



The Republic of Macedonia is situated in the central part of the Balkan Peninsula. The country borders Serbia and Montenegro to the north, Albania to the west, Greece to the south, and Bulgaria to the east. The capital is Skopje with more than 600,000 inhabitants.

International recognition of Macedonia's independence from Yugoslavia in 1991 was delayed by Greece's objection to the new State's use of what it considered a Hellenic name and symbols.

The Republic of Macedonia is a parliamentary democracy with an executive government composed of a coalition of parties from the unicameral legislature (*Ńiđđaièđ, Sobranie*), and an independent judicial branch with a constitutional court.

The country is member of the UN, Council of Europe, associate member of *La Francophonie*, and the WTO. It is a candidate for joining the EU, and is also expecting NATO membership.

Macedonia's overarching goal is to join the EU. It was the first country from the Balkan Region to sign the Stabilisation and Association Agreement with the European Community and its Member States on April 09, 2001. The Stabilisation and Association Agreement (SAA) was ratified by all Member states and it entered into force on April 01, 2004. In 2005, Macedonia was officially recognised as an EU candidate nation.

Economy¹

The Republic of Macedonia is considered a country with an intermediary-developed industry, with continuing growth of the industrial production. The process of transition in the economy was triggered in 1995. The Republic of Macedonia has an open economy, highly integrated into international trade, with a total trade-to-GDP ratio of 79.5 percent. The most important sectors are agriculture and industry. The service sector also grew in

PROFILE	
Population:	2 million***
GDP (Current US\$):	4.7 billion***
Per Capita Income: (Current US\$)	1,980 (Atlas method)*** 6,470 (at PPP)**
Surface Area:	25,710 sq. km
Life Expectancy:	73.5 years**
Literacy (%):	96 (ages 15 and above)**
HDI Rank:	60***
Sources:	
- World Development Indicators Database, World Bank, 2004	
- Human Development Report Statistics, UNDP, 2004	
(**) For the year 2002	
(***) For the year 2003	

the past few years. Work force education and skills are competitive, but without adequate jobs. The country economic policy is to attract foreign investments and to increase employment rate. One of the biggest features of the country economy is the fiscal discipline which maintained stable course of the currency for a long period. The country also makes effort to develop Small and Medium-sized Enterprise sector.

Looking back, the country together with Montenegro, Bosnia and Hercegovina and Kosovo belonged to the less developed regions in the former Yugoslavia. It suffered severe economic difficulties after independence, when the Yugoslav internal market collapsed and subsidies from Belgrade ended. In addition, it faced many of the same problems faced by other former socialist East European countries during the transition to a market economy.

The outbreak of the Yugoslav wars and the imposition of sanctions on Serbia and Montenegro caused great damage to the Republic's economy, with Serbia constituting 60 percent of its markets prior to the disintegration of

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1 http://en.wikipedia.org/wiki/Republic_of_Macedonia#Economy

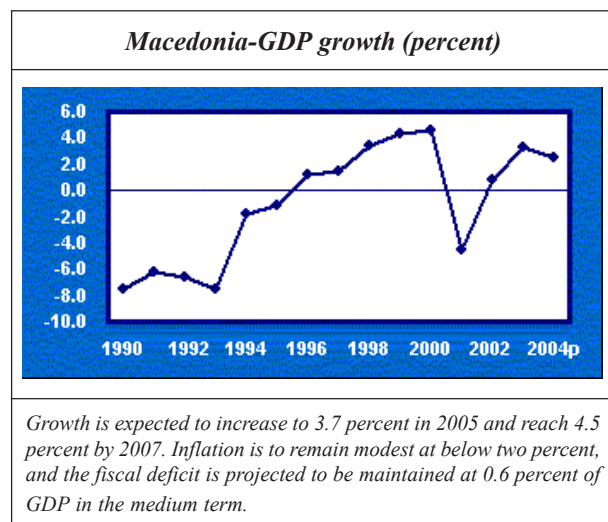
Yugoslavia. Matters worsened when Greece imposed a trade embargo on the Republic between 1994-1995. Some relief was afforded by the end of the Bosnian war in November 1995 and the lifting of the Greek embargo, but the Kosovo War of 1999 and the 2001 Albanian crisis caused further destabilisation.

The Macedonian economy has since made a sluggish recovery, though the extent of unemployment, the grey market, corruption and a relatively feeble legal system continue to cause significant problems and a low growth rate. The Republic still has one of the lowest per capita GDP in Europe.

Since the end of the Greek embargo, Greece has become the most important business partner of the Republic of Macedonia. Many Greek companies have bought former state companies in the country, such as the oil refinery Okta, the baking company Zhito Luks, marble mines in Prilep, textile facilities in Bitola etc.

Growth barely recovered in 2002 to 0.9 percent, then rose by 3.4 percent in 2003, 2.9 percent in 2004, and about four percent in 2005. The past few years saw a significant rise in the economy and with the recent candidacy for the EU, the country should be making rapid progress.

After gaining independence on September 08, 2001, an extensive trade liberalisation programme has been implemented, following the basic WTO principle to eliminate quantitative restrictions on trade. Macedonia has been a WTO member since April 04, 2003, has signed a FTA with all Southeast Europe (SEE) countries (including Moldova), and with the EU.



Competition Law: Evolution and Environment

Competition law is a field, which covers, many cross cutting issues such as State aid, mergers, public utilities, and enforcement. It is a major and priority part of the Interim Agreement. Substantially, new rights and obligations have been created for the business community.

There are also new challenges for the State and the way it intervenes in the market. The first is how to effectively transpose and implement liberalisation measures, which are inherent in the EU *acquis communautaire* and in WTO requirements. The second, its corollary, is related to the proper regulation of the free market system.

In respect of *anti-trust*, a new legal framework for the regulation of monopolies and competition policy was created by the adoption of the Law Against Restraints of Competition in 1999. A Monopoly Authority, charged with the implementation of competition law, was created and has been operating since April 2000. The Authority's mandate includes vetting M&As; sanctioning possible abuses of dominant position by undertakings; and evaluating practices and agreements, which may cause restriction of competition.

Changes and Supplements to the Law Against Limiting Competition were enacted in April 2002. This has been perceived as a very important and initial step to harmonise domestic legislation with the EU *acquis*, as a prerequisite for Accession of Macedonia to the EU. The existing Law (last amended in 2002) has been prepared according to the 6th version of the German law. But despite its importance, it has some drawbacks related to the normatively unclear set-up, incomplete harmonisation with the positive acts of the Republic of Macedonia, and insufficient regulation of the basic rules of procedure before the bodies for the protection of competition. Due to this, applying this law in practice was inefficient and ineffective, presenting an obstacle for more efficient protection of competition in the market.

By signing the SAA, the Republic of Macedonia pledged to bring its legislation, in the fields of competition and State aid, gradually in line with those of the EC. According to Article 68 of the SAA, the approximation of laws shall extend to certain fundamental elements of the Internal Market *acquis*, as well as to other trade-related areas, along with a programme to be defined in co-ordination with the Commission of the European Communities. In addition, several reasons for drafting the new law are:

- harmonisation of the law with the EU *acquis* in the field of competition, as a priority obligation of the Republic of Macedonia, according to Article 68 of the SAA;
- harmonisation with the positive acts of the Republic of Macedonia, especially with the amendments in the area of trade law, as well with the conditions on the market;
- the need for a new institutional set-up of the body for the protection of competition on the basis of the principles of autonomy, collaboration and independence in the decision-making process, as well as appointment and accountability before the legislative powers;
- regulation of the procedure to be adopted by the body for protection of competition in accordance with the procedural rules of the EU; and

- strengthening of the coercive measures, respecting the provisions of the law and enforcement of the decisions made by the bodies.

Taking into consideration the fact that efficient protection of free competition is a principle of a market economy, as well as the continuous enhanced progress of Competition Law of the EU taking place, a new *Law on Protection of Competition* has been enacted (Official Gazette of the RM No. 04/05). The Law on Protection of Competition (LPC) entered into force on January 25, 2005. The body responsible for implementing the LPC is the Commission for Protection of Competition (CPC).

The new Macedonian Competition Law guarantees:

- freedom and autonomy in performing economic activities;
- free entry for all participants in the market;
- protection of the free competition by all potential forms of restriction;
- equality of all entities in the eyes of the bodies for the protection of competition;
- autonomy, collaboration and independence in the decision-making process;
- appointment and accountability of the body for protection of competition before the legislative power; and
- enhanced coercive measures in the law enforcement process.

The implementation of the LPC is not limited only to practices undertaken within the territory of the Republic of Macedonia, but also abroad, if they produce certain effects within the territory of the Republic of Macedonia. Article 3, paragraph 1 of the LPC stipulates that it shall apply to all forms of prevention, restriction or distortion of competition that negatively affect the territory of the Republic of Macedonia, even when the effects result from acts and actions carried out or undertaken outside of the territory of the Republic of Macedonia.

Article 81 of the Rome Treaty (Treaty on Establishing EEC) is completely transposed into the Law, which makes the competition law of the EU an integral part of the Macedonian order by its legal effect and importance.

It is also important that this law additionally incorporates Article 86 from the Rome Treaty in its original form, regarding public undertakings and undertakings having special and exclusive rights or concessions. Article 3, paragraph 3 of the law, stipulates that, whilst assessing the forms of restriction on competition between the Republic of Macedonia and European Communities and their member countries, the criteria arising from regular application of the EU competition rules shall apply. This is a novelty introduced by the Law.

This high level of approximation with the EU legislation means that the competition legislation in the Republic of Macedonia presents an integral part of the EU competition legislation. Thereby, the Macedonian companies are assured that, by entering the EU market, they will not face the new competition rules, which differ from the provisions of the Macedonian Law. Thus the Macedonian economy will become EU compatible and Macedonian companies will be strong enough to face the competition pressure, which they will face when entering the internal EU market.

This approximation will have an effect on the improvement of the business climate, in terms of attracting foreign investments, due to the certainty that in the Republic of Macedonia there will be the same conduct rules applicable in the market as those in the EU.

Institutions and its Competencies

An essential element for market economy development is a strong and competent competition authority, being able to perform its tasks independently and providing enhanced welfare. Related to this issue, evident progress has been achieved in the Republic of Macedonia. The Monopoly Authority is the competent body for the implementation of the Law, established as a body within the Ministry of the Economy. The new Law stipulates the transformation of the Monopoly Authority into the Commission for Protection of Competition (CPC).

The Commission is an independent state body with a status of a legal entity, is independent in its work, and in making the decisions within the scope of its competencies determined by the Law on Protection of Competition. The budget necessary for the work of the CPC is provided from the Budget of the Republic of Macedonia. The CPC must report to the Assembly of the Republic of Macedonia, and must submit, to the Assembly, a detailed annual work report.

The CPC consists of a President and four members. The President and members of the CPC are appointed and dismissed by the Assembly of the Republic of Macedonia, upon a proposal by the Commission, for a period of five years, with the right to reappointment. The President and at least one member of the CPC are engaged on a full time basis in its operations. The President represents and manages the work of the CPC.

Any citizen of the Republic of Macedonia, having completed higher education in a legal or economic area, and having work experience of over five years in his area of specialty; and having special knowledge in the field of competition, trade law, management and finances, can be appointed as President and member of the CPC.

For the duration of their term of office, the President and the members of the CPC may not be members of the

Assembly of the Republic of Macedonia, the Government of the Republic of Macedonia; persons performing duties in bodies of the political parties; members of management bodies of an undertaking, or of any other form of association of legal and natural persons that might lead to a conflict of interest. Failure to submit or to adopt the detailed annual report can create grounds for collective dismissal of the CPC.

The investigative and other expert activities of the Commission are performed by a Department of qualified personnel, managed by a Secretary General.

The total number of the staff in the CPC, including the Commission members, is 16. The educational levels of the persons engaged is: 13 with university degrees, and three, with high school degrees. In the period up until 2007, the total number of engaged staff is planned to increase to 24 employees, out of which 21 will have a university degree and three with a high school degree.

By law, crucial interference of political and private interests will be avoided to enable the Commission to perform its tasks of implementation of the competition law.

Anticompetitive Business Practices

The Law states special cases of agreements restricting competition. The basic kinds of agreement arrangements in all three existing forms are defined in the law: agreements, decisions of association of undertakings, and concerted practices. All agreements having the effect or objective of the prevention, restriction or distortion of competition shall be null *ex lege*. Article 8 of the law refers

to the block exemptions. This refers to cases when certain forms of agreements or group of agreements contain certain restrictions, and the parliament may declare that these arrangements shall not be prohibited. The law clearly states all these agreements.

The law identifies when it shall be considered that an undertaking has a dominant position in the market, as well as criteria for determining the dominant position. The law introduces extinguishable legal presumptions of existing individual, or collective, dominant position of the undertakings, on the basis of their market share, expressed in percentages. When examined in line with Article 82 of Rome Treaty, the Commission is empowered to look at collateral behaviour or refusal to trade and for violation of the so-called essential facilities doctrine. The law also stipulates the procedure and content of a decision, by which the Commission declares whether it is a concrete case of abuse of dominant position in the market. This form of proceeding, in its basics, is borrowed from the Regulation 1/2003.

As regards concentrations (M&As etc), the law follows the EU regulation *No. 139/2004* applicable since May 01, 2004. The law determines the situations, which shall not be considered as concentrations, as a situation of so-called failing company defence i.e. where control is acquired in conditions when the undertaking to be acquired is bankrupt.

The law contains penalty provisions and distinguishes serious and simple infractions of the provisions of the Law. A fine amounting up to 10 percent of the value of the

Box 84.1: Competition Authority Restores Consumers' Right to Use of Different Types of Water Meters

The Consumers' Advice Bureau in Skopje was established by the Consumers Organisation of Macedonia (OPM). The main purpose of the Bureau is to protect the rights of citizens as consumers. One of the major problems raised by citizens to the Bureau concerned water meters.

The Public Enterprise for Water Supply and Sewage Systems, taking advantage of its monopolistic position in the market, required citizens to purchase and use only INSA and ABB water meters, which are more expensive, and thus violated the right to free choice. They refused to accept the use of Siemens water meters, which in citizens' opinions are better and cheaper than the others.

After receiving numerous complaints regarding water meters, OPM and the Bureau decided to take initiative and address the issue. Together with members of the CPC, they supported consumers'

right to free choice when purchasing goods. The issue was submitted to the Urbanisation and Construction Board of the Council of the City of Skopje, which reviewed the arguments submitted by both parties, and decided in favour of the Public Enterprise for Water Supply. The rationale was that introducing a new type of water meter in the water supply system would cause interference in its operation.

Consumers were not satisfied by the decision and submitted the case for further review to the CPC. Upon review of the case, the agency concluded that the Water Supply Enterprise limited the consumers' right to free choice, taking advantage of its monopolistic position. It decided that, in the future, consumers could use any type of water meters complying with the necessary A-tests and certificates confirmed by the Standardisation Bureau, according to the Law on Measurement Units and Measurement Instruments.

Source: Consumers Organisation of Macedonia - OPM

aggregate annual turnover for serious infractions; and up to one percent of the value of the aggregate annual turnover for simple infractions for the firms; and serious fines are also applicable against the persons responsible in the firms. Regulating the possibility to impose security measures for serious infractions, for the legal persons, as well for the responsible person, is a novelty introduced by the law. Introducing more rigorous and restrictive penalty regimes, aiming to achieve the effect of a criminal policy, in the field of competitive behaviour in the market, is also a crucial characteristic of this law. Having stipulated the amount of penalty provisions in this way, the law is adjusted to the EU's regulations.

The Commission while performing its activities cooperates with other state bodies and institutions, for competition matters. The Commission and the regulatory bodies are obliged to exchange data and information necessary for performing their duties.

Sectoral Regulation

Energy Sector

Restructuring of the energy sector in the Republic of Macedonia and its eventual privatisation is under preparation, with the background of the open regional market of electricity whose top priorities are EU integration and integration into the energy markets of South East Europe. The restructuring will take into account the Memorandum of Understanding on the Regional Energy Market in SEE, and its Integration into the European Community Internal Energy Market (the Athens Memorandum 2003), whose signatory is Macedonia.

The new *Law on Energy* 2002 drafts the following:

- energy policy and planning energy development, by preparation of strategy for complex, long-term energy development and following the implementation of this strategy;
- creating conditions in the energy market (electricity and gas), and defining the rules as a base for functioning of this market;
- energy transit through energy systems and their use by the interested domestic and foreign entities;
- defining conditions for performance of the energy actions from the energy production, transit and distribution point of view, under market conditions of economic performance;
- creating conditions for extensive investment actions in the energy sector, with a possibility for wider involvement of foreign capital;
- continuous and quality supply of consumers with all kinds of energy, in accordance with the energy balances; and
- defining rules for extensive use of renewable energy sources within energy consumption in the country.

The Energy Regulatory Commission was established in 2002 with the law for change and supplementation of the

law on energy. It is composed of five Commissioners appointed by the Parliament. It is fully independent from the interests of the energy industry and the Governmental bodies.

The main competencies of the Energy Regulatory Commission are to ensure:

- safe, secure, continual and quality energy supply to the final consumers;
- protection of environment and nature;
- protection of consumers; and
- promotion and protection of a competitive energy market based upon the principles of objectivity, transparency and non-discrimination.

Among the key tasks assigned to the Energy regulatory body are:

- prescribes the conditions for supply of different types of energy;
- makes decisions on the prices of different types of energy, according to the methodology of price fixing, tariff systems for different types of energy and other regulations;
- issues, changes, takes away and monitors the enforcement of the licences for performing of separate activities in the energy domain;
- prescribes the rules for connecting to the power supply networks; and
- participates in the settlement of disputes and proposes measures regarding the dispute.

Telecommunications Sector

Reform of the sector has been driven by plans to join the EU eventually. Internet and broadband penetration are both low but are expected to grow due to increased focus on the sector by the incumbent. The mobile market has experienced strong growth and has recently surpassed 50 percent penetration. Mobile data services are available and digital terrestrial TV trials have been launched.

The telecommunications sector in the former Yugoslav Republic of Macedonia was until 2005 regulated by the *Act on Telecommunications* passed in 1996 and by subsequent modifications and supplements (1998), as well as by other acts and regulations that define more precisely this field. Competent institutions governing the issues in the field of telecommunications are the Ministry of Transport and Communications (MTC) and Telecommunications Directorate, which was established as an Authority within the Ministry of Transport and Communications with the capacity of a legal entity.

Following the SAA agenda, a new *Law on Electronic Communications* was prepared and adopted by the Parliament in 2005. This law foresees the establishment of an Independent Regulatory Body for Electronic Communications to oversee sector development.

Pursuant to the Electronic Communications Law (“Official Gazette of RM” No. 13/2005) the Agency for Electronic Communications has been established as an independent regulatory authority, which commenced its operations on July 01, 2005. The Telecommunications Directorate ceased to exist with the commencement of operations of the Agency for Electronic Communications.

These legislative changes have partially implemented the EU’s regulatory framework for communications, setting the scene for competition although the incumbent still dominates.

The new law requires the telecom regulator to cooperate with the CPC in assessing situations of operators with significant market power.

Consumer Protection

Using public meetings and media lobbying the Consumers Organisation of Macedonia (OPM) convinced the Macedonian Government to work on a new Consumer Protection Act. The country’s many consumer laws were extremely confusing and did not properly protect consumers. So OPM set out to lobby for rationalisation of consumer protection.

The government adopted the Law on Consumer Protection in 2004. This Law regulates the protection of the rights of consumers, the conditions and manner of consumer protection, conditions for trade operation that are of relevance for protection of the rights of consumers, rights and obligations of consumer associations, as well as the competencies of the state administration bodies concerning consumer protection.

The Act provides for the establishment of a Council for Consumer Protection. The Council comprises of 12 members including representatives of state administrative bodies. The Council takes care of the protection and fulfillment of consumer rights regarding the protection of health, safety, and economic interests. It is also empowered to examine the existing legal framework and proposes adequate amendments in the area of the legal protection of consumers. It evaluates the condition on the market in relation to the level of consumer protection.

Concluding Observations and Future Scenario

The new established CPC, within the scope of its competencies, is authorised to supervise the application of the provisions of the Law, monitor and analyse the conditions on the market to the extent necessary for the development of free and efficient competition. The Commission determines the methodology for market research, rules and measures for protection of competition, measures for elimination of the prevention, restriction or distortion of competition.

Box 84.2: Consumers Oppose a New System of Payment for Heating Energy Consumption

The Public Enterprise for Central Heating in Skopje announced that, from the next heating season, the energy usage in apartment buildings and public facilities, with several owners, would be measured by one collective calorimeter placed in the heating substation. This meant that payment would be collected per heating area of squared metre.

This change raised many questions and dilemmas regarding the legal basis of the new system, the technical capability of the facilities and their water heating systems, as well as other factors related to the use of calorimeters. As a result of this announcement, many citizens expressed their concerns and dissatisfaction to the Consumers’ Advice Bureau in Skopje.

After receiving many complaints from citizens, the Consumers Organisation of Macedonia took submitted a request to the CPC and the City Council of Skopje in order to review the issue.

The Commission, together with representatives from the OPM, reviewed the case of introducing calorimeters for the measurement of collective heat energy usage, and concluded that consumers had not been consulted when the decision was made; although they were obliged to pay additional fees, in addition to the fact that the new system of measurement did not give them the opportunity to control their expenses and own consumption.

The Commission put this issue on the agenda of a session of the City Council. Representatives from the Public Enterprise for Central Heating attended the session. The City Council decided that the conditions for introducing a new measurement and payment system for heat energy usage based on calorimeters were not fulfilled at the moment.

Finally, the Organisation for Consumers’ Protection used the media to inform the consumers about the decision adopted.

As a result, citizens succeeded in opposing the introduction of the new system of payment for heat energy usage.

Source: OPM

The Commission will be undertaking the following actions in the forthcoming period:

- adoption of by-laws with regard to the block exemptions from the general prohibition of agreements, decisions and concerted practice, minor importance agreements and the form and content of the concentration notification;

- creating conditions for further development of the free market competition, as fundamental conditions for sustainable economic progress and consumers' welfare;
- strengthening of public awareness, particularly with respect to companies, judiciary and other state bodies, significant for the competition protection;
- promotion of the competition and increased public awareness by advocacy – introducing the law and the EU regulations transposed in the law with an objective to enable the undertakings and institutions that perform activities which may influence competition to adhere to the competition rules and to be familiar with the content of the new law and the competencies of the authorised body for competition protection; and
- preparation of opinions upon draft-laws and other acts that regulate issues pertaining to the economic activities and expert opinions on issues in the field of competition policy and protection of competition on the market.

In the antitrust sector, a new Law on Protection of Competition has been in force since January 2005. It reflects the *acquis* in this area and covers all sectors. Secondary legislation incorporating the Community's regulations on block exemptions, *de minimis* rules and mergers is under preparation. Because of constitutional requirements, fines can be imposed only by a court upon an application by the CPC. To ensure proper enforcement of the legislation, the country's constitutional order would need to be changed, without prejudice to the right of

judicial review, so that the CPC could impose fines or other sanctions directly, without having to pass through the courts. This is particularly important in view of the possibility that court backlogs, in combination with short limitation periods, could make the imposition of fines only a theoretical possibility.

Progress has been made regarding the adoption of appropriate and EU-compatible antitrust and State aid legislation. It is now important to adopt the relevant implementing legislation and to visibly enforce the antitrust and State aid rules. The country needs to promote competition by encouraging liberalisation, the improvement of public procurement practices, and an approach to privatisation designed to foster competition.

To make the antitrust rules an effective tool, the CPC should be given efficient means directly to enforce the law and impose sanctions, including fines. The large-scale non-payment of social security contributions and taxes by a large number of enterprises can lead to considerable distortions of competition and is incompatible with the internal market. Efforts need to be made to remedy this situation.

Overall, the Republic of Macedonia will have to make considerable and sustained efforts to align its legislation with the *acquis* and to implement it in the medium term. The country might not be able to effectively enforce the legislation in the medium term unless the State Aid Commission and the CPC succeed in establishing a credible enforcement record.

Suggested Readings

- Competition Law and Policy in the European Union, *OECD, 2005*
- Council Decision on the Principles, Priorities and Conditions Contained in the European Partnership with the Republic of Macedonia, Brussels, 9 November, 2005
- Analytical Report for the Opinion on the application from the Macedonia for EU membership, Brussels, 9 November, 2005
- The European Competition Network, The Antitrust Source, July 2005
- Report on Competition Policy 2004, European Commission, 17 June 2005
- International Forum on Competition Law, 7 April 2005

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