Note on the main issues raised during the Conference “Competition is Good; with Regulation is better”

On 13th of June at Sirius Hotel in Prishtina, under the auspices of the Project “EU Support to the Kosovo Competition Authority and State Aid Commission” implemented by consortium partners, namely B&S Europe, Lithuanian Competition Council, Kosovo Legal Services Company (KLSC) and Archidata, was held the Conference titled “Competition is Good; with Regulation is better” to signal to a wider audience the official start of the project.

Team Leader of the Project, Mr. Andrea Filippo Gagliardi moderated the conference. Opening remarks were delivered by the EU Deputy Head of Mission in Kosovo, Mr. Ricardo Serri and Minister of Finance, Mr. Bedri Hamza. Both, Serri and Hamza acknowledged the progress achieved thus far in the said policy fields, but also the efforts being put by relevant stakeholders, namely Kosovo Competition Authority, State Aid Commission to offering a level playing field, where competitors would compete under fair and equal market conditions, but also consumers could extract the benefits from a competitive environment.

Afterwards, participants were invited to two separate panel discussions covering competition and state aid.

The competition panel was moderated by the project Team Leader, Mr. Gagliardi. Panelists included: Mr. Valon Prestreshi, Kosovo Competition Authority; Mr. Robert Erzin, IPKO; Mr. Indrit Reka, Albanian Competition Authority; Mr. Selatin Kaçaniku, NGO Consumer; Mr. Arbër Kadriu, Kallxo.com.

Panel discussion related to competition may be summarized as follows:

* Mr. Valon Prestreshi, Chairman - Kosovo Competition Authority: Mr. Prestreshi briefed participants on the work of KCA in past years. Further, Mr. Prestreshi acknowledged that institutional crises had an impact on the work of KCA, given the collegiate nature of the body. However, that did not prevent KCA from being active and discharging its mandate, as competition enforcement agent. Ultimately, Mr. Prestreshi averred that competition culture should be promoted and extended across other sectors as well.
* Mr.Robert Erzin, Chief Executive - IPKO: From the perspective of market participant, Mr. Erzin raised the issue of challenges and obstacles new entrants face when entering Kosovo marketplace. Mr. Erzin shared the experience of IPKO as competitor in the telecommunications sector, how difficult was to compete against Vala, its main and biggest competitor, but also given its prevalence in the marketplace.
* Mr. Indrit Reka, Chief of Cabinet – Albanian Competition Authority:Interesting remarks were given by the representative of the Albanian Competition Authority. Mr. Reka shared the experience and institutional challenges Albanian Competition Authority faced in recent years. According to Mr. Reka Albanian Competition Authority is gradually, but firmly establishing itself as an important institutional actor in the field of competition.
* Mr. Selatin Kaçaniku - NGO ‘Consumer’: Mr. Kaçaniku welcomed the event, also acknowledged the importance of the forum, especially from the perspective of consumer protection. According to Mr. Kaçaniku, government behavior oftentimes fails to take due account of consumer interest as end-users in the chain of economic activity.
* Mr. Arbër Kadriu - Kallxo.com: Mr. Kadriu representing online platform Kallxo.com was critic of government’s intervention in several economic areas liable to raise issues of competition law and policy. Worth mentioning was monopolistic practice in vehicle homologation system, which was several times flagged by this platform. Mr. Kadriu committed that Kallxo.com will continue to play its watchdog role in critical economic areas.

State aid panel was moderated by the Project Key Expert, Mr. John Chimereze Emeruwa. Panelists included: Mr. Agim Krasniqi, State Aid Department; Mrs. Jurate Soviene, Lithuanian Competition Authority; Mr. Lulzim Syla, KIMERK; and Mrs. Arbëresha Loxha, Group for Legal and Political Studies.

Panel discussion related to state aid may be summarized as follows:

Following a short presentation by panel members i.e. Mr. Agim Krasniqi, SAD; Mrs. Jurate Soviene Lithuanian Competition Authority; Mr. Lulzim Syla, KIMERK and Mrs. Arbëresha Loxha GLPS, of the activities of their respective organizations, the discussion focused on several topics i.e. the success profile for the State Aid Department; Kosova e Re; engagement by civil society groups in the activities of the State Aid Department/State Aid Commission; lessons to be learnt flowing from the Lithuanian experience. Despite aggressive questioning by the audience, there was an acceptance of the need to widen the debate regarding the activities and success of the State Aid Department/State Aid Commission in monitoring and controlling state aid in Kosovo. At the same time, the audience agreed that the State Aid Department/State Aid Commission require more time to establish themselves before any judgment is passed.

State aid success indicators/profile (This issue concerns the indicators, for the SAD/SAC, of their success in the area of state aid monitoring and control).

* Mr. Agim Krasniqi stressed the importance of highlighting the fact that state aid regulation monitoring and control is very new for Kosovo authorities and require cross government input and coordination. He highlighted that both the SAD/SAC have come a long way in terms of their operational readiness i.e. staff have been selected and are being trained (with support of EU and other donors), legislation is in place (although more is needed); obligations to be fulfilled under the SAA have started and awareness is slowly rising of the need to be state aid compliant. In terms of success indicators, in the years to come, Mr. Krasniqi foresees, more of the same i.e. better trained staff, raising awareness and respect for the national state aid rules (at all levels of government – central and local); completion of SAA obligations and the continued drafting of legislation reflecting Government policy priorities.

Kosova e Re

* This issue was raised by a member of the audience i.e. from GAP and also Arbëresha Loxha and directed at Agim Krasniqi. The discussion focused on the role of the SAD in respect of analyzing the Kosova e Re power plant agreement for state aid implications. In response the point was made that in the context of state aid opinions i.e. whether or not support is state aid, the only opinion and decision that matters is that of the SAC – as they are responsible for deciding whether any Government support is or is not within the state aid law. All other views are merely expressions of opinions that any interested party has the right to express. Secondly, the SAD is currently looking into the matter and will be in discussions with the relevant Ministry shortly i.e. Ministry of Economic Development. Mr. Krasniqi emphasized the need for cross Government coordination and cooperation.

The Lithuanian experience

* The Lithuanian experience was brought by Mrs. Jurate Soviene, in the context of building state aid institutions and legislation provided an opportunity to share with the audience what they i.e. the Lithuanian’s consider to be do’s and don’t’s. Further, Mrs. Jurate Soviene led the discussion and made the point all state aid authorities must be proactive in respect of reaching out to colleagues in other parts of Government. It is a continuous process. Secondly, state aid authorities must be brave and focus on the big cases – not small cases. Colleagues from the Albanian State Aid Commission also supported this approach, emphasizing the need for clear legislation so as to avoid confusion.

Role of civil society in scrutinizing the work of SAD/SAC

* The point was made by the moderator of the importance of civil society in providing an information hub for citizens to understand the issues. Arbëresha Loxha saw the role of civil society groups as that of challenging Government to be more transparent and forthcoming with information – currently this is not happening in Kosovo (the case of Kosova e Re being an example). Mr. Lulzim Syla expressed confidence in the SAD Director to deliver, although he was less confident in the ability of other parts of Government to do the same.

At the end of the panel discussions, participants were invited to attend a final plenary session where the project Team Leader summarized the main topics discussed as follows:

* How to measure the impact of competition law and policy? There are several international indexes that reflect the competitiveness and openness of the marketplace. The most renown is the World Bank “Ease of doing business” which Kosovo has been consistently climbing over the past few years. There is also the EU Country Report which is updated annually. Relevant economic data to understand Kosovo economic fundamentals can be found in the statistics published by Kosovo customs and Central Bank.
* What can be done by a new entrant if confronted with an institutional environment favoring national champions? Adjust to market conditions and lobbying local institutions to ensure application of the competition rules. The Conference discussed at length instances of anticompetitive government intervention in the regulation of the economy notably with respect to the homologation of vehicle registrations and in the telecom sector. Prices charged by the company offering homologation of imported vehicles are perceived as excessive compared to the prices for the same service in other regional countries. The company is considered as having been granted an unnecessary monopoly. PTK, Kosovo State Owned Telecom Operator, is considered as running losses and there is fear that its prices in the mobile and internet services are cross-subsidized by it universal service operations. It is said to secure government contracts on an exclusive basis due to a broad interpretation of the “in-house” rule in public procurement. Pledges from market players and civil society as well as recommendations issued to the government by the Kosovo Competition Authority and the European Union have so far been ignored.
* What can be done to discipline the government when it is acting contrary to the competition rules? There are no sanctions in place against such type of government behavior. In Lithuania these instances may attract fines which are capped at 60.000 Euros, with the possibility to be imposed even against local authorities. There is a perception that the judiciary should step in to discipline government anti-competitive behavior. More generally, it is believed that judges shall be competent to applying competition rules in parallel with Kosovo Competition Authority.
* What else can be done to promote enforcement of competition in Kosovo? Awareness campaigns on the significance and importance of the competition rules must include several stakeholders which were not fully represented at the conference such as Kosovo Assembly, Judges, Academia and Civil Society. More information needs to be produced to increase knowledge and ensure compliance. The approach to the enforcement of competition must be implemented in a more systematic way, trying to always involve all of the above stakeholders.
* Is media reporting on competition issues? Not sufficiently. Media also needs to be trained on competition law and policy to avoid material errors when reporting over complex legal economic issues.
* What about consumers and consumer NGOs? There are no consumer surveys run in Kosovo by media. Consumer NGOs requested the creation of a consumer protection institution raised at the level of cabinet office, which shall address instances related to quality of consumer products as well as information provided to influence consumer choice.

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