of GBER, the corresponding provisions of FIBER and ABER, and where provided for in notifications and decisions." https://ec.europa.eu/competition/state_aid/overview/index_en.html

65) State Aid Scoreboard 2018, https://ec.europa.eu/competition/state_aid/scoreboard/index_en.html

66) Report on Northern Macedonia for 2019 of the EC, available at: <http://www.sep.gov.mk/data/file/Dokumenti/Izveshtaj%202019-F.pdf>

- ensuring the functioning of the State aid authority, now placed in the Agency for the Protection of Competition, and the effectiveness of its control over State aid at all levels, including the building up of an enforcement record;
- ensuring transparency of all state aid decisions;
- improving the enforcement record of the Agency for the Protection of Competition on antitrust and mergers.

The Agency for the Protection of Competition in Montenegro was established in February 2013 and became operational in March 2013.

The existing legislative framework provides a good degree of alignment with the EU acquis and the Stabilization and Association Agreement (SAA). The Law on the Protection of Competition is largely harmonized with the relevant bylaws. In terms of the institutional framework, the Agency for the Protection of Competition (APC) is responsible for law enforcement. On enforcement capacity, the APC's staffing level and expertise remain insufficient. On implementation, the number of decisions on cartels and abuses of a dominant position has stagnated over time. The APC has so far carried out only two on-site inspections. Courts' capacity to handle complex competition cases must be largely strengthened.

To align the national legislation with the EU acquis in the field of state aid, Montenegro adopted a new Law on State Aid Control in 2018, and the relevant bylaws. The legislative framework is to a large extent in line with the EU acquis and the SAA. However, important parts of the EU acquis, such as the Banking Communication, have not yet been aligned. Amendments to the Law on the Protection of Competition entered into force in March 2018. They expanded the mandate of the APC to include State aid control, to meet the SAA requirement on the operational independence of the State aid authority. The APC has yet to establish a credible enforcement record. The institutional capacity of the APC remains significantly insufficient. On implementation, the number of decisions adopted by the body responsible for control of the state aid is decreasing. There is a low level of awareness of state aid rules. Some state aid measures granted centrally or locally (e.g. through VAT exemptions or debt relief), especially to large companies, have not been notified or thoroughly investigated by the state aid control body. In the future, the APC should monitor the implementation of state aid rules for large-scale projects undertaken in cooperation with third countries. Consequently, the APC needs to have access to all the necessary information to be able to give an opinion and make binding decisions. Awareness of State aid rules among aid grantors is still insufficient and needs to be strengthened.

Serbia

Serbia is a candidate country that has started negotiations for EU membership. Regarding the harmonization of the legislation with the EU acquis on antitrust and merger control, Serbia has a Law on the Protection of Competition adopted in 2009 and relevant bylaws. According to the EC Progress Report for 2019,⁶⁸ Serbia has some level of preparation / is moderately prepared in the area of competition policy. During 2019, no progress has been made in the field of legislative alignment and enforcement of state aid rules.

In the coming year, Serbia should pay special attention to:

- making significant progress in the alignment of its legislation on State aid, in particular repealing the exemption of companies in the process of privatization from State aid rules, in line with its obligations under the Stabilization and Association Agreement (SAA);

68) Serbia 2019 Report accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2019, Communication on EU Enlargement Policy {COM(2019) 260 final}, pp. 63-64.

- taking additional steps to align existing schemes, in particular the fiscal state aid schemes (namely the Law on corporate income tax, the Law on personal income tax and the Law on free zones) with the *acquis*;
- substantially increasing the budget of the Commission for State Aid Control, as well as its enforcement powers, to ensure its independence and effectiveness;
- aligning the law on multilateral interchange fees and special operating rules for card-based payment transactions with the *acquis* and SAA obligations.

The legislative framework remains broadly in line with the *acquis* and the relevant provisions of the SAA. The law on the Protection of Competition provides for ex-ante control of mergers, following the principles of the Merger Regulation. A new competition law has yet to be finalized and adopted. On the institutional framework, the Commission for the Protection of Competition (CPC) is the main institution responsible for implementing the legal framework. It is an operationally independent authority. Regarding enforcement capacity, the CPC has 53 employees of which 34 are case-handlers with a good level of expertise. On implementation, the number of antitrust cases and the relative size and significance of companies under investigation continued to increase. From January 2018 to February 2019, the CPC adopted seven decisions on restrictive agreements and two on abuse of power cases. The level of fines imposed during this period has increased. The CPC's investigations of large private and public companies further contributed to improving its credibility and public image. More generally, the CPC should be consulted on all draft laws concerning competition, such as the law on multilateral interchange fees and special operating rules for card-based payment transactions. Article 9 of this law is not in line with the EU *acquis* and is not in line with the SAA. The decisions of the CPC are increasingly upheld by the courts. However, the capacity of the judiciary to deal with complex competition-related cases needs to be significantly strengthened by increasing the number of judges with expertise in this area.

In order to align the national legislation with the EU *acquis* in the area of state aid, Serbia adopted a new Law on State Aid Control in 2009, and the relevant bylaws. As regards the legislative framework, the law on State aid control broadly reflects Articles 107 and 108 of the TFEU and the relevant provisions of the SAA. However, provisions providing exemption from State aid rules for companies undergoing restructuring and privatization are not compliant with the SAA and not aligned with the *acquis*. Existing aid schemes, including the fiscal State aid schemes part of the law on corporate income tax, the law on personal income tax and the law on free zones, need to be aligned with the *acquis*. To comply with the SAA, the CSAC needs to step up its efforts to provide the European Commission with information on a number of individual decisions approving large amounts of State aid to major operators in the economy, in line with its obligation under Article 73(5) of the SAA.

On the institutional framework, the CSAC is responsible for implementing the Law on State Aid Control. The five members of the CSAC are mostly appointed by aid-granting ministries and its secretariat is administratively part of the Ministry of Finance. As a result, the CSAC cannot be considered as operationally independent, as required by the SAA.

The enforcement capacity of the CSAC remains very weak and insufficient with only four full time employees in its Secretariat. The CSAC's budget needs to be substantially increased to hire additional qualified staff and thus to enable it to perform its mandate. No progress has been made in the implementation of the Law on State Aid Control in the past year. The Commission has not yet made a single decision prohibiting state aid or a decision in favor of recovery. Monitoring of compliance in this area needs to be significantly strengthened, including compliance with the conditions for 'cumulation' of aid. The Commission should also closely monitor the implementation of intergovernmental agreements concluded with non-EU countries, which should not provide for exemptions from national legislation, including fiscal legislation and State aid control. Serbia needs to ensure that aid granted to the steel mill Smederevo before its

assets were privatized is claimed and recorded when liquidating the company. Awareness of State aid rules among stakeholders remains low, especially among the authorities granting aid. This is particularly highlighted by the low number of Commission decisions that were appealed. Advocacy activities need to be significantly stepped up in order to increase the number of ex-ante notifications.

Serbia has not yet opened negotiations on Chapter 8 Competition Policy, primarily due to remarks on state aid.

2.5. Countries from the region that have successfully finalized EU membership negotiations and are EU members

Croatia

Croatia has been an EU member state since 1 July 2013. EU accession negotiations for Chapter 8 Competition Policy had been going on for quite some time. Accession negotiations began in 2005 and were finalized in 2011. One of the main problems in the negotiations was state aid, especially aid to shipyards. Croatia has taken over and implemented the EU acquis from this chapter from the date of EU accession.

Two protocols in this area were added to Croatia's EU Accession Treaty:

- With regard to the shipbuilding sector, the reconstruction and privatization of shipyards in difficulty should be carried out in accordance with the conditions agreed with the European Union. Upon accession, the European Commission was empowered to order Croatia to repay reconstruction aid granted since 2006 to shipyards in difficulty, and this aid was not in line with these requirements. In addition, Croatia should report to the European Commission on a regular basis.
- With regard to the steel sector, after accession, the European Union gained the authority to order Croatia to repay the state aid granted to the Sisak company if the company has not repaid the funds by the date of Croatia's accession to the European Union.

State aid granted in Croatia prior to accession to the EU was very different from the EU state aid thus significant efforts were needed to harmonize state aid. The share of state aid in the GDP was 4 times higher in Croatia than in the EU and was targeted at certain industries. Croatia has thoroughly reformed and reduced sectoral assistance in the areas of shipbuilding, transport (especially rail transport), the steel industry, and rescue and reconstruction companies in difficulty.

Slovenia

Slovenia has been an EU member state since 1 May 2004. EU accession negotiations lasted from 1998 to 2002. One of the main problems in the negotiations on Chapter 8 Competition Policy was state aid. State aid policy must be in line with the EU acquis as was achieved by Slovenia.

3. CONCLUSIONS AND RECOMMENDATIONS

The modern competition legislation in RN Macedonia is undergoing an important change with the new legal solutions since 2010. As far as competition policies are concerned, including state aid, it can be concluded that the policy and the Law on the Protection of Competition and the Law on State Aid Control are completely based on the European policies in this area and the aspirations of the state for EU membership. Therefore, *legal acts in their content, concept, methodology and procedure, and institutional solutions reflect the EU acquis.*

The current legal framework for competition protection is well aligned with the relevant EU acquis. However, EU annual reports on the progress of RNM, over the years, indicate that it is necessary to create a credible enforcement record or improve the implementation of legislation in the field of competition and to increase transparency of the granted state aid.

Therefore, the CPC needs to invest more in expanding its scope, increasing its capacity, promoting independence, raising the level of the general culture of competition and activity in the field of competition advocacy / raising awareness of various stakeholders and market analysis and sectoral policies, to cover multiple sectors and to significantly improve transparency through the systematic publication of information by the CPC.

Based on the above findings, the following *conclusions* can be drawn regarding the current state of the competition protection policy:

1. *The legislative framework for competition protection is defined and consistent with the relevant EU acquis* but additional harmonization of regulations and other bylaws is needed in order to comply with the latest EU acquis, which despite the plans in the NPAA have not been adopted within the set deadlines. At the same time, it is necessary to align the additional innovations with the EU framework based on amendments in the EU;
2. In the area *of state aid, the basic legislative framework has been established*, but there are areas where the situation needs to be improved, especially in the area of compliance with the EU acquis and the guidelines for transparency. At the same time, questions are raised about the permissibility of certain state aid granted by both the previous and more recent legal solutions, and for certain cases of granted state aid. Newly adopted legal solutions as well as government decisions and programs implemented by different ministries / agencies, and programs funded by the budget on various grounds based on the granting of state aid, do not always have the opportunity to pass the CPC filter. In those cases, the CPC has no mechanism to exercise control; thus, previous reports of the SAO emphasize the lack of register and records of inadequate granting of state aid.⁶⁹
3. The Commission for the Protection of Competition, in accordance with the law, *performs a basic supervisory / oversight function*, and makes final decisions making this institution powerful, independent and successful. The legal status of the SEC as an independent oversight body is set, but the organizational and professional capacities of the Commission are not adequate, in terms of number and structure, hence the need for possible restructuring, increasing capacities in number and knowledge especially of the so-called case handlers, as well as the need for increasing the budget and the opportunities / forms of financing;
4. *The function of conducting economic analysis*, including sectoral analysis, is absent in the work of the Commission. No such analysis has been conducted in the last two years. Economic analyses would significantly increase the persuasiveness and credibility of the CPC. For this purpose, the CPC has been discussing for quite some time the need to fill the position of Chief Economist;

69) The SAO audit report on AFIPERM, of 2013, 2018

http://dzt.mk/Uploads/1_11_FR_Agencija_za_stranski_investigicij_Smetka_osnoven_budzet_637_KOMPLET_2018_REDUCE.pdf,
<http://dzt.mk/mk / 131218-revision-of-regularity-2013-agency-for-foreign-investment-in-promotion-of-export>

5. *Analyses of the effects of state aid (assessments) in line with the guidelines in the EU member states are completely missing*, hence the question of the soundness of state aid decisions and the market effects that state aid funds have, whether the granted state aid achieved its original purpose and to what extent. EU members prepare analyses of the effects of the granted state aid not only as a form of accountability, but also as a process and a way of assessing the degree of achievement and success of given policies, and the basis for adopting new improved policies;
6. The academic community seems to have *a limited interest* in the given topic, resulting in a small number of academic papers in this field, while the civil sector rarely and to a small extent deals with the topic;
7. Competition policy is not sufficiently recognized as a separate public policy, i.e. *there is no integrated approach or strategic framework for a specific policy in the area*, and it generally comes down to legal provisions;
8. There is rarely or never any *cross-sectoral coordination* of ministries and other state bodies with the purpose of reviewing sectoral policies and regulations;
9. *The activities and influence of the Commission for the Protection of Competition on the process of preparing the legislative framework is negligible*, which is demonstrated by the number of opinions on draft laws, as opposed to the number of laws that were drafted and adopted in one year;
10. The *competition advocacy* activities *are rare, imperceptible* and without continuity. These activities also include the need to increase knowledge and advocacy for state aid;
11. The Commission is *relatively transparent when it comes to competition procedures*, but lacks explanations, exchange of views and debates on key open issues for the implementation of competition policy. The creation and maintenance of a web portal / platform with complete case documents would give a picture of its work that would serve as an example for the business sector and for all stakeholders. This would result in the creation of good practices and information that would also have an educational character;
12. The Commission *lacks transparency regarding the decisions and opinions on state aid control*. There is still no publicly available register of granted aid or a map of regional aid; these data should be timely and easily accessible by multiple parameters (provider, recipient, height, type, sector, grounds, etc.).

Recommendations drawn from the challenges:

1. **Improving the strategic process** to increase the importance of the protection and promotion of competition toward greater economic development, reduced corruption, increased trust in institutions and creating, supporting and promoting a policy for the protection of competition.
2. **Improving the strategic approach** of approving, granting and controlling state aid at a higher level, assessing state aid in every sense, both positive and the possible negative implications for competition.
3. **Strengthening the level of financial independence of the institution and capacity building.** The CPC is a special budget user in the budget of the Republic of Macedonia, adopted by the Parliament of RNM, making it more independent, but it is necessary to improve the level of financial independence of the CPC and further improve the capacity of the CPC by creating the necessary conditions for the execution of all complex functions prescribed by law, which are not currently applied or implemented sufficiently or appropriately.
4. **Improving the capacity of the courts** through the advanced specialization of cases for the protection of competition in the Administrative Court of RNM.
5. **Promoting the oversight role of the Parliament** over the work of the CPC by increasing the capacity and knowledge of the subject; namely, the current legal framework regarding oversight is applied only in terms of the conclusions regarding the delivered final report.

6. **Strengthening the practice / application**, especially in the field of non-compliance with the rules for the protection of competition regarding improving the quality of decisions, by giving appropriate reasons, based on reliable facts and appropriate economic analysis.
7. **Strengthening the function of economic analytics through** conducting sectoral analysis for those sectors that are considered important in detecting violations of the principles of free competition, including the challenges of the digital economy. It is necessary to create preconditions and apply the analytical function of the CPC both in the protection of competition and in granting state aid.
8. **Strengthening the normative and consultative functions of the CPC and cooperation with other institutions and state bodies**, such as government and ministries, policy makers and supporters of regulation, through strong normative and consultative functions, by giving opinions on draft regulations, participation in policy and legislation development.
9. **Raising the level of dialogue** through greater transparency of the work of the Commission. By creating a mechanism for the exchange of opinions and experiences (example portal) where the practice of the Commission can be openly reviewed, the reasons for the adoption of detailed decisions, processes, and relevant market phenomena will improve knowledge on the matter and its advanced application.
10. **Strengthening advocacy for free competition** through continuous awareness raising activities on the importance of competition policy (competition advocacy).
11. **Promoting transparency** in several directions in the field of competition protection for greater systematization and visibility to the general public, whereas for state aid first by creating an accessible register of approved and granted aid in accordance with the guidelines and practice of EU member states.

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ANNEX A: Assessment of the status of the policies for the protection of competition and state aid control in North Macedonia

Table 1: Assessment of the status of the policies for the protection of competition and state aid control in North Macedonia

	(A) Overall policy stance and policy effectiveness	(B) Procedural and legal framework	(C) Commission for the protection of competition	(D) Parliamentary institutional and judiciary framework	(E) Participation of civil society and the private sector
(1) Structure and role of the public sector and the public interest	<ul style="list-style-type: none"> • NPAA sub-sectoral group set up to comply with the EU acquis, including Chapter 8 (Internal Market and Competition) • NPAA not adopted and not available for the period after 2017 • Satisfactory level of successful implementation of legal provisions; however, there is a need to promote the so-called portfolio that indicates the degree of effectiveness of policies • There is no integrated strategic document or policy for the protection of competition and state aid • There is no strategic approach to creating state aid policies or assessing the effects of granted state aid 	<ul style="list-style-type: none"> • Macedonian competition regulations are significantly harmonized with EU regulations • Identified need for harmonization in secondary legislation (rulebooks, instructions, etc.) • Established need for harmonization of the state aid regulation as well as for introduction / amendment of the secondary legislation on state aid control • Low level of application of procedures for impact assessment and economic analysis • In recent years, there have been no changes in the regulations, although needs have been identified (in the areas of competition protection and state aid), which reduces the importance of the areas as a priority 	<ul style="list-style-type: none"> • An independent commission set up by the parliament • High level of independence in the election of members • Control and executive role in procedures • Need for an increased number of operating structure • Limited financial sustainability • Limited financial and human capacity and technical equipment for optimal performance of all functions • Limited enforcement of advocacy function 	<ul style="list-style-type: none"> • Parliament elects the members of the commission for a 5-year term with the possibility of re-election • By law, parliament has an oversight role that is exercised only through the submission of the CPC's annual report • Relatively low level of parliamentary control over the substantive work of the body 	<ul style="list-style-type: none"> • Limited interest and participation of the civil sector • Limited level of familiarity of the business sector with the opportunities especially in the area of anti-trust prevention and implementation of the leniency program

(2) Functional market economy	<ul style="list-style-type: none"> • In the annual progress reports by the EU, Macedonia is noted as having a good level of readiness for a functioning market economy • The annual progress reports by the EU on Macedonia note a significant influence of the state over the economy • In the annual progress reports by the EU, Macedonia is noted as moderately prepared for the competitive forces in the EU 	<ul style="list-style-type: none"> • Need for change and harmonization with the EU, especially in the area of regional aid 	<ul style="list-style-type: none"> • Failure to conduct sectoral analysis and analysis of the level of competition • Lack of analysis of the effects of state aid on market forces and competition 	<ul style="list-style-type: none"> • Limited legal practice and specialization on topics in the judiciary 	<ul style="list-style-type: none"> • Low level of knowledge about the need, the role of competition and the opportunities for the protection of the business sector
(3) Regional policy	<ul style="list-style-type: none"> • Undefined effects of regional development policies from the last decade at the state level • Increased disparities in the development of the regions in RNM 	<ul style="list-style-type: none"> • Need to revise the strategic approach and decision regulation • The 2019 Annual Progress Report by the EU on Macedonia notes some progress in aligning national legislation with the acquis on the implementation of European funds and future structural funds 	<ul style="list-style-type: none"> • Need to adopt a decree on terms and procedure for granting regional aid 		
(4) Transparency and accountability	<ul style="list-style-type: none"> • EU reports, even in the part on the fundamental economic criteria, clearly mention the lack of transparency in the granting of state aid (clear criteria for selection of recipients of state aid and procedures) • There is no practice of assessing the effectiveness of state aid and it is not available (practice in EU member states) 	<ul style="list-style-type: none"> • EU reports note that the compatibility regime (permitted state aid) is not in line with the EU • Determined need for adoption of a regulation / Decree on the manner and procedure for submitting a notification for granting state aid 	<ul style="list-style-type: none"> • Lack of application of rules and guidelines for disclosure of approved / granted state aid by different characteristics (providers, beneficiaries, categories, etc.) • There is no electronic and accessible register (ISEF) for state aid for current and past periods in an understandable and comprehensive, accessible and timely manner 	<ul style="list-style-type: none"> • Parliament receives state aid through an annual report of the CPC 	<ul style="list-style-type: none"> • For a long time, the civil sector has been requesting and insisting on disclosure of the granted state aid in any form, as well as accountability for it, especially concerning the support of foreign investments, granted subsidies in agriculture, regional development, etc.; however, their disclosure and review are hindered at every level or in a structured and comprehensive manner
(5) Visibility and awareness			<ul style="list-style-type: none"> • Relatively low visibility in the general public, low advocacy performance of the body, and low level of cooperation with other state bodies for the implementation of the educational component 		<ul style="list-style-type: none"> • Lacking accountability in terms of measuring and evaluating the policies, i.e. allocating funds from the central and local budgets

Table 2: Reform priorities for competition protection and state aid control in North Macedonia

	(A) Overall policy stance and policy effectiveness	(B) Procedural and legal framework	(C) Commission for the protection of competition	(D) Parliamentary institutional and judicial framework	(E) Participation by civil society and private sector
(1) Structure and role of the public sector and the public interest	<ul style="list-style-type: none"> • Development, implementation, and monitoring of the strategic approach to the NPAA, in a timely and complete manner • Creating a strategic stance / position at the national level for competition protection policies • Creating a strategic approach and assessment for granting state aid and its effects (positive and on restricting competition) 	<ul style="list-style-type: none"> • Full alignment with EU acquis, including secondary and tertiary regulations on both competition protection and state aid control 	<ul style="list-style-type: none"> • Developing regulations within the competence of the CPC, full policy implementation, improvement of the scope of functions and implementation of all functions of the body 	<ul style="list-style-type: none"> • Improving the oversight function of parliament in competition protection and state aid control policies 	<ul style="list-style-type: none"> • Improved sector activity in research and preparation of competition policy proposals • Improving the knowledge of the private sector about the role of regulations and policies in the field and using the opportunities offered by the law
(2) Functional market economy	<ul style="list-style-type: none"> • Creating policies that enable enhanced competition, and state aid that does not distort competition 	<ul style="list-style-type: none"> • Full alignment with EU acquis, including secondary and tertiary regulations on both competition protection and state aid control 	<ul style="list-style-type: none"> • Full harmonization and implementation of the provisions in accordance with the EU • Improving the application of all functions of the CPC 	<ul style="list-style-type: none"> • Improved oversight role of the Parliament • Advanced practice and court specialization in topics 	<ul style="list-style-type: none"> • Greater activities of the private sector in law enforcement and familiarity with it • Promoted role and interest of the civil society sector in policies and their implementation
(3) Regional policy	<ul style="list-style-type: none"> • Changing and implementing regional development policies that are closer to EU policies to move closer to cohesive and structural policies 	<ul style="list-style-type: none"> • Alignment of regional aid regulations and other regulations related / harmonized with other regional policies 	<ul style="list-style-type: none"> • Alignment with EU regional aid regulations 		

<p>(4) Transparency and accountability</p>	<ul style="list-style-type: none"> • Improved strategic priorities for increasing transparency but also accountability in terms of policies adopted and their impact assessment 	<ul style="list-style-type: none"> • Drafting regulations including practices and regulations for systemically and legally supported processes for disclosure of spending of public resources, transfers, subsidies and any form of state aid • Application of regulation if it is or may be a restriction on disclosure of information and data that are in the interest of increasing competition and state aid control 	<ul style="list-style-type: none"> • Creating data registers and data that will give a picture of the EU practices 	<ul style="list-style-type: none"> • Improved oversight role of the parliament in terms of greater oversight of performance, not just formal 	
<p>(5) Visibility and awareness</p>			<ul style="list-style-type: none"> • Promoting the function and role of the CPC for greater public presence, media, reporting, stakeholder education and public advocacy 		

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