

Chapter 5.

Competition policy in South East Europe

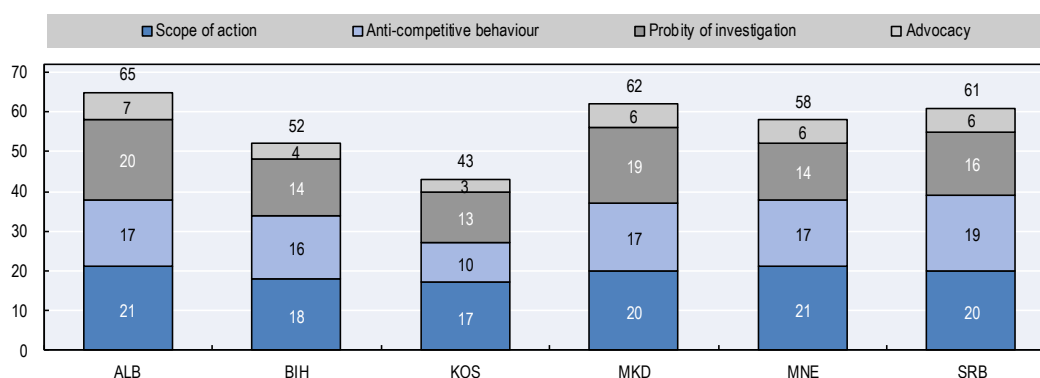
This chapter on competition policy assesses the policy settings, processes and institutions in six South East European economies. After a brief overview of competition performance in South East Europe, the chapter then focuses on four essential policy areas. The first policy area, scope of action, assesses to what degree the competition authority is invested by law with the power to investigate and sanction anti-competitive practices. The second, anti-competitive behaviour, describes the development of policy to prevent and prosecute exclusionary vertical and horizontal agreements and anti-competitive mergers. The third, probity of investigation, examines the independence and accountability of institutions which enforce competition law and the fairness of their procedures. The final policy area – advocacy – looks at further actions to promote a competitive environment. The chapter includes suggestions for enhancing the policies in each of these areas in order to foster the competitiveness of these economies.

Main findings

A competitive economic environment helps boost economic growth and increase living standards, thereby also helping to reduce inequality. It stimulates competitiveness by giving businesses incentives to lower their costs and reduce their prices, to better respond to customers' needs and to be more innovative. Furthermore, it motivates firms to supply internationally competitive products and services and to upgrade in global value chains.

The six economies of South East Europe (Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo,* Montenegro and Serbia) appear to have in place most of the basic building blocks of a functional competition policy regime (Figure 5.1), although some gaps persist and enforcement records appear limited. Their major challenge for the future is to transform systems that look good on paper into working, nationally acknowledged enforcement regimes.

Figure 5.1. Competition policy: Number of adopted criteria



Note: The assessment in this chapter is based on the answers to the questions listed in Annex 5.A1, with each “yes” counting as an adopted criterion. The maximum number of adopted criteria is 68. See the methodology chapter for information on the *Competitiveness Outlook* assessment and scoring process.

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Comparison with the 2016 assessment

Changes since the 2016 assessment are mixed. While the overall number of criteria adopted has increased for Albania, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia, they have decreased for Bosnia and Herzegovina, and Kosovo. Actual enforcement activity has not increased as much as would have been desirable. While scores for the scope of action policy area remain mostly the same, they have increased in most economies in the anti-competitive behaviour policy area. With regard to probity of investigation, the picture is more diverse, with small increases in some economies, and no changes or only a slight decrease in the others. In the advocacy policy area, the trend is positive in four out of the six SEE economies, but negative in the other two.

* This designation is without prejudice to positions on status, and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo's declaration of independence.

Achievements

The SEE economies have put all of the necessary major legal provisions in place for a competition law regime that works. The provisions for anti-competitive agreements and abuse of dominance are closely aligned with those in the Treaty on the Functioning of the European Union. The provisions on mergers also follow international standards.

Most authorities can and actually do conduct market studies and comment on the competitive effects of laws and regulations. The legal framework enables the SEE competition authorities to act as competition advocates in their economies.

Competition authorities are formally independent. Governments do not formally intervene in the decision-making process or give directions.

Remaining challenges and key recommendations

- **Improve the competition law enforcement record further.** Despite the established legal foundations of competition policy in the region, challenges remain in their systematic implementation. As the enforcement track record is one of the most important indicators of an effective competition regime, strengthening it is a priority for the competition authorities.
- **Put in place guidance for stakeholders on the competition authorities' enforcement practices.** Publishing explanatory documents that help businesses, their legal advisers and the public to understand how competition law is applied is an important aspect of enforcement practice. However, only half of the SEE competition authorities have published comprehensive sets of guidelines to that effect.
- **Ensure that competition authorities have sufficient resources.** In most of the SEE economies, financial and human resource constraints may limit the scope of action and the quality of work that can be expected.
- **Give more weight to competition authorities' recommendations.** When the competition authorities comment on barriers to competition in laws, regulations or industry sectors, these recommendations are not always taken into consideration.

Context

Competition, the process of rivalry between firms, is seen as the driving force of well-functioning markets. It can also drive productivity and economic growth, a finding underpinned by theoretical and empirical evidence. This evidence also suggests that countries with lower levels of product market regulation enable stronger competition and therefore tend to have higher levels of productivity growth (CMA, 2015; OECD, 2014a). An effective, and effectively enforced, competition law that safeguards the competitive process will facilitate and even enable productivity growth and will help distribute wealth more evenly. In addition to evidence that there is a general link between competition and productivity growth, studies show the direct effects of competition law itself, and of product market deregulation. Although it is difficult to distinguish the effects of individual policy changes, there are some studies showing that policies that lead to markets operating more competitively, such as enforcement of competition law and removal of regulations that hinder competition, result in faster economic growth (Ospina and Schiffbauer, 2010; Gutman and Voigt, 2014).

Competition can also improve equality. Market power may depress the income of the poorest 20% of the population by 12-21% (OECD, 2015a), mainly by keeping prices high. Competition law enforcement that prevents and reduces market power will help to bridge the gap between the richest and the poorest groups, facilitating a smooth transition into a competitive market economy.

However, on its own competition law is not sufficient – it can only be effective if it is properly enforced. This requires an adequately resourced and skilled competition authority, free to fulfil its mandate without political interference. This authority must have the necessary power and tools to uncover illegal practices and impose sanctions for infringements, to prevent or remedy mergers that may lead to reduced competition, and to advocate for a more competitive environment.

Analysis of competition policy in the SEE economies reveals significant links with other policy areas. A sound competition law and policy framework will increase productivity and encourage innovation, provide legal security to domestic and international investors, and help reduce unnecessary barriers to trade in state laws and regulations. In addition, public procurement frameworks need to consider competition and corruption prevention equally. This chapter has particularly close links to the following chapters:

- **Chapter 1. Investment policy and promotion** will benefit from the competent and predictable implementation of competition rules that apply to foreign and domestic investors alike. Competition laws that are aligned with international standards and that are applied according to best practices will create legal security that benefits investment decisions.
- **Chapter 2. Trade policy and facilitation** and competition policy can and should be mutually supportive. In general, trade and competition policies share the ultimate objective of achieving an efficient allocation of resources and promoting economic growth. In particular, trade liberalisation can generate competitive pressure by encouraging more domestic and foreign direct investment (Bartók and Miroudot, 2008). On the other hand, competitive markets create opportunities for trade and investment and enhance the gains from trade and investment liberalisation. However, potential tensions or inconsistencies may arise when markets are not contestable, there are barriers to entry or exit, and important sunk costs or other market imperfections that might prevent foreign products or companies from reaching domestic markets.
- **Chapter 9. Science, technology and innovation** are facilitated by competitive environments. Yet the relationship is not simple; the empirical evidence shows that moderately competitive markets innovate the most, while both monopoly and highly competitive markets show lower levels of innovation. However, competition policy focuses not on making moderately competitive markets hyper-competitive, but on introducing or strengthening competition in markets where it does not work well. The inference is therefore that competition policy serves to promote innovation (Aghion et al., 2005).
- **Chapter 16. Public services.** As mentioned above, competition law can only fulfil its objectives when it is properly enforced. Law enforcement authorities should ensure fair and transparent application of the law by guaranteeing the right to a fair process, clear rules, consistent and predictable enforcement, and certainty as to the length of the enforcement procedures (OECD, 2015b).

- **Chapter 17. Anti-corruption policy** and competition both focus to a large extent on public procurement markets. Competitive bidding in public procurement markets will be encouraged if the risk of corruption is low. Research generally finds an inverse relationship between competition and corruption: low levels of competition correlate with high levels of corruption (OECD, 2010). Cartels favour corruption and benefit from co-conspirators among public procurement officials. A successful anti-corruption policy will also lead to more competitive and cost-effective tender results.

Competition policy assessment framework

The analytical framework applied to the six SEE economies in this chapter differs from the approach used in the other chapters. It draws on a questionnaire developed by the OECD (see Annex 5.A1). The questionnaire includes 68 questions allocated into four policy areas that are widely agreed across the OECD as forming the foundations of a competition policy regime (Figure 5.2):

1. Scope of action: is the competition authority invested by law with the power to investigate and sanction anti-competitive practices? Does it have the remit to investigate, remedy, or block anti-competitive mergers? What is the authority's budget and number of staff?
2. Anti-competitive behaviour: how does competition policy prevent and prosecute exclusionary vertical and horizontal agreements and anti-competitive mergers? Which factors are taken into account when ascertaining if anti-competitive practices have taken place?
3. Probity of investigation: how independent and accountable are the institutions which enforce competition law? How transparent are they? How fair are their procedures?
4. Advocacy: what activities other than standard enforcement of competition law are used to further promote a competitive environment? Are market studies and reviews of new laws and regulations conducted for any distortionary impact on competition?

The questionnaire does not seek to create a complete and detailed account of competition policy regimes, but rather to broadly measure their scope and strength. It has a much stronger focus on the *de jure* characteristics of a regime than on its *de facto* enforcement and implementation.

Figure 5.2 shows how the policy areas and their constituent indicators make up the competition policy assessment framework.

Unlike the other chapters, where indicators are allocated a score from one to five, the assessment in this chapter is based on yes/no (coded as 1/0) answers to the 68 questions in the questionnaire listed in Annex 5.A1. Where a response to a question is yes (coded as 1), then we refer to this as an adopted criterion. Each of the four policy areas has a different number of possible criteria that can be stated as having been adopted. Each policy area is assessed through data collected from the questionnaire indicators and by measuring the number of criteria adopted. The assessment also draws on OECD competition experts familiar with the SEE economies, and a 2013 comparative report on competition regimes in the Balkan region (Sofia Competition Forum, 2014).

Figure 5.2. **Competition policy assessment framework**

Competition policy dimension			
Outcome indicators <ul style="list-style-type: none"> • Increase net enterprise creation • Increase per capita exports in goods and services 			
Policy area 1 Scope of action	Policy area 2 Anti-competitive behaviour	Policy area 3 Probity of investigation	Policy area 4 Advocacy
Sub-dimensions <ol style="list-style-type: none"> 1. Competences 2. Powers to investigate 3. Powers to sanction/remedy 4. Private enforcement 	Sub-dimensions <ol style="list-style-type: none"> 5. Mergers 6. Horizontal agreements 7. Vertical agreements 8. Exclusionary conduct 	Sub-dimensions <ol style="list-style-type: none"> 9. Independence 10. Accountability 11. Procedural fairness 	Sub-dimensions <ol style="list-style-type: none"> 12. Advocacy
Quantitative indicators Not applicable in this assessment	Quantitative indicators <ol style="list-style-type: none"> 1. Number of staff of the competition authority 2. Budget of the competition authority 	Quantitative indicators Not applicable in this assessment	Quantitative indicators Not applicable in this assessment

Competition policy performance in SEE economies

All competition policy and enforcement systems consist of essentially two components: 1) the legal instruments (“rules”) governing both substance, competences and procedure; and 2) the administrative structures and processes through which the legal instruments are implemented (Lowe, 2008). Both components are necessary for the success of the system as a whole.

The weak points identified in the assessment are based only on answers to the OECD questionnaire. This does not examine approaches in depth, but verifies whether they incorporate certain important elements. A more detailed, impartial assessment of approaches would require in-depth analyses of some of the authorities’ decisions. Peer reviews, such as those undertaken by the OECD or the United Nations Conference on Trade and Development (UNCTAD), could provide such insights (see for example OECD Country Reviews of Competition Policy Frameworks).¹

All six SEE economies appear to have in place the basic legal instruments (laws, policy documents, etc.) required for functional competition policy regimes, though some gaps still exist (Figure 5.1). Law enforcement across the SEE economies, however, is very limited.

For enforcement, improvements could be made to ensure that the competition authorities in the six economies have all the most important powers and tools for enforcing competition law effectively and for protecting and fostering competition. In Kosovo and the Former Yugoslav Republic of Macedonia, for example, the competition authority could be given the power to advocate for competition, not just at central, but also at local government levels.

Enforcement activity could be strengthened across the region, particularly in Kosovo. Only the Former Yugoslav Republic of Macedonia, Montenegro and Serbia have blocked or remedied an anti-competitive merger in the last five years. As for sanctions imposed

against cartels, only the Former Yugoslav Republic of Macedonia, Montenegro and Serbia have imposed fines in the last five years; the other economies have imposed no, or only insignificant, fines. Only the competition authorities in Albania, Montenegro and Serbia have made use of unannounced inspections of the premises of firms being investigated.

Most SEE authorities (except Kosovo) apply at least some economic analysis when they assess mergers, anti-competitive agreements or abusive conduct.

The assessment also finds that stakeholders would benefit from more guidance on enforcement practices; to date competition authorities have published few or no guidelines on how they apply competition law provisions. A more active stance could also be taken by some authorities to advocate for competition. This relates to the assessment of laws and regulations and to advocacy to public procurement bodies to detect and prevent bid rigging. At the same time, most governments appear not to be particularly receptive towards the recommendations given by their competition authorities.

Scope of action

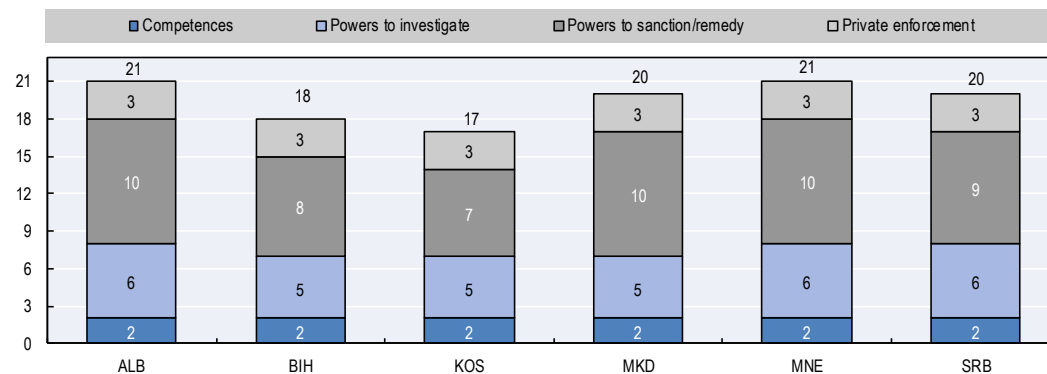
This section assesses the scope of the SEE competition regimes' powers to uncover, remedy, deter and penalise anti-competitive behaviour and mergers. This is assessed across four sub-dimensions (Figure 5.3):

The **competences** sub-dimension covers public and foreign firms' exemptions from competition law and the competition authority's financial and human resources.

The **powers to investigate** and **powers to sanction/remedy** sub-dimensions both encompass the statutory powers of the competition authority to investigate and punish competition law infringements and to investigate and remedy or block anti-competitive mergers.

The **private enforcement** sub-dimension assesses the extent of provisions for civil action by individuals, firms or groups of consumers seeking compensation for financial damage incurred as a result of competition law violations.

Figure 5.3. **Scope of action: Number of adopted criteria**



Note: The maximum number of criteria that could be adopted is 21. See the methodology chapter for information on the *Competitiveness Outlook* assessment process.

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The legal instruments are mostly in place, but lack implementation resources

All six SEE economies have the necessary **powers to investigate**, such as the legal right to request information from parties to competition proceedings (i.e. firms) and third parties when investigating possible antitrust infringements and mergers. They can also conduct unannounced inspections of the firms' premises. Yet, the assessment shows that competition authorities in the assessed SEE economies rely mainly on information requests, in spite of the fact that unannounced inspections ("dawn raids") are considered the most robust and valuable way of detecting and proving hard-core cartels. Out of the six economies, only the competition authorities in Albania, Montenegro and Serbia have made use of dawn raids in the last five years.

In terms of **powers to sanction/remedy**, in all the economies, competition authorities have the power to impose, or can ask a court to impose, interim measures while investigating an alleged antitrust infringement, because there is a concern that this may lead to irreversible damages. Likewise, all competition authorities can impose sanctions on a firm that hinders an investigation into an alleged antitrust infringement. The competition authorities in all the economies except in Kosovo have done so in the last five years. In line with this, all competition authorities can also impose, or ask the court to impose, remedies or a cease and desist order² on firms that have committed antitrust infringements. They also have the powers to impose, or ask a court to impose, sanctions on firms that have committed such infringements. This is also true for accepting or imposing remedies in order to clear a merger.

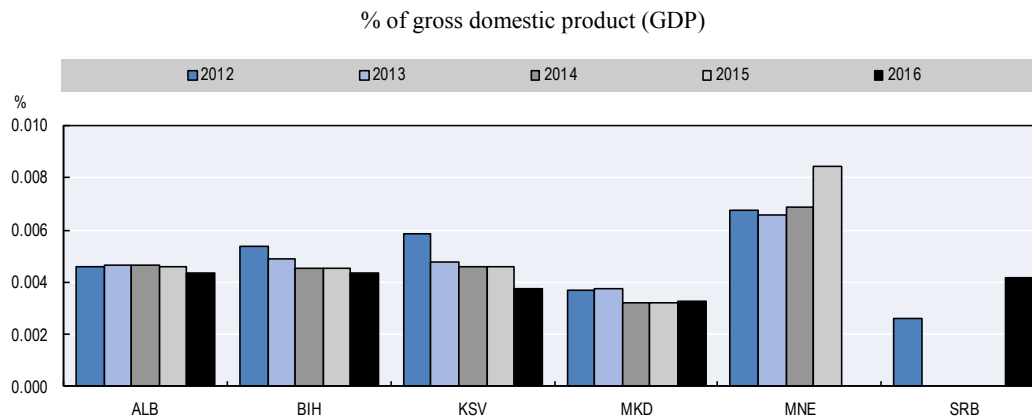
With the exception of Bosnia and Herzegovina, all of the competition authorities can also enter into settlements with the parties under investigation for alleged antitrust infringements and thus close the investigations. This **private enforcement** can be a way of finding a quick, efficient solution and avoiding long drawn-out investigations.

In terms of **competences**, none of the six economies exempt state-controlled or foreign companies from the scope of competition law, and the law also applies to foreign firms if their actions directly affect competition or consumers in the domestic market. Individuals, firms and groups of consumers in all the economies can bring legal action against firms that have committed an antitrust infringement and can seek redress for any harm they have incurred as a consequence.

In order to enforce competition law effectively, competition authorities need adequate financial and human resources. The budgets of the six competition authorities appear to have remained stable over the past five years (Figure 5.4). Apart from Serbia, staff numbers have also remained constant (Figure 5.5). It is difficult to say what an appropriate staffing and funding level for a competition agency is. There are no norms or widely accepted comparators. Some competition agencies from smaller European Union (EU) Member States like Austria, Latvia, Lithuania or Portugal have comparable staff and budget numbers (GCR, 2016). Given the variety of tasks a competition agency must address and the level of specialisation and experience that is required, it is doubtful whether this can be achieved with the staff levels around or below twenty, as in Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo and Montenegro. Funding requirements are also increased by the need for increasingly sophisticated data-heavy investigations that can require the use of forensic information technology equipment and experts.

While effective competition enforcement comes at a cost, all the agencies that have conducted an assessment of the impact of their actions (OECD, 2014c) can usually show that they offer an excellent business case.³ Every euro invested in an agency can be expected to generate many euros of consumer savings every year.

Figure 5.4. Annual budget of competition authorities (2012-16)

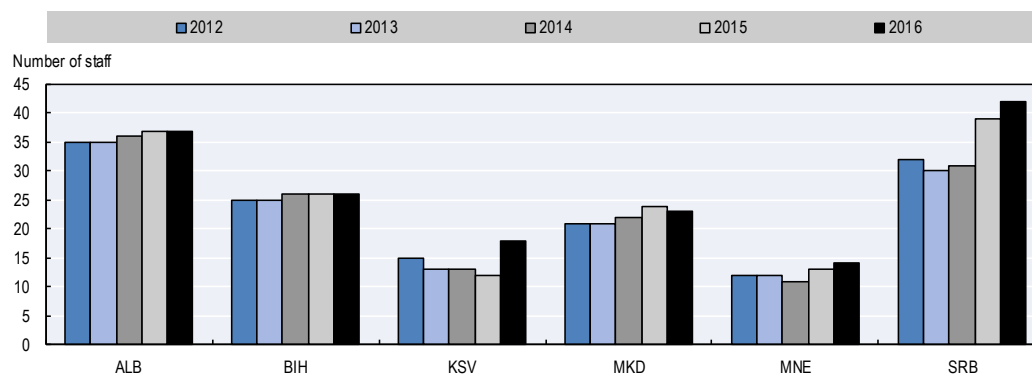


Note: Data not available for Montenegro for 2016, or for Serbia for 2013, 2014 and 2015.

Source: Albanian Competition Authority (2017), “Annual reports”, www.caa.gov.al; Bosnia and Herzegovina Council of Competition (2017), “Annual reports”, <http://bihkonk.gov.ba/en>; Kosovo Competition Authority (2017), “Annual reports”, <https://ak.rks-gov.net/?cid=2.11>; Commission for Protection of Competition of the Former Yugoslav Republic of Macedonia (2017), “Annual reports”, www.kzk.gov.mk; Montenegro Agency for Protection of Competition (2017), “Annual reports”, www.azzk.me; Serbia Commission for Protection of Competition (2017), “Annual reports”, www.kzk.org.rs/en/; EC (2017), *Main GDP Aggregates* (Eurostat database), <http://ec.europa.eu/eurostat/data/database>; Agency for Statistics of Bosnia and Herzegovina (2017), *Economic Statistics* (database), www.bhas.ba/saopstenja/2017/NAC_04_2016_Y1_0_BS.pdf.

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Figure 5.5. Annual staffing of competition authorities (2012-16)



Source: Albanian Competition Authority (2017), “Annual reports”, www.caa.gov.al; Bosnia and Herzegovina Council of Competition (2017), “Annual reports”, <http://bihkonk.gov.ba/en>; Kosovo Competition Authority (2017), “Annual reports”, <https://ak.rks-gov.net/?cid=2.11>; Commission for Protection of Competition of the Former Yugoslav Republic of Macedonia (2017), “Annual reports”, www.kzk.gov.mk; Montenegro Agency for Protection of Competition (2017), “Annual reports”, www.azzk.me; Serbia Commission for Protection of Competition (2017), “Annual reports”, www.kzk.org.rs/en/.

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The way forward for the scope of action area

The laws related to scope of action need to be complemented by better enforcement of the legal provisions and efficient use of the instruments at hand. Otherwise the SEE economies will not capture the benefits that a functioning competition law regime offers their societies. The shortcomings in enforcement and suggestions for changes are outlined in the next section on anti-competitive behaviour policy.

The SEE economies should improve both public and private enforcement of anti-competitive behaviour. Without improvements in public enforcement, the right to private actions to compensate for harm incurred through anti-competitive behaviour is currently meaningless: there is widespread agreement that effective public enforcement lays the foundations for effective private enforcement. The two are complementary, with public enforcement being a necessary condition for success (OECD, 2015b).

The SEE economies should provide their competition authorities with adequate financial and human resources. Rigorous enforcement will only be possible if the competition authorities have sufficient funding, which will also help to attract staff with the right qualifications. Funding for competition authorities could come from a variety of sources, such as the state budget, fines, fees, transfers from other national regulatory authorities, and tax revenues levied on companies (see Box 5.1 for some examples).

Box 5.1. Good practice: Self-funded authorities in Turkey and Portugal

The Portuguese Competition Authority (PCA) is financed by transfers from national regulatory authorities (NRAs), fees charged within the scope of the PCA's activities and fines imposed. The state budget can also be used as a last resort, but so far never has. Transfers from NRAs are the most important source of funds, accounting for around 81% of the PCA's total budget. Article 35 of the PCA's new by-laws foresees a range of contributions, between 5.5% and 7.0% of the total amount of the NRAs' revenues, and also sets a default rate of 6.25% of NRAs' revenues to be transferred to the PCA if the annual ministerial order setting out the rate is not adopted. The PCA also receives 40% of the fines imposed, while the remaining 60% goes to the state budget. In 2014, funding from fines accounted for 4% of the PCA's budget.

The Turkish Competition Authority (TCA) is funded by the state budget, tax revenues levied on certain companies and publications. Fines used to be a part of its funding, but the article granting it the right to 25% of the fines imposed was repealed in 2003. This was in response to criticism from companies that the authority tended to impose high fines in order to fund itself. In addition, while courts can approve or reject a decision of the TCA, they cannot decide specifically on the amount of the fine. This gives the TCA wide discretion on the level of fines imposed. Since its creation in 1997, the TCA has not received any funding from the state budget and following the change in 2003, it has relied entirely on tax revenues. The tax is 0.04% of the capital of all newly established partnerships with the status of incorporated and limited company, and 0.04% of the increased portion in case of capital increase.

Source: OECD (2016a), "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).

Anti-competitive behaviour

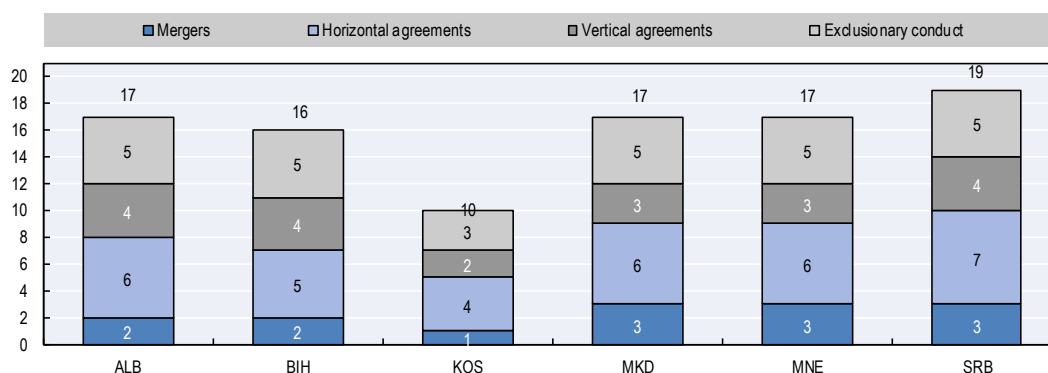
An effective competition law and policy regime ensures that anti-competitive behaviour is punished and anti-competitive mergers are remedied or blocked. An effective regime also requires that investigations of alleged antitrust infringements or

anti-competitive mergers include an assessment of the economic impact of each case and take into account any potential efficiency gains.

In order to prosecute competition law violations effectively, the competition authority not only needs formal powers to investigate and impose a sanction or remedy; it should also be adequately resourced and skilled. The anti-competitive behaviour policy area gauges those powers and resources across four sub-dimensions: 1) mergers; 2) horizontal agreements; 3) vertical agreements; and 4) exclusionary conducts (Figure 5.6). It assesses whether the anti-competitive behaviour is prohibited, what tools and practices the authorities have at their disposal when investigating allegedly anti-competitive behaviour, and their enforcement track record.

When it comes to the number of overall practices adopted for countering anti-competitive conduct, the picture across the six economies is one of contrast. Serbia meets all 19 criteria (see Annex 5.A1) and Albania, the Former Yugoslav Republic of Macedonia and Montenegro meet most of them, with Bosnia and Herzegovina close behind. Kosovo still needs to make up ground, with only 10 of the 19 criteria in place.

Figure 5.6. Anti-competitive behaviour: Number of adopted criteria



Note: The maximum number of criteria that could be adopted is 19. See the methodology chapter for information on the *Competitiveness Outlook* assessment process.

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Anti-competitive agreements and mergers can be investigated but are rarely prosecuted

All competition authorities are empowered to investigate **mergers** and all analyse them to consider any efficiency gains that they may generate. Except for Kosovo, the competition authorities also include at least some form of economic analysis in their investigations. However, only the Former Yugoslav Republic of Macedonia, Montenegro and Serbia have blocked or otherwise remedied one merger each in the last five years, while no mergers in the other three economies have prompted concerns over competition. Serbia reviews on average 100 mergers a year and the Former Yugoslav Republic of Macedonia and Montenegro around 30. Albania and Bosnia and Herzegovina review on average ten mergers a year, but Kosovo has reviewed only six in total over the last five years. Overall, the assessment indicates that the level of concern raised by mergers is low, with only three mergers prohibited or remedied in total in all jurisdictions over the last five years. While low intervention rates are not unusual, it should be kept in mind that merger control is an important instrument for preventing anti-competitive structures being

created, and to reduce the potential for competition law violations by powerful market players. It is much harder to prosecute and remedy such violations than to prevent the creation of market power in the first place.

Although anti-competitive **horizontal agreements** – which include cartels – are prohibited in all six SEE jurisdictions, the enforcement record is very similar to that observed for mergers. Except for Bosnia and Herzegovina, all have prosecuted at least one hard-core cartel within the last five years. However, in the last two years, only the Former Yugoslav Republic of Macedonia, Montenegro and Serbia have had some enforcement activity in this area, involving prohibitions and/or imposing fines. The level of fines is still very low. In 2015/16 the average fine imposed in the nine completed cartel cases was EUR 125 000, with the total fines amounting to approximately EUR 1.1 million. Fines need to be high enough to both punish and act as a deterrent by sending a message to the wider business community. By way of comparison with other small economies, in 2015 Latvia and Lithuania together imposed fines totalling approximately EUR 26 million (Competition Council Republic of Latvia, 2015; Competition Council of the Republic of Lithuania, 2016). That all of the SEE economies have taken so little action (and some none at all) in the recent past is all the more worrying given that cartels tend to be quite common in most jurisdictions. While they are difficult to detect, once detected they are relatively simple to analyse and prosecute, as they mostly constitute plain “by object” violations.

One of the most important enforcement tools in hard-core cartel investigations is an unannounced inspection of the business premises and/or private residences of suspected cartel offenders. While all six economies have the legal right to conduct unannounced inspections, only three have done so in the past five years: Albania, Montenegro and Serbia. Nine inspections were carried out by Albania and six by Serbia in 2015-16.

All jurisdictions also have leniency programmes for cartel participants – schemes which offer partial or full immunity from sanctions to firms that reveal the existence or provide evidence of a cartel in which they are involved to assist a cartel investigation. In the Former Yugoslav Republic of Macedonia, Montenegro and Serbia, leniency programmes have elicited at least one application in the last five years, though not in the other three economies. The underuse of this instrument may be explained by the limited levels of enforcement. Leniency programmes are only attractive to cartels if detection is likely and fines are high enough to pose a threat to their anti-competitive agreements.

An alternative path to successful cartel prosecution can be close monitoring of public procurement tenders and co-operation with public procurement authorities. Bid rigging, which is just another name for a hard-core cartel affecting public procurement, is a common phenomenon in public tender procedures and can increase purchase prices by 20% or more (Connor, 2016). Co-operation with public procurement bodies can help to prevent bid rigging in the first place and can also help to detect bid-rigging conspiracies, thus leading to successful cartel prosecution (see Box 5.2 for an example from Mexico). Albania, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia have all undertaken efforts to varying degrees to co-operate with and to educate public procurement officials. While the Former Yugoslav Republic of Macedonia and Montenegro seem to have only limited activities, Albania and Serbia actively communicate with public procurement bodies, provide training, and participate in public debate.

Box 5.2. Good practice: Fighting collusion in public tenders in Mexico

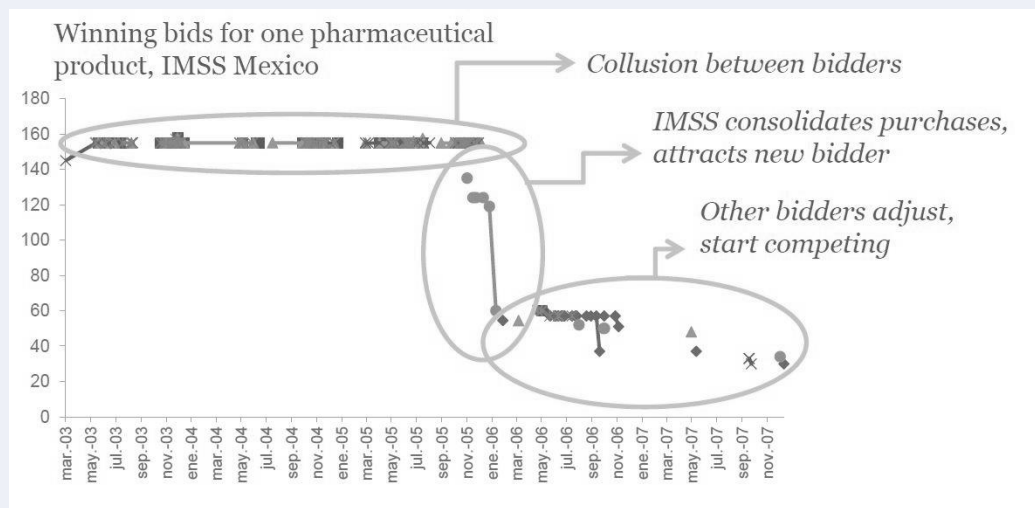
In 2011 the OECD conducted a comprehensive review of the integrity of the Mexican Institute of Social Security's (IMSS) procurement practices and provided training sessions to over 200 IMSS procurement officials. A report was released to the public in January 2012 which made over 30 recommendations in three main areas:

1. proposals for changes to the law (for example, removing requirements for meetings and other opportunities for bidders to learn about one another's bids)
2. proposals for changes to IMSS's procurement systems, such as consolidation of bids and changes to the auction system
3. training for procurement officials to raise awareness of bid rigging, the danger signs and when to call in the competition authority.

Figure 5.7 shows an index of prices for successful bids for a single high-volume drug. Different bidders are shown with different colours and shapes of data points. IMSS reduced its cost by 70% by consolidating purchases, but these savings were not achieved through "economies of scale". Instead, the larger volumes attracted a new bidder, who broke what was evidently an existing price-fixing agreement – i.e. bid rigging – among the incumbent bidders.

This one policy change has saved IMSS about USD 250 million annually. IMSS has estimated that its annual cost saving from all of the procurement reforms it undertook following OECD advice on fighting bid rigging is in the order of USD 700 million annually.

Figure 5.7. Index of prices for successful bids for a single high-volume drug



Source: IMSS (2015), "Informe al Ejecutivo Federal y al congreso de la Unión Sobre 2014-2015" [Report to the Federal Executive and the Congress of the Union 2014-2015], www.imss.gob.mx/conoce-al-imss/informe-2014-2015; Mena-Labarthe, C. (2012), "Mexican experience in screens for bid-rigging", www.competitionpolicyinternational.com/assets/Uploads/LabartheMAR-121.pdf.

Vigorous competition among suppliers helps governments attain this objective. However, the formal rules that govern procurement, the way in which an auction is carried out, and the design of the auction itself, can all act to hinder competition and help promote or sustain bid-rigging conspiracies. The Recommendation of the OECD Council on Fighting Bid Rigging in Public Procurement (OECD, 2012b) calls for governments to

assess their public procurement laws and practices at all levels of government in order to promote more effective procurement and reduce the risk of bid rigging in public tenders. The Guidelines on Fighting Bid Rigging in Public Procurement (OECD, 2009), which form a part of the recommendation, are designed to reduce the risks of bid rigging through careful design of the procurement process and to detect bid-rigging conspiracies during the procurement process. This includes identifying: 1) markets in which bid rigging is more likely to occur so that special precautions can be taken; 2) suspicious pricing patterns, statements, documents and behaviour by firms that procurement agents can use to detect bid rigging; 3) methods that maximise the number of bids; 4) best practices for tender specifications, requirements and award criteria; and 5) procedures that inhibit communication among bidders. These guidelines can be applied in a decentralised manner across the government at both national and local levels and can be used by public officials with no specialised training in economics or competition policy.

All six SEE economies prohibit anti-competitive **vertical agreements**, and their competition authorities – with the exception of Kosovo’s – carry out economic analyses to determine whether agreements are likely to distort competition and to identify any offsetting efficiency gains. However, in the last five years, only Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia and Serbia have imposed sanctions on companies for vertical agreements.

Exclusionary conduct by dominant firms is prohibited in all six SEE jurisdictions. All, except Kosovo, carry out economic analyses to determine whether alleged anti-competitive conduct is likely to jeopardise competition or produce efficiency gains. In the last five years, all the jurisdictions except Kosovo have imposed sanctions on at least one firm for exclusionary conduct.

The way forward for anti-competitive behaviour policy

In general, low enforcement rates are a common feature of the six SEE economies. Bosnia and Herzegovina, and Kosovo appear to be particularly inactive. In the case of Kosovo, this may reflect the lack of a functional competition authority between November 2013 and the end of 2016. However, answers to the questionnaire reveal that enforcement measures in certain important areas of competition are sparse in most of the economies. As an economy’s enforcement record is one of the most important indicators of effective competition law and contributes to the credibility of the enforcer in the eyes of the business community and policy makers, **governments would benefit from encouraging the competition authorities to actively enforce competition law and providing them with the resources to do so.** As competition regimes become more mature, the deterrent effect generated by the authorities’ powers to investigate and sanction may reduce the need for very active enforcement.

Adequate resources would also help to attract qualified lawyers and economists to work for competition authorities. These authorities compete with the private sector, and while they may not be able to offer similar remuneration, they could use other means to attract staff. Excellent authority leadership and attractive options for gaining qualifications and training will help. In this way, even small authorities could be very active and successful.

In order to improve merger control, it should first of all be ensured that all mergers that meet the legal thresholds are duly notified to the authorities. These mergers should then be analysed using sound economic methods where necessary. The authorities should consider a prohibition decision as a realistic option in problematic

cases, if competition concerns cannot be appropriately addressed with remedies. If remedies are considered, preference should be given to structural merger remedies (OECD, 2011).

Priority should be given to boosting cartel enforcement. Cartels are the most clear-cut and undisputedly harmful competition law violation and they affect every country. It is highly unlikely that they do not affect the six SEE economies. On the contrary, small economies with limited openness to trade and small numbers of major economic actors seem to face an even higher risk of becoming victims of cartels than large open economies. While leniency programmes can help, they are not a silver bullet and require determined enforcement in the first place in order to be attractive at all. Given the severe lack of enforcement, leniency will not work in the SEE economies for some time to come.

Competition authorities and public procurement officials should receive training in the prevention and detection of bid rigging. Reducing cartel activity in public procurement and detecting cartels when they happen would mean large savings for the public budget and ultimately for tax payers and consumers, given that public procurement seems to be a preferred target for cartels (see the Mexico example in Box 5.2). The assessed SEE economies would therefore benefit significantly from focusing their enforcement activities on these areas. Successful co-operation with public procurement bodies will also help to improve SEE competition authorities' enforcement track record, their public recognition, cartel deterrence and the enforcement of cartels in other sectors of the economy. The Guidelines on Fighting Bid Rigging in Public Procurement (OECD, 2009) could be applied in a decentralised manner across governments at both national and local levels.

Closer co-operation among the SEE economies could help alleviate some resource constraints and strengthen their enforcement capacity. The SEE economies are relatively close geographically, in levels of economic and social development and, to some extent, in economic weight and language.

Pooling experience across the SEE economies could help the competition authorities achieve the critical mass that they are still building. For example, a formal arrangement between all the competition authorities could allow for regular sharing of experience among all staff levels (economists, lawyers, case managers, heads of division, etc.). The OECD inventory of international co-operation agreements between competition agencies (MoUs)⁴ provides an overview of existing arrangements from which inspiration can be drawn. The six SEE economies, together with Bulgaria and Croatia, are already part of a region-wide initiative – the Sofia Competition Forum – which meets twice a year to share experiences. However, the forum's members could make their co-operation more operational, for example by carrying out joint projects – such as preparing policy papers or market studies – and share experience more widely with authorities' operational staff. This could be done either within the Sofia Competition Forum or through a separate initiative, perhaps by emulating the collaboration between Nordic competition authorities (Box 5.3). In the medium to long term, the Nordic initiative could also serve as a template for co-ordinating parallel proceedings and exchanging confidential, case-related information – on the condition that the requisite legal framework is in place.

Competition authorities in SEE economies could also exchange experiences and share good practices by regularly attending international events. The OECD-GVH Regional Centre for Competition in Budapest is a forum where competition authorities can meet and share good practices and receive training. Such events can be a highly effective way for the six competition authorities to ensure regular training for their staff.

Indeed, they are already regular participants in the centre’s events and would benefit from actively continuing.

Box 5.3. Good practice: Co-operation among Nordic competition authorities

The Nordic competition authorities – from Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden – co-operate closely and meet on an annual basis. Important components of the collaboration are sector inquiries and joint reports on competition issues of common interest. The authorities have produced a number of joint reports on competition in sectors ranging from telecommunications, energy, banking and the food market.

On 5 March 2013, the Nordic Competition Authorities published their tenth joint report, *A Vision for Competition: Competition Policy towards 2020*. The report aims to highlight how effective competition policy and effective competition authorities can help to address future challenges to economic growth and welfare in the Nordic countries. A strong message from the report is that there is considerable scope for strengthening the relevant legal instruments and making competition policy more effective.

Source: EC (2013), “The Nordic Competition Authorities: New joint report: A vision for competition – competition policy towards 2020”, http://ec.europa.eu/competition/ecn/brief/02_2013/nor_rep.pdf.

Probity of investigation

Probity of investigation plays an essential role in fair and effective law enforcement. Companies must be safe in the knowledge that their practices conform to the applicable laws in the economies where they operate. They must also be able to interpret legal procedures correctly and to know and understand the workings of the statutory authority (or other body) that oversees them. Should they have to mount a defence in court, they need to be informed properly of the allegations against them and in good time (OECD, 2012c). Freedom from political influence is a prerequisite of fair and equal competition law enforcement, to ensure that cases are brought or dropped only on their merit (OECD, 2016a).

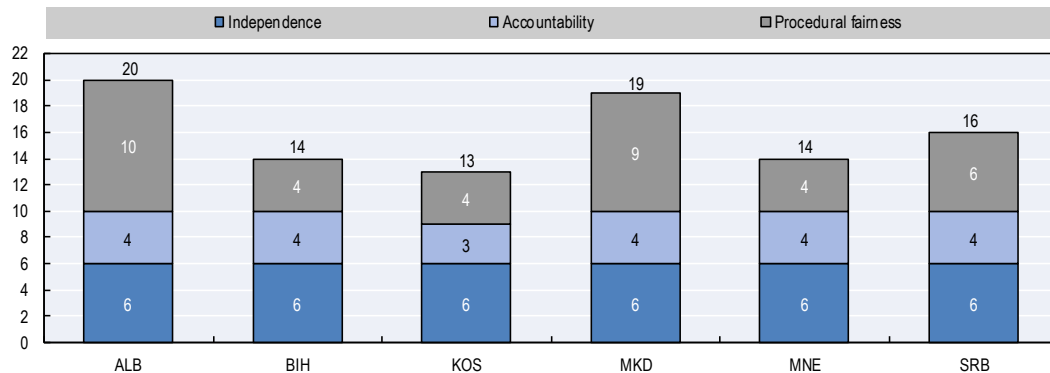
The probity of investigation policy area gauges the fairness of competition law enforcement and the degree to which competition authorities are independent and accountable. It involves three sub-dimensions: 1) independence; 2) procedural fairness; and 3) accountability. Together, these sub-dimensions assess the absence of government interference in investigations or decisions in antitrust infringements and mergers, the rights of companies under investigation, and the transparency of the authority’s actions and activities, as well as its accountability in court.

Based on the overall scores, Albania and the Former Yugoslav Republic of Macedonia meet all or almost all of the criteria in the probity of investigation policy area. Bosnia and Herzegovina, Kosovo, and Montenegro, however, are currently seeking to catch up with the SEE average (Figure 5.8).

Competition authorities are formally independent and ensure due process, but could give companies better legal guidance

Independence is important for the effective enforcement of competition rules. It enables competition authorities to take decisions based solely on legal and economic grounds, rather than on political considerations (OECD, 2016a). It is also widely

Figure 5.8. Probity of investigation: Number of adopted criteria



Note: The maximum number of criteria that could be adopted is 20. See the methodology chapter for information on the *Competitiveness Outlook* assessment process.

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recognised that in order to ensure citizens' confidence and belief in a fair legal system and in those applying the law, it is important that procedures regulating the relationship between the public sector and citizens are, and are generally perceived to be, fair and transparent. Fairness and transparency are therefore essential for the success of antitrust enforcement, and regardless of the substantive outcome of a government investigation it is fundamental that the parties involved know that the process used to reach a competition decision was just (OECD, 2012c). Transparency can be enhanced through the publication of guidelines, regulations, practice manuals, substantive authority opinions and court jurisprudence, and the adherence to antitrust best practices of multilateral bodies (i.e. the OECD and the International Competition Network).

Competition authorities in all six SEE economies are formally independent, meaning that in the last five years, their governments have not given them any binding directions as to whether they should open investigations or impose sanctions. Nor have the governments overturned any decision by the competition authorities in that time. However, in Kosovo, the government did not appoint a functional competition council for almost three years (2013-16). The competition authority could not undertake any enforcement activity during this time, as no decisions could be taken. This must be considered as a serious violation of the principle of authority independence.

In terms of **accountability**, all six SEE competition authorities, except Kosovo, account for their activities and regularly publish reports on their activities and all decisions on infringements of antitrust legislation. Similarly, in all of the economies, decisions on antitrust infringements and mergers (whether taken by a competition authority or a court) can be subject to judicial review on substance and procedure.

To ensure **procedural fairness**, the competition authorities provide an opportunity for the parties under investigation for an antitrust infringement or a merger to consult them on significant legal, factual or procedural issues during the course of an investigation. Similarly, the parties have the right to be heard and present evidence before a decision is reached.

When it comes to giving businesses general guidance, half of the competition authorities do not provide any guidance other than the text of laws and by-laws – this is the case for Bosnia and Herzegovina, Kosovo, and Montenegro. Albania and the Former

Yugoslav Republic of Macedonia stand out for having published guidance on substantive analysis and calculating fines; Albania also has guidance on investigative procedures. Serbia has issued administrative guidelines on the calculation of fines and on investigative procedures, but not on substantive analysis. The absence of enforcement guidelines in the majority of the economies could be the result of insufficient enforcement, since guidelines are the fruit of experience, best national practices and case law.

The way forward for investigation probity

In order to ensure full independence of their competition authorities, governments should continue to refrain from giving any directions on cases. They also need to resist the temptation to interfere in more subtle ways, for example in budget allocation. Independence also hinges on competition authorities having sufficient resources and on the existence of a functional decision-making body at all times, with members being appointed on merit.

Publication of case decisions, annual reports and enforcement statistics would have a greater impact if they had more visibility and were more easily accessible on well-designed websites belonging to the competition authorities.

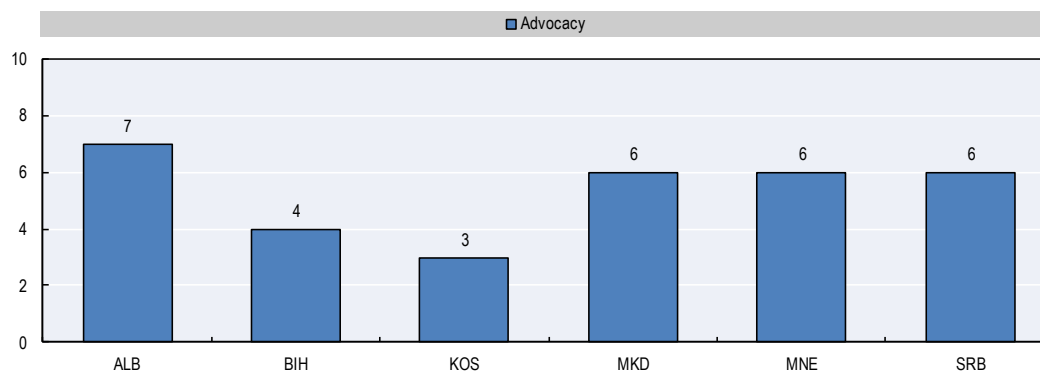
Stakeholders would benefit from more guidance on enforcement practices, as competition authorities have published few or no guidelines on how they apply competition law provisions. Until the SEE economies gain enough experience in enforcing competition law to develop national guidelines themselves, a good intermediary step would be to use existing EU guidelines. EU guidance notes are easily applicable to the substantive rules in the SEE economies' competition laws as the laws are all closely aligned with the EU *acquis*.

Advocacy

Competition may be inhibited by public policies, laws and regulations that create barriers to entry or distort incentives for firms. Some distortions are unnecessary and can be eliminated without affecting the government policy objectives. The mandate of a competition authority should therefore extend beyond merely enforcing competition law to addressing the additional obstacles to competition. It should also participate in formulating public policies to ensure they do not adversely affecting competitive market structures, business conduct or economic performance. Accordingly, the competition authority should be able to advocate for competition and contribute to the public policy discussion by assessing policies against barriers to competition and flagging potential threats for competition.

This section considers the capacity of the competition authority to advocate for a more competitive environment at different government levels. Such advocacy can involve reviewing new and existing regulations to identify any unnecessary distortions to competition and performing market studies that may lead to policy recommendations on how to foster competition and make the regulatory environment more pro-competition. Figure 5.9 shows how the six reviewed economies score for the number of adopted criteria in the advocacy policy area.

Figure 5.9. Advocacy: Number of adopted criteria



Note: The maximum number of criteria that could be adopted is 8. See the methodology chapter for information on the *Competitiveness Outlook* assessment process.

StatLink  <http://dx.doi.org/10.1787/888933703865>

All six economies advocate for competition to varying degrees, but lack resources

The competition authorities in all six SEE economies issue competition policy recommendations for laws and regulations at the central government level; four also do so at local government level. Except for Kosovo, all economies scrutinise new public policies that may affect competition, although they have insufficient resources to carry out thorough, effective assessments. As for anti-competitive behaviour, however, while the legal framework for scrutinising laws and regulations by the competition authorities is mostly in place, their actual activity and involvement differ widely. Albania stands out with its active competition assessment work. The Albanian competition authority enforces its right to review laws and regulations, has issued guidelines on the process, and reviews a large number of laws and regulations through its legal department. Only a limited number of its recommendations are successful though. In the other jurisdictions, the involvement of the competition authorities in the review of laws and regulations varies. The authorities rarely receive draft laws and regulations or on time; they have no specialised staff, manuals or guidelines; and the few recommendations they issue are seldom used. The public bodies/governments are under no obligation to respond publicly to the authorities' recommendations.

Market studies are another instrument that competition authorities can use to advocate for competition and to help them understand a market better. Market studies assess the level of competition in a particular sector, identify factors that prevent or distort competition, and issue recommendations to private firms and public bodies on how to improve competition in the sector concerned or help to determine enforcement priorities for competition authorities. The UK Consumer and Markets Authority uses market studies frequently and flexibly; its experience can help SEE economies fine-tune their processes (Box 5.4).

In the six SEE economies the competition authorities may conduct market studies; all except Bosnia and Herzegovina and Kosovo have done so in the last five years. Again, their actual activity levels differ. While Albania and Serbia are very active, other jurisdictions have only undertaken one market study within the last five years. None of the six governments is required to publicly respond to a recommendation in the market

study for how to address an obstacle or restriction to competition caused by public policy. Nevertheless, the governments of Montenegro and Serbia usually do.

Box 5.4. Good practice: Using market studies in the United Kingdom

In the United Kingdom, market studies are conducted under the Consumer and Markets Authority's (CMA) general review function in Section 5 of the Enterprise Act of 2002.

Market studies are one of a number of tools at the CMA's disposal to address competition or consumer protection problems, alongside its enforcement and advocacy activities. They examine the reasons why particular markets may not be working well, taking an overview of regulatory and other economic drivers, and patterns of consumer and business behaviour. They may lead to a range of outcomes, including: a clean bill of health, actions which improve the quality and accessibility of information to consumer, encouraging businesses in the market to self-regulate, making recommendations to the government to change regulations or public policy, taking competition or consumer enforcement action, or accepting an undertaking to change behaviours or divest. In the United Kingdom, other regulators can refer markets to the CMA for further investigation, and the Financial Conduct Authority has the power to conduct market studies in the markets it regulates.

In the experience of the Office of Fair Trading, and now the CMA, market studies have a number of unique benefits that make them a very flexible and cost-effective tool. These include their ability to identify and address the root causes of market failure, and the effective approach they offer of tackling regulatory and other government restrictions on competition. The Office of Fair Trading has made extensive use of market studies in specific circumstances: 1) when it suspected that a market was not working well, but there was no strong evidence that firms were breaking competition law; and 2) when it wanted to understand better why a market was not working well and whether it was due to regulatory restrictions. A list of all the market studies undertaken so far is available on the CMA website, together with the authority's policy documents in this area.

Source: OECD (2015d), *Competition and Market Studies in Latin America*, www.oecd.org/daf/competition/competition-and-market-studies-in-latin-america2015.pdf.

The way forward for advocacy

Conducting a competition assessment of laws and regulations, and market studies, can help to root a competition authority firmly in a country's political and economic landscape. An authority that raises its voice in a competent manner and on a regular basis against public or private restrictions of competition will not be overlooked, and can establish a competition mindset and culture within an economy. This will also strengthen the authority's standing and reputation when it enforces against anti-competitive restrictions by private firms.

As competition assessments and market studies are resource-intensive activities that divert resources from the primary task of competition enforcement, **adequate funding and specialised staffing of the competition authorities will again be needed.**

The governments should ensure that their competition authorities are always involved in drafting or reviewing laws and regulations that have the potential to affect competition in a sector. The authorities should be given sufficient time to comment. Their recommendations should be taken seriously and the governments should commit to publicly explaining themselves when they do not follow the competition authority's recommendations.

The competition authorities should develop a sound process to guide their assessment efforts. The OECD's Competition Assessment Toolkit is a practical methodology to help competition authorities and other decision makers identify and

evaluate existing and proposed policies to see whether they unduly restrict competition (Box 5.5; OECD, 2016c). Where a detrimental impact is discovered, the toolkit helps to develop alternative ways to achieve the same objectives, with minimal harm to competition. The toolkit can be used in four key ways:

- as part of an overall, high-level evaluation of existing laws and regulations (either for the economy as a whole or for specific sectors)
- as part of a regulatory impact assessment process for new laws and regulations
- by competition authorities to structure their competition advocacy efforts
- by government bodies, particularly those engaged in the development and review of policies and materials for domestic use (for example, ministries that develop laws, or the competition authority when it evaluates the competitive impacts of regulations).

The toolkit can also be applied and adapted in a decentralised manner across government at both federal and state levels.

Box 5.5. Good practice: Contribution of competition assessments to growth and productivity

Australia was the first country to systematically review all of its laws and regulations for their impact on competition. In the mid-1990s, more than 1 800 state and federal laws and regulations were examined for unnecessary restraints on competition (Hilmer, 1993). The results led to a sea change in the performance of the Australian economy. The Productivity Commission that evaluated the outcome of the project found that on average GDP growth had been at least 2.5% above the estimated level without regulatory reform. Household incomes increased, employment rose, inflation dropped and the economy's overall resilience increased.

The OECD carried out the first in-country competition assessment review using its Competition Assessment Toolkit in Greece in 2013 (OECD, 2014b). The project was undertaken with the support of the Hellenic Competition Commission. It covered four sectors of the economy: retail trade, food processing, building materials and tourism. Together, they accounted for approximately 21% of Greek GDP. The project examined 1 053 pieces of legislation from these sectors: 555 provisions were found to be potentially harmful and were assessed further. This yielded 329 recommendations that could generate a total economic value of EUR 5.2 billion (2.5% of GDP), essentially in the form of increased consumer benefit or higher sector turnover.

Recommendations included:

- liberalising the distribution and the pricing of the retail of over-the-counter medicines, for instance by allowing the formation of retail chains and allowing supermarkets to sell over-the-counter medicines such as aspirin
- replacing some “command and control” regulations requiring foods to be sold in a certain way, or in certain packaging, with stronger requirements for information for consumers
- removing requirements to notify or seek approval for prices that might lead to inefficient market outcomes, or even assist illegal collusion under competition law (e.g. for hotel rooms and marinas)
- lifting barriers to entry in some sectors, such as for asphalt or fresh milk.

Two follow-up projects took place in Greece in 2014 and 2016. Romania (OECD, 2016d) and Mexico (OECD, 2018) have also joined up with the OECD to implement competition assessments, and a project is currently underway in Portugal, scheduled to finish in January 2018.

Source: OECD (2016d), *OECD Competition Assessment Reviews: Romania*, <http://dx.doi.org/10.1787/9789264257450-en>; OECD (2014b), *OECD Competition Assessment Reviews: Greece*, <http://dx.doi.org/10.1787/9789264206090-en>.

The SEE economies should incorporate the guidance on market studies that has been developed by the OECD and the International Competition Network (ICN) in order to inform the process and to ensure an efficient use of resources and results with good implementation prospects. The guidance given in the ICN's *Market Studies Good Practice Handbook* (ICN, 2016) can be easily adopted and implemented by the SEE economies. It builds on the best practices of the ICN's more than 120 members, and includes sections on:

- planning the information-collection process, including engaging in internal consultations
- organising research, taking into account spending constraints, and thinking of alternatives if initial efforts do not bring results
- methods for collecting information, with an emphasis on empirical evidence over qualitative evidence
- analysing information, e.g. considering if the information meets the authority's requirements and if it confirms the initial hypotheses, as well as possible steps for information verification
- safeguarding confidential information with information handling procedures.

Conclusions

Overall, the six reviewed SEE economies have most of the basic building blocks in place for a functional competition policy regime aligned with international standards. They have all adopted policies to prohibit anti-competitive behaviour and review mergers. They have also taken steps to support the enforcement of competition law. Competition authorities are formally independent and have most of the tools and powers that allow them to enforce competition law effectively.

Some challenges persist, however. The enforcement record is among the most important indicators of an effective competition regime – all six SEE economies have considerable room for improvement in that regard. Accordingly, the competition authorities could consider intensifying enforcement activity, in particular in the area of hard-core cartels and bid rigging in public procurement as a matter of priority. Governments should enable them to do so by providing adequate resources, and should continue to respect their independence. Guidance for stakeholders on enforcement practices could also be improved by publishing explanatory documents that help businesses, their legal advisers and the public to understand how competition laws are applied. In order to reduce public barriers to competition, market studies and competition assessment should be undertaken on a regular basis and governments should seriously consider the recommendations issued. More regional co-operation could help in all areas.

Addressing these challenges could improve the business environment in the six SEE economies and ultimately lead to increases in productivity, business integrity, new businesses and exports.

Notes

1. Available at www.oecd.org/regreform/sectors/countryreviewsofcompetitionpolicyframeworks.htm.
2. A cease and desist order is a document sent from the court or the competition authority to an individual or business to stop engaging in an illegal activity (“cease”) and not take it up again later (“desist”).
3. For instance, the Competition Council of Lithuania has averaged a ratio of direct consumer benefits to budget of at least 7:1 since 2012 (Competition Council of the Republic of Lithuania, 2017). The estimated consumer benefit generated by the EC Directorate-General for Competition, averaged between 0.1 and 0.2% of GDP, amounting to between EUR 14.21 billion and EUR 28.72 billion (DG Competition, 2017). The UK Consumer and Markets Authority calculated that for the period 2014-17 the estimated direct financial benefit to consumers of its activities was GBP 3.7 billion in aggregate, representing annual average consumer savings of GBP 1.2 billion. The ratio of direct benefits to cost was 18.6:1 (CMA, 2017). The Dutch Authority for Consumers and Markets generated savings for consumers of around EUR 760 million in 2016 (ACM, 2017).
4. Available at www.oecd.org/competition/inventory-competition-agreements.htm.

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Annex 5.A1.

Competition policy: Indicator scores

Table 5.A1.1. Competition policy: Indicator scores

Policy area: scope of action		ALB	BIH	KSV	MKD	MNE	SRB
Sub-dimension	Indicator						
Competences	Does the competition law apply also to firms located outside your jurisdiction whose behaviour directly affects competition and/or consumers in domestic markets?	1	1	1	1	1	1
	In your jurisdiction, are state-controlled firms exempt from the application of competition law when conducting commercial activities in competition with private firms?	1	1	1	1	1	1
Powers to investigate	Can your competition agency compel (or ask a court to compel) firms investigated for a possible antitrust infringement to provide information?	1	1	1	1	1	1
	Can your competition agency compel (or ask a court to compel) third parties to provide information to help an investigation on an antitrust infringement?	1	1	1	1	1	1
	Can your competition agency perform unannounced inspections/searches in the premises of firms investigated for a possible antitrust infringement aimed at gathering evidence (with or without a warrant/court authorization)?	1	1	1	1	1	1
	If yes, has your competition agency performed unannounced inspections in the premises of firms investigated for a possible antitrust infringement at least once in the last five calendar years (2012-16)?	1	0	0	0	1	1
	Can your competition agency compel (or ask a court to compel) merging firms to provide information to help it assess the merger?	1	1	1	1	1	1
	Can your competition agency compel (or ask a court to compel) third parties to provide information to help it assess the merger?	1	1	1	1	1	1
Powers to sanction/ remedy	Can your competition agency impose, or ask a court to impose, remedies or a cease and desist order on firms that have committed an antitrust infringement?	1	1	1	1	1	1
	If yes, can your competition agency impose, or ask a court to impose sanctions on firms that do not comply with remedies imposed on them with respect to an antitrust infringement they have committed?	1	1	0	1	1	1
	Can your competition agency impose, or ask a court to impose, sanctions on firms that have committed an antitrust infringement?	1	1	1	1	1	1
	Can your competition agency, or a court, accept or impose remedies on firms in order to clear a merger?	1	1	1	1	1	1
	Can your competition agency impose, or ask a court to impose, sanctions on a firm that hinders an investigation on an alleged antitrust infringement?	1	1	1	1	1	1
	If yes, have sanctions been imposed on a firm and/or individuals for hindering an investigation on an antitrust infringement at least once in the last ten calendar years (2007-16)?	1	1	0	1	1	1
	Can your competition agency impose, or ask a court to impose, sanctions on firms and/or individuals that do not comply with a decision concerning a merger?	1	1	1	1	1	1
	Can your competition agency impose, or ask a court to impose, interim measures while performing an investigation of an alleged antitrust infringement because there is a concern that this may lead to irreversible damages?	1	1	1	1	1	1
	Can your competition agency, or a court, settle voluntarily with the parties investigated for an alleged antitrust infringement and thus close the investigation?	1	0	1	1	1	1
	Can your competition agency, or a court, clear a merger that raises anticompetitive concerns by negotiating/accepting remedies that address these concerns at an early stage and thus avoid to perform a more in-depth investigation?	1	0	0	1	1	0

Table 5.A1. **Competition policy: Indicator scores** (*continued*)

Policy area: scope of action							
Sub-dimension	Indicator	ALB	BIH	KSV	MKD	MNE	SRB
Private enforcement	Can individuals bring a legal action to seek damages from firms that have committed an antitrust infringement?	1	1	1	1	1	1
	Can firms bring a legal action to seek damages from firms that have committed an antitrust infringement?	1	1	1	1	1	1
	Can a group of consumers (either collectively or through a consumer association) bring a legal action to seek damages from firms that have committed an antitrust infringement?	1	1	1	1	1	1
Policy area: anti-competitive behaviour							
Sub-dimension	Indicator	ALB	BIH	KSV	MKD	MNE	SRB
Mergers	Does the decision maker conduct an economic analysis of the competitive effects of mergers when investigating them?	1	1	0	1	1	1
	When assessing a merger can the decision maker consider whether the merger is likely to generate efficiencies?	1	1	1	1	1	1
	Has the decision maker blocked or cleared with remedies at least one merger in the last five calendar years (2012-16)?	0	0	0	1	1	1
Horizontal agreements	Are anticompetitive horizontal agreements (including cartels) prohibited in your jurisdiction?	1	1	1	1	1	1
	Does the decision maker conduct an economic analysis of the competitive effects of horizontal agreements when investigating them?	1	1	0	1	0	1
	When investigating an allegedly anticompetitive horizontal agreement can the decision maker consider any efficiency this may generate?	1	1	1	1	1	1
	Have sanctions and/or remedies been imposed on at least one cartel in your jurisdiction in the last five calendar years (2012-16)?	1	0	1	1	1	1
	Have sanctions and/or remedies been imposed on at least one anticompetitive agreement that is not a cartel in your jurisdiction in the last five calendar years (2012-16)?	1	1	0	0	1	1
	Does your jurisdiction have a leniency/immunity program for cartel participants (firms and/or individuals)?	1	1	1	1	1	1
	If yes, has the leniency program generated at least one application in the last five calendar years (2012-16)?	0	0	0	1	1	1
Vertical agreements	Are anticompetitive vertical agreements prohibited in your jurisdiction?	1	1	1	1	1	1
	Does the decision maker conduct an economic analysis of the competitive effects of vertical agreements when investigating them?	1	1	0	1	1	1
	When investigating an allegedly anticompetitive vertical agreement can the decision maker consider any efficiency this may generate?	1	1	1	1	1	1
	Have sanctions and/or remedies been imposed on at least one anticompetitive vertical agreement in your jurisdiction in the last five calendar years (2012-16)?	1	1	0	0	0	1
Exclusionary conducts	Are exclusionary conducts by dominant firms and/or by firms with substantial market power prohibited in your jurisdiction?	1	1	1	1	1	1
	Does the decision maker take non-market-share factors (such as conditions of entry, ability of smaller firms to expand, and ability of customers to switch to smaller rivals) into account when determining dominance?	1	1	1	1	1	1
	Does the decision maker conduct an economic analysis of the competitive effects of exclusionary conducts when investigating them?	1	1	0	1	1	1
	When investigating an allegedly exclusionary conduct can the decision maker consider any efficiency this may generate?	1	1	1	1	1	1
	Has the decision maker in your jurisdiction imposed sanctions and/or remedies on at least one firm for exclusionary conduct over the past five calendar years (2012-16)?	1	1	0	1	1	1

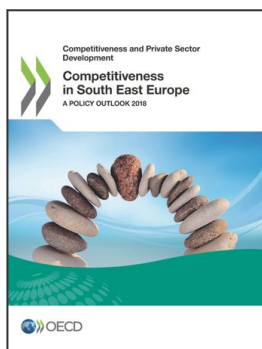
Table 5.A1. Competition policy: Indicator scores (continued)

Policy area: probity of investigation		ALB	BIH	KSV	MKD	MNE	SRB
Sub-dimension	Indicator						
Independence	Have the government/ministers given binding directions to the competition agency on whether it should open an investigation on an alleged antitrust infringement at least once in the last five calendar years (2012-16)?	1	1	1	1	1	1
	Have the government/ministers given binding directions to the decision maker in your jurisdiction on whether it should close an investigation on an alleged antitrust infringement at least once in the last five calendar years (2012-16)?	1	1	1	1	1	1
	Have the government/ministers given binding directions to the competition agency on whether it should impose/not impose (or ask a court to impose/not impose) specific remedies when closing an investigation on an alleged antitrust infringement at least once in the last five calendar years (2012-16)?	1	1	1	1	1	1
	Have the government/ministers given binding directions to the competition agency (or other public bodies) on whether it should not undertake a market/sectoral study at least once in the last five calendar years (2012-16)?	1	1	1	1	1	1
	Have the government/ministers overturned a decision concerning the clearance of a merger at least once in the last five calendar years (2012-16)?	1	1	1	1	1	1
	B_2.6 Have the government/ministers overturned a decision concerning the prohibition of a merger at least once in the last five calendar years (2012-16)?	1	1	1	1	1	1
Accountability	Does your competition agency publish regularly a report on its activities?	1	1	0	1	1	1
	Are decisions that ascertain the existence of an antitrust infringement published by the relevant decision maker?	1	1	1	1	1	1
	Are decisions that block a merger or clear a merger with remedies published by the relevant decision maker?	1	1	1	1	1	1
	Can decisions on antitrust infringements and mergers (whether taken by a competition agency or a court) be subject to judicial review with respect to their substance?	1	1	1	1	1	1
Procedural fairness	Does your competition agency provide the party/parties under investigation for an antitrust infringement with opportunities to consult with your competition agency with regard to significant legal, factual or procedural issues during the course of the investigation?	1	1	1	1	1	1
	Do parties have the right to be heard and present evidence before the imposition of any sanctions or remedies for having committed an antitrust infringement?	1	1	1	1	1	1
	Does your competition agency provide the parties under investigation for a merger with opportunities to consult with your competition agency with regard to significant legal, factual or procedural issues during the course of the investigation?	1	1	1	1	1	1
	Do parties have the right to be heard and present evidence before a decision on a merger is reached?	1	1	1	1	1	1
	Does your competition agency publish procedural guidelines or public documents explaining its investigative procedures?	1	0	0	0	0	1
	Does your competition agency publish guidelines that explain how abuses of dominance are assessed?	1	0	0	1	0	0
	Does your competition agency publish guidelines that explain how horizontal agreements are assessed?	1	0	0	1	0	0
	Does your competition agency publish guidelines that explain how vertical agreements are assessed?	1	0	0	1	0	0
	Does your competition agency publish guidelines that explain how mergers are assessed?	1	0	0	1	0	0
	Are there published administrative guidelines that explain how monetary sanctions for antitrust infringements are set by your competition agency, or recommended by it to the court?	1	0	0	1	0	1

Table 5.A1. **Competition policy: Indicator scores** (*continued*)

		Policy area: advocacy					
Sub-dimension	Indicator	ALB	BIH	KSV	MKD	MNE	SRB
Advocacy	Does your competition agency (or another public body) advocate competition at central government level?	1	1	1	1	1	1
	Does your competition agency (or another public body) advocate competition at local or regional government levels?	1	1	0	0	1	1
	Are all new public policies that may have implications for competition subject to a competition assessment in your jurisdiction?	1	1	0	1	0.5	0.5
	In case 9.3 has been answered with “yes”, is the competition agency involved in the competition assessment?	1	1	0	1	1	1
	Can market/sectoral studies be performed in your jurisdiction?	1	0	1	1	1	1
	If yes, has at least one market/sectoral study been performed in your jurisdiction in the last five calendar years (2012-16)?	1	0	0	1	1	1
	If a market/sectoral study identifies an obstacle or a restriction to competition caused by an existing public policy, can the study include an opinion/recommendation to the government to remove or reduce such obstacle or restriction?	1	0	1	1	1	1
	If a market/sectoral study includes an opinion/recommendation to the government concerning an obstacle or restriction to competition caused by an existing public policy, is the government required to publicly respond to this opinion/recommendation?	0	0	0	0	0	0.5

Note: 1 – “Yes”, criterion adopted; 2 – “No”, criterion not adopted.



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