

COMPARATIVE ANALYSIS OF FACTORS FROM MARKETING AND LEGAL PERSPECTIVE AND POLICIES THAT AFFECT SMEs IN MACEDONIA AND EU

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Abstract

This paper examines the current factors that affect the competition of SMEs in Macedonia as a representative country of the transitional economy from marketing and legal perspective, as well as the state policies that are being implemented in Macedonia on one side and the developed countries on the other. The development of SMEs depends on the mutual collaboration and engagement of the enterprises and the national institutions, because SMEs are one of the greatest sources of strength of world economy, quality way of creating new jobs and competitive economy. In transitional economies this fact gets even greater significance in light of the gradual integration of the countries in the European Union. Having in mind that the European Union (the Lisbon Strategy) has set a very high goal - to become the leading economic force by the end of 2010, and SMEs are identified as the most significant factor, Macedonia, as a contender to join the EU should have the same goal.

In Macedonia, SMEs are usually organized as Ltd., as a hybrid form of company which contains elements of personnel and elements of a capital company. Supporting the development and long-term survival of SMEs in the market is achieved among other things, with a good formulation of the legal and administrative framework of the company itself. This is particularly reflected in the use of the opportunity offered by the Macedonian Company Act for independent and autonomous regulation of a number of issues that are of particular interest to the company's founding act of the company, in this case - the contract of the company. By using this opportunity that the law offers and the self regulation of number of issues within the founding act, SMEs become more competitive in the market, can successfully build their reputation and avoid problems that can occur with the operation of the company at the very beginning, and thus would avoid costly and lengthy court procedures.

In order to discern the current situation of SMEs in Macedonia in terms of how they work, we have conducted two studies (research technique: questionnaires; purposive sample of 1st - 40/ 2nd - 50 entrepreneurs in service and production industry; June - September, 2009/February 2011; tool of analysis: SPSS software). The first research was done to determine the degree to which SMEs in Macedonia use marketing activities and provide an answer to the following:

- 1. Do the owners/managers of enterprises carry out research before beginning or during the work of the enterprise in the domestic or on foreign markets?*
- 2. What data sources and research methods do they most often use?*
- 3. Whether they need more information of the markets where they are performing?*

The second research had an aim to provide information about:

- 1. Whether the founders of the companies in establishing their agreement despite the mandatory regulations have provided optional regulations that would have been helpful for further work?*
- 2. Whether they know the meaning of the founding act?*
- 3. How detailed is the contents of the Founding Act?*

Key words: SMEs, marketing, legal factors, state policies.

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Introduction

Entrepreneurship has become a major movable coupling of economic and social development worldwide. The role of SMEs is significantly amended by the transition from the model of the so-called managed economy to a so-called entrepreneurial economy. The impact of SMEs is manifested through the growth on the level of enterprises, local and national level. In contemporary economic theory and practice major attention is drawn to the analysis of the behavior of states in the screening and implementation of national policy for support and development of small and medium enterprises, and implementation of market orientation and marketing strategy and planning in the operations of small and medium enterprises as one of the key factors for the development of national economy and greater competitiveness of the economy. An increasing body of literature like: Carree and Thurik (2010), Parker (2009) and Van Praag and Versloot (2007) for surveys, indicates that small and medium size enterprises (SMEs) are of major importance for macro-economic growth (DG Enterprise & Industry, 2009). It is shown that proportional to their size, small firms create more jobs than large firms do (DG Enterprise & Industry, 2009). Small and new enterprises have an important role in innovation, which has replaced price as the most central competitive weapon in key parts of the economy (Baumol, 2002). The many experiments by these enterprises, even if not successful, facilitate implementation by larger firms (Nooteboom, 2000). New enterprises create a higher degree of competition, leading to a positive effect on aggregate employment growth five to eight years later (Fritsch, 2008). In industries where the SME sector is bigger, large firms are often more efficient because they can outsource activities to smaller firms. These positive structural contributions of SMEs to macro-economic performance outweigh the fact that on average, large enterprises outperform SMEs with respect to labour productivity and profitability. During much of the past decade SMEs have seen an impressive growth, but since the onset of the financial crisis this trend seems to have been interrupted, even though there are indications that, at least in the early stages of the crisis, EU SMEs have proven to be comparatively resilient (DG Enterprise & Industry, 2009). Some of the main findings in the European Commissions Directorate –General for Enterprise and Industry annual report on EU SMEs 2009, “European SMEs under pressure” are the following:³

- Between 2002 and 2008, SMEs in the EU-27 grew strongly and turned out to be the job engine for much of the European Economy. The number of SMEs increased by 2.4 million (or 13 %), whereas the number of large enterprises increased by only 2 000 (or 5 %);
- Between 2002 and 2008, the number of jobs in SMEs increased by 1.9 % annually, while the number of jobs in large enterprises increased by only 0.8 % annually. In absolute numbers, 9.4 million jobs were created in the SME-sector between 2002 and 2008;
- There are areas where SMEs outperform LSEs: the propensity to invest which is – for the EU non-financial business economy as a whole – highest for micro firms. For micro enterprises, gross investment in tangible goods amounts to 24 % of value added, compared to 19 % for all firms. While for a large part, this is due to particular service industries (real estate, leasing, etc), the fact remains that the propensity to invest in micro enterprises overall is still higher than could be

³For more information, see http://ec.europa.eu/enterprise/policies/sme/small-business-act/index_en.htm

expected on the basis of their profitability underlining their importance for the EU-economy;

- Over the long run, underlying structural determinants of the earlier growth trend in the number of enterprises in the EU, including the Internet revolution, the growth of the services sector and institutional developments favouring self-employment, are, expected to remain relevant in the coming years. When economic growth seriously picks up again, the number of SMEs is expected to resume its upward development.

In comparison to EU, the SMEs sector in Macedonia has a small-scale structure: the percentage of small enterprises is slightly higher than the European average. The contribution of small firms to employment in Macedonia is significantly higher than the European average while the contribution of the medium-sized enterprises is lower. As a consequence, the contribution of the total SME sector to employment (71%) surpasses the EU average (67%) (Table 1).

Table 1. Comparison of Enterprises, Employment and Value added in Macedonia vs. EU-27 for non-financial business economy (NACE C-I, K)

	Enterprises			Employment			Value added		
	FYROM		EU-27	FYROM		EU-27	FYROM		EU-27
	Number	Share (%)	Share (%)	Number	Share (%)	Share (%)	Billion €	Share (%)	Share (%)
Micro	40890	90.6	91.08	79563	29.5	29.7	n/a (not available)	n/a	21.0
Small	3792	8.4	6.9	74095	27.5	20.7	n/a	n/a	18.9
Medium-sized	376	0.8	1.1	38133	14.2	17.0	n/a	n/a	18.0
SMEs	45058	99.8	99.8	191791	71.2	67.4	n/a	n/a	57.9
Large	88	0.2	0.2	77644	28.8	32.6	n/a	n/a	42.1
Total	45146	100	100	269435	100	100	n/a	n/a	100

The first and most obvious question when starting up your own business is what form of entrepreneurship to choose. In the Republic of Macedonia, the Company Law that regulates this matter provides for the following five forms of companies: Public business partnership; Limited partnership; Limited partnership with shares; Company with limited liability; Joint Stock Company. In FYROM, the Company Act, Article 470 gives the following classification of traders, i.e. companies:

Micro trader is the trader who, in each of the last two accounting years, i.e. in the first year of operation has met the first criterion and at least one of the second and third of the following criteria: The average number of employees based on hours of work is up to 10 workers. Gross income acquired from any source does not exceed € 50.000 in MKD equivalence. At most 80% of the gross income of the trader is derived from a customer / consumer by a person associated with this customer / consumer. All rights of participation in the micro company are owned by at most two individuals.

Small trader is the trader who, in each of the last two accounting years, i.e. in the first year of operation has met the first criterion and at least one of the second and third of the following criteria: The average number of employees based on hours of work is up to 50 employees. The annual income is less than €2,000,000 in MKD, the total turnover is less than € 2,000,000 in MKD. The average value (at the beginning and end of the accounting year) of total assets (in assets) is less than € 2,000,000 in MKD.

Medium trader is considered the trader who in each of the last two accounting years, i.e. in the first year of operation has met the first criterion and at least one of the second and third of the following criteria: The average number of employees based on hours of work is up to 250 workers. The annual income is less than € 10,000,000 in MKD.

The average value (at the beginning and end of the accounting year) of total assets (in assets) is less than € 11,000,000 in MKD.

Traders who are not classified into micro, small and medium traders, acquire the status of large traders.

Under the provision of the Company Act, in case of inability to classify traders according to the criteria provided for micro, small and medium traders, they can be classified according to the first criterion, which is the number of employees. In Macedonia, the SMEs which were the focus of our research are usually organized as DOO (Limited liability company) or DOOEL (Limited liability company – single person) as a hybrid form of companies containing elements of personal and elements of capital company. The frequent use of this form of organization of SMEs in our country is because of the possibility offered by this form of autonomous regulation of a number of issues and relationships that are of particular importance for the development of the enterprise. According to the statistics of the Central Registry of the Republic of Macedonia, of all companies that are registered including inactive companies, only 1566 are formed as A.D.(Joint Stock Company), while the remaining 137,349 are Limited liability companies (DOO or DOOEL).

Regulations that apply to an economy's businesses during their lifecycles, can include start-up and operations, trading across borders, paying taxes, security, macroeconomic stability, corruption, skill level, the strength of financial systems, closing a business, etc. FYR Macedonia made significant strides in seven out of ten reform areas, (Doing Business report, 2011): Starting a Business, Construction Permit, Employing Workers, Registering Property, Getting Credit, Protecting Investors, Paying Taxes. Regarding the information on the situation of SMEs and SME policy in Macedonia and the EU, we follow the logic of the Small Business Act for Europe (SBAs 2008) 10 principles– Entrepreneurship, Second Chance, Think Small First, Responsive Administration, Finance, Public Procurement and State Aid, Single Market, Skills and Innovation, Environment and Internationalisation– which were developed to guide the conception and implementation of policies.

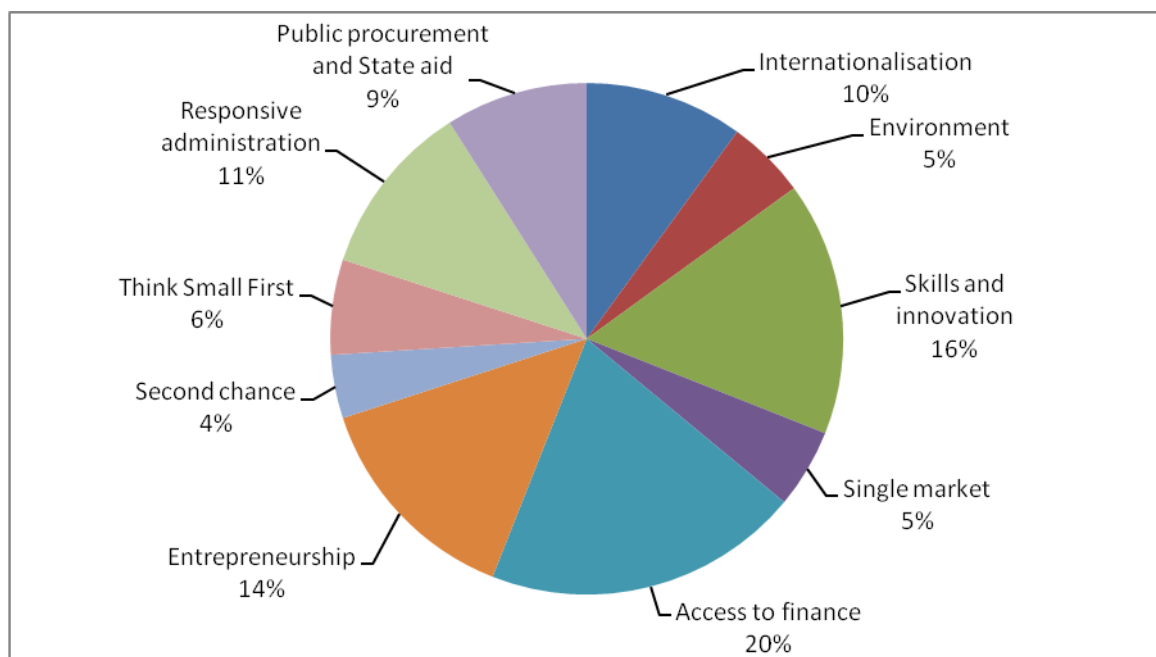


Figure 1. Distribution of policy measures by SBA principle: EU 27

In 2007-2009, in Macedonia were initiated actions in several areas regarding the policies that regulate the SME sector (SBA Fact Sheet FYROM, 2009):

Entrepreneurship - A course on business and entrepreneurship is compulsory in gymnasiums, in the four-year secondary vocational schools and in the new curriculum for primary education. The government organises SMEs promotional events, the celebration of the EU Day of the Entrepreneur, organisation of the European SME Week and selection of the Entrepreneur of the Year.

Second chance - In 2006 a new law on Bankruptcy has been adopted that is in line with the international trade standards (UNCITRAL), paying special attention to compatibility with the Trade Company Law.

Think small first - In 2002, the government presented the first National Development Strategy for SMEs 2002 – 2012. The SME support is implemented by the Agency for Promotion of Entrepreneurship (APPRM). The main tasks of APPRM are: realisation of the SME Programme, preparation of progress reports on the implementation of the European Charter for Small Enterprises, as well as implementation of other programmes adopted by the Government related to entrepreneurship and small enterprises. Consultation with SMEs takes place via the SMEs Forum. The feedback obtained was incorporated into the revised SMEs Programme.

Responsive administration - In 2008, an IT system for electronic submission of annual balance sheets was introduced. During 2007 and 2008, the Public Revenue Office achieved significant improvement in the development of filing and reporting procedures for SMEs through the preparation of an ease of access strategy for SMEs in their communications with the tax institutions and the way in which they make their tax returns.

Public procurement and state aid - In 2008, the Public Procurement Bureau has implemented an Information System for Electronic Filing (ISEF) through which all physical or legal persons may access calls for tenders and advertisements. This web-based system enables implementation of public procurement in electronic form.

Finance - In 2009, the Government opened an operational credit line with a total budget of € 100.000.000 based on European Investment Bank funds. The credit line is intended to support SME and start ups. The mechanism of its distribution involves the Macedonian Bank for Development and Promotion (MBDP) and commercial banks as intermediaries for the final beneficiaries. The credit line is implemented through 4 programs: 1) Co-financing and guarantees for long term investment credits and subsidized interest rates (€ 35 million); 2) Co-financing and guarantees of working capital credits and subsidized interest rates (€ 45 million); 3) Short term working capital credits with subsidized interest rates (€ 5 million); 4) Program for guarantees (€ 15 million).

Single market - During 2007 and 2008, the Economic Chamber of Macedonia organised five training sessions for the implementation of international standards.

Skills and innovation - In 2008, APPRM introduced a new Innovation Voucher Programme with maximum amount approved as a subvention by the state under this new scheme of € 1,500 that can be used for introduction of new product or service, investment in RD, JIT time Management, TQM, protection of Intellectual Property Rights. In 2009, the Ministry of Economy adopted the Programme for Support and Development of Clusters with activities such as: Preparation of a catalogue and a web page for the existing clusters; Training to improve clusters management; Improving of networking between regional cluster associations; Support for the establishment of new clusters; Organisation of cluster conferences. In 2009, APPRM together with Human Resource Development Fund implemented a Training Needs Analysis for SMEs. In November 2009, the Project “Technical assistance for Implementation of European Innovation Scoreboard for Macedonia” was implemented, which will increase the level of awareness among SMEs for more innovations in the future in their

activities. **Environment** - Examples of services provided to SMEs are: issuing green certificates, carrying out project evaluation for banks and investors, preparation of projects for Energy Efficiency (EE) and Renewable Energy Resources (RER) and professional training for EE and RER. **Internationalisation** - During 2007-2009, the Macedonian Government adopted an annual Programme for Improving the Competitiveness and Export of Macedonian Products and Services, which included: subsidies for private enterprises such as: costs of quality system certification (ISO) and product certification, HACCP system, costs of industrial design of product, costs of ICT related training of staff and cost for international application for patent and promotional activities: financial support for the organisation and participation on business forums and workshops in Macedonia and abroad, participation of Macedonian companies in International fairs, campaigns, publication of promotional materials, support and promotion of cluster development.

Methods

The first research was done to determinate the degree to which SMEs in Macedonia use market orientation and marketing activities. The second research had an aim to provide information about the effect of legal factors on the work and success of SMEs. The research technique that was used in both of the researches was questionnaires. The statistical samples were purposive samples of 40 entrepreneurs in service and production industry for the first and 50 entrepreneurs in the second research. The time table was June – September 2009 – 1st and February 2011 – 2nd research. Used tool of analysis: Statistical Package for Social Sciences (SPSS) software to determine the statistical correlation between the SMEs and their market orientation on one side, and SMEs and the implementation of legal acts on the other.

Results

The following results were acquired regarding the question: Do the owners/managers of enterprises carry out research before beginning or during the work of the enterprise in the domestic or on foreign markets?

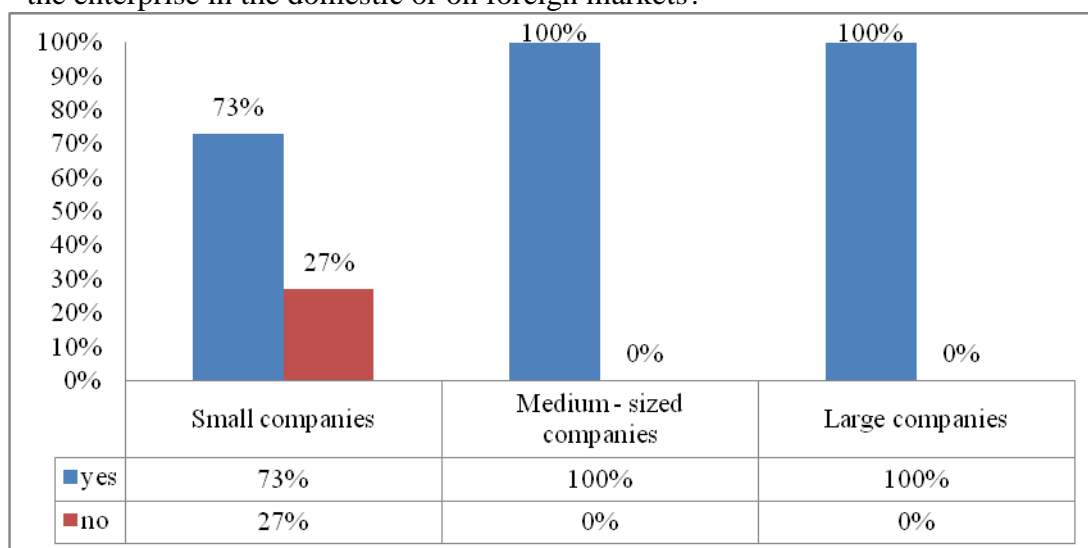


Figure 2. Share of enterprises that have conducted market research before starting the business

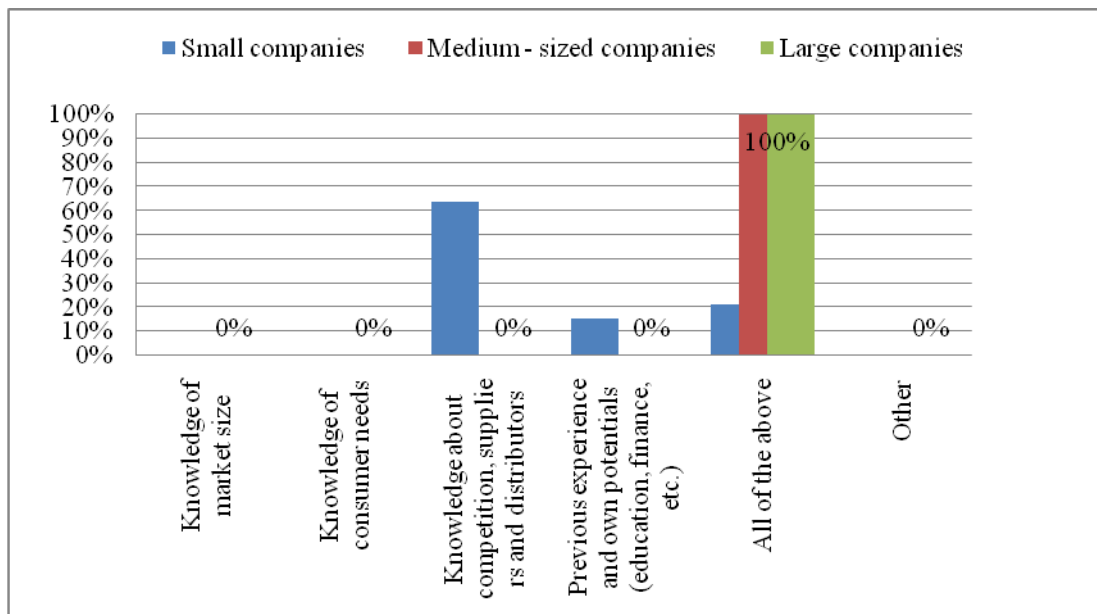


Figure 3. The type of knowledge that the owners had before starting the business

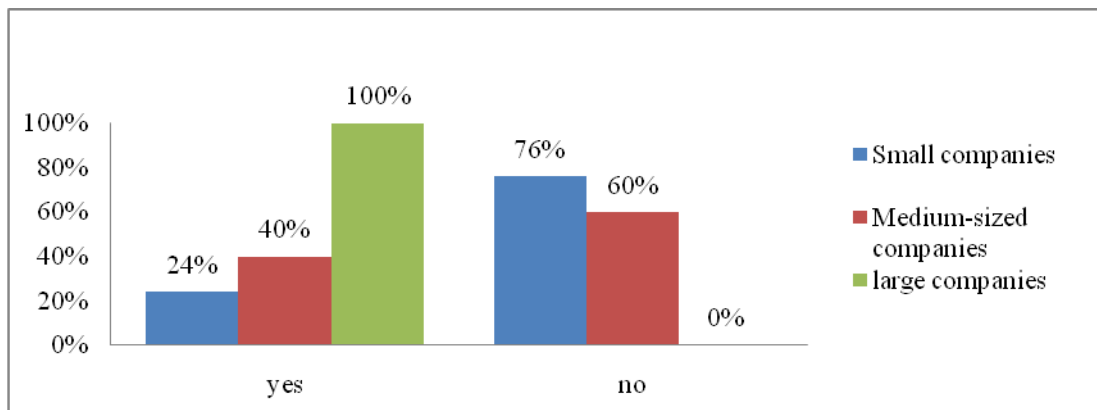


Figure 4. Share of enterprises that carry out market research throughout the work

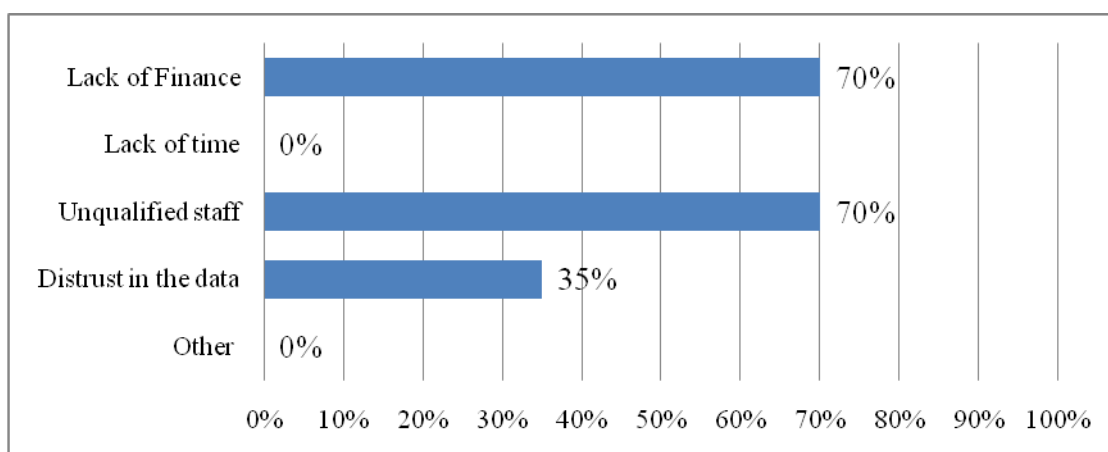


Figure 5. Main reasons for not conducting a market research

The results about the data sources and research methods which are most often used, were:

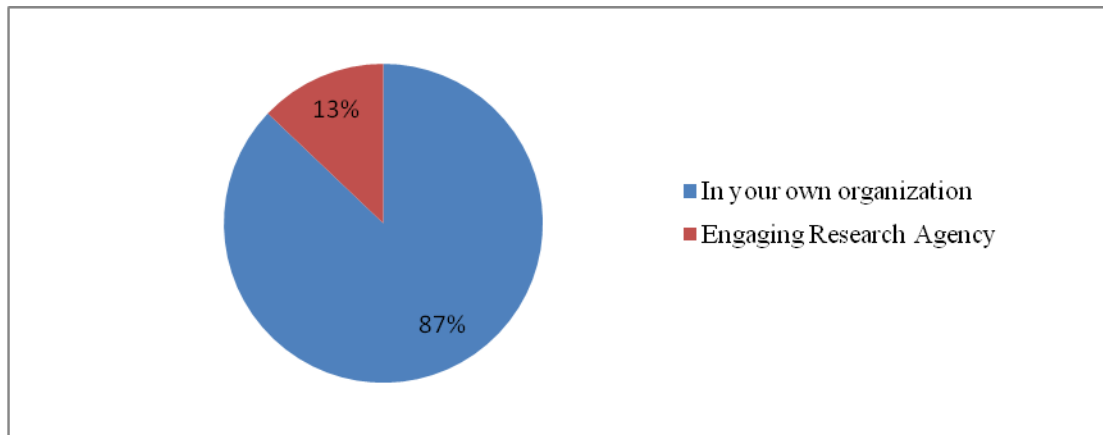


Figure 6. Ways of conducting the market research?

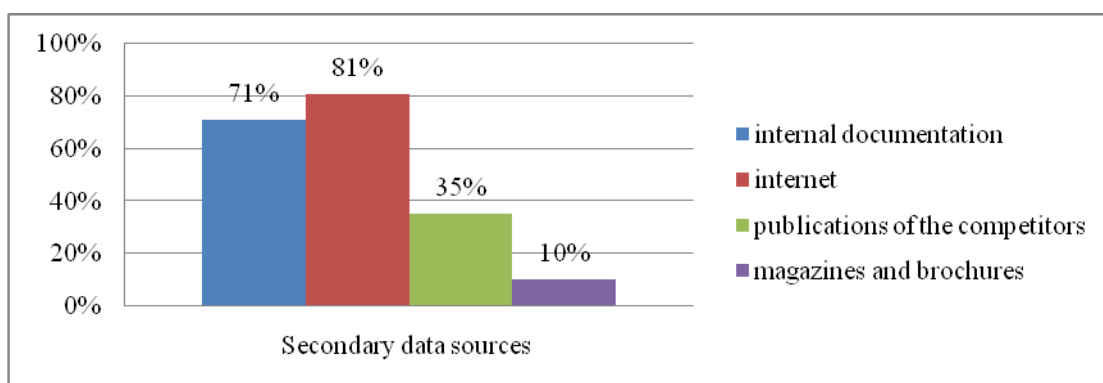


Figure 7. Type of secondary data sources that are commonly used in the market research

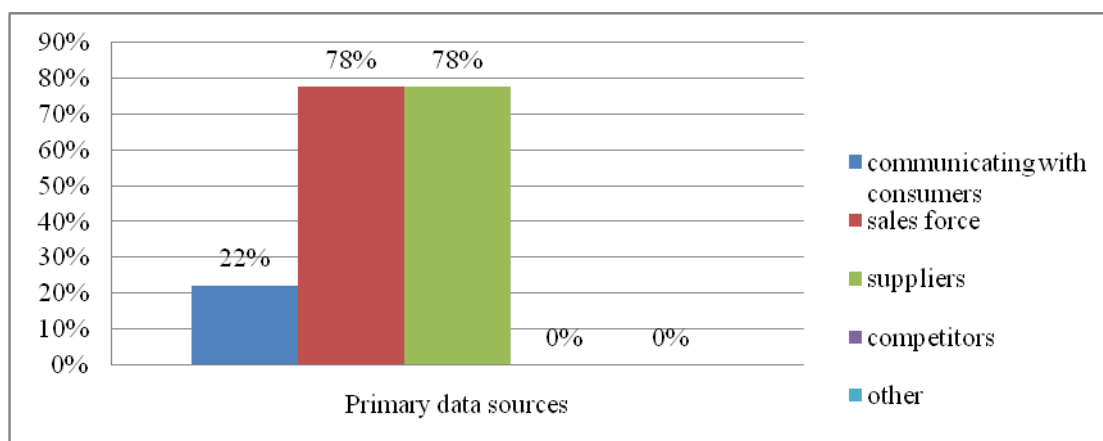


Figure 8. Type of primary data sources that are commonly used in the market research

Regarding the need for more information of the markets where the enterprises are performing on, we found out that:

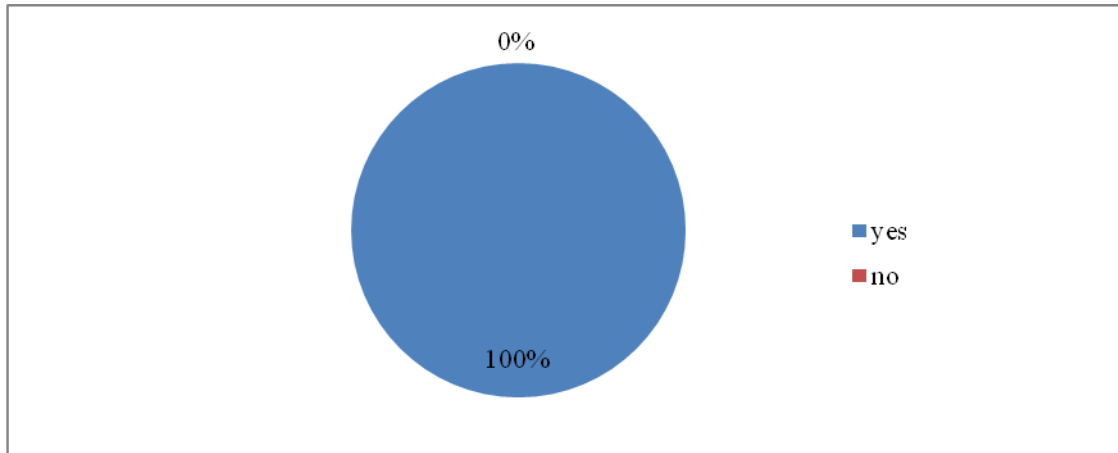


Figure 9. Share of enterprises that feel the need for more information featuring the market

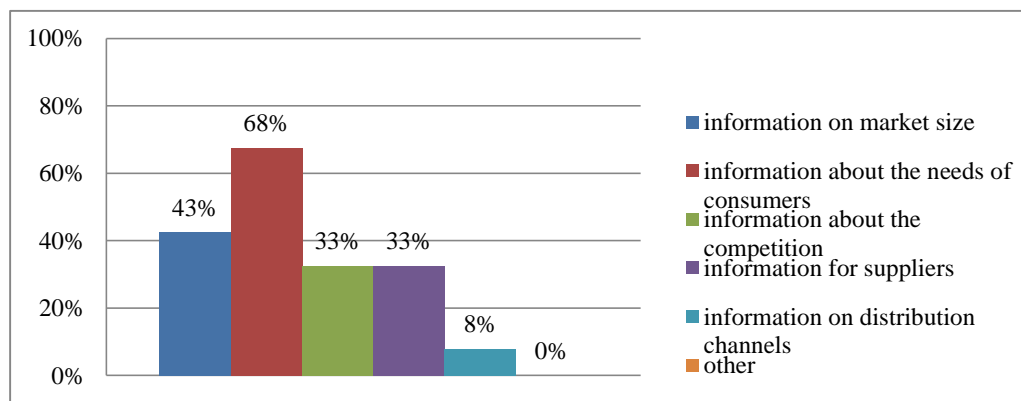


Figure 10. Type of data that enterprises have most shortage of and want to get with market research

The second research results show that SMEs in FYROM have very little knowledge of the legal possibilities and constraints of running their own business. They usually use short and pattern – like agreements that contain only obligatory legal provisions, and do not envision an autonomous regulation of internal relations in the manner that would be most suitable for them. As a result, very often the company operates only for a short period because when there is a misunderstanding between the partners, due to unregulated internal relationships, important decisions for the company cannot be made. This leads to expensive and lengthy court procedures, violation of honor and reputation of the enterprise, and thus loss of the market position. Issues related to the founding acts of capital companies in Macedonia are very important because they regulate issues and relationships that occur between the investors, and between the company and the wider community in which it operates and exists, issues of particular importance for the company's existence. Well-structured founding acts of the capital companies provide conditions for reduction of conflicts that can arise at a minimum, i.e. the lowest possible level, and thus at the very onset of operations of the company provide greater legal certainty for the investors, shareholders and partners and for all persons entering in any business relationship with the newly founded company, and all the "stakeholders". The name of the general founding act indicates that the provisions in it, except for those strictly required by the law and which must be contained in any agreement of the company, are of dispositive and binding nature. With the contract of the company, in some way the shareholders determine its shape and make the company more or less

closed. It plays the normative-legal role of an organizational act of the company, so we can freely say that the contract of the company is an integral agreement that governs the legal, property and administrative infrastructure of the company. In addition to the mandatory provisions which must be contained in any agreement, our Company Act provides the opportunity for optional regulation of a number of issues.

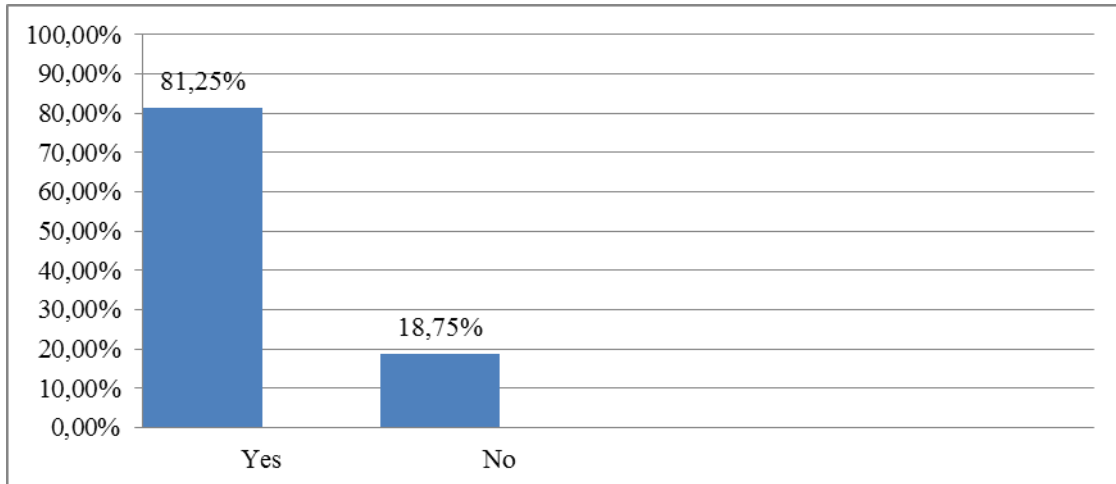


Figure 11. The percentage by which the founding act of the company determinates the advantages that the founders retain

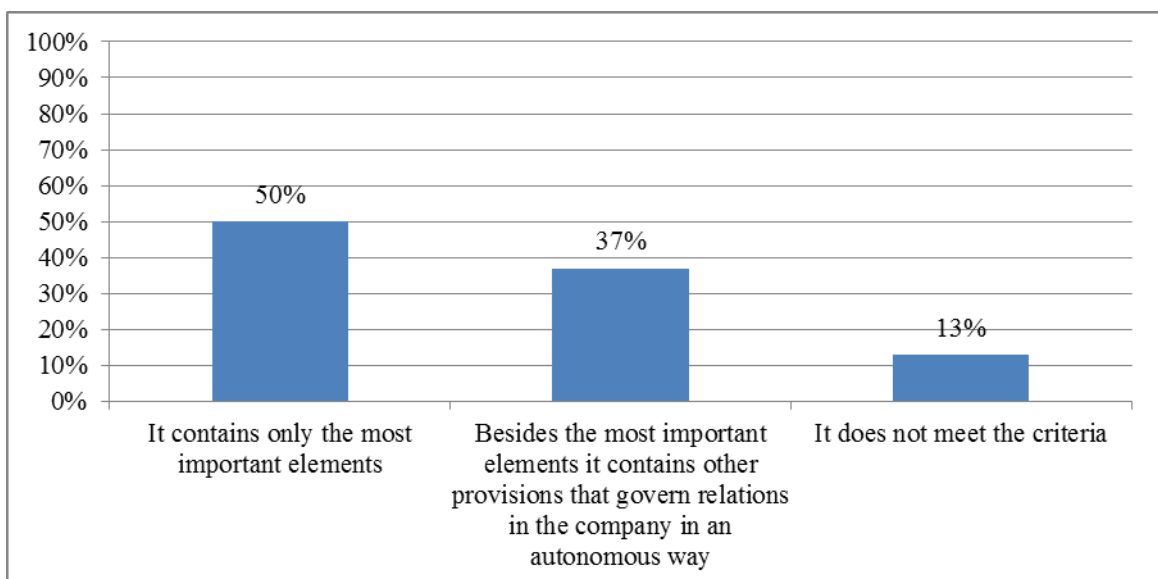


Figure 12. The share of detailed contents of the general act of the company

The current situation in our companies in relation to the legal possibility of autonomous regulation of certain issues in the contract of the company is in a phase where investors or founders still do not know the Company Act enough or do not use enough professional legal assistance in preparing the general founding general acts and are not sufficiently aware of the benefits of the legal opportunity for autonomous regulation of certain issues with the general act of the company. In order to access the acts of the other half of the surveyed companies, interested parties have to go thorough lengthy and complicated procedures. This is the result of the fear of the shareholders that if free

access to the acts and documents of the company is allowed, the business secrets of the company will be disclosed and perhaps abused by the competition.

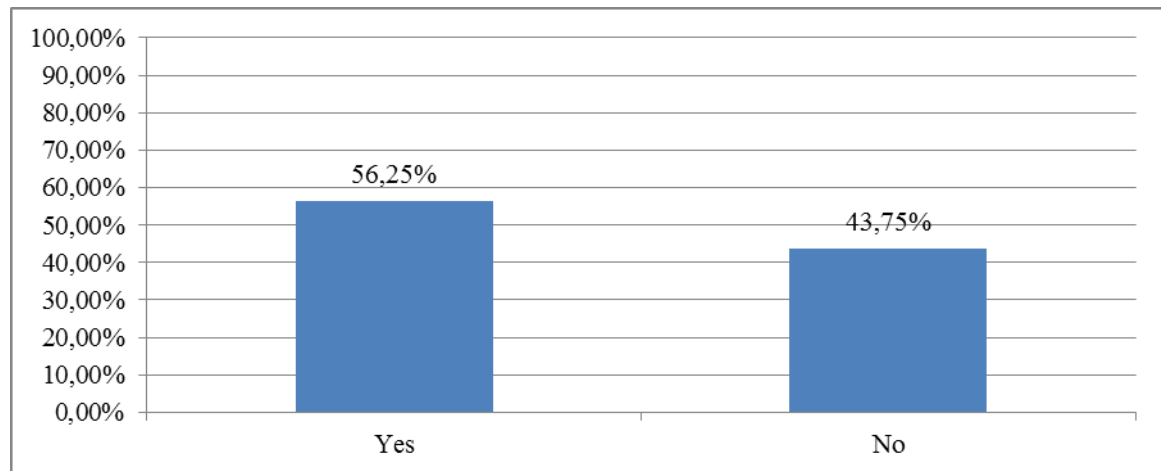


Figure 13. The percentage of allowance of free access to the statute – the founding act to interested persons

Discussion

The independent business and entrepreneurial SMEs represent the most valuable part of the economy of countries in transition, and hence the Macedonian economy. They are generators of social growth, new jobs, reducing poverty and a key factor in maintaining the stability of a country. The success of a company, a part of its size, depends from the synergistic effect of the mutual simultaneously actions both of the government and the company. As mentioned above, on national level, in Macedonia various steps towards higher level of competition of the SMEs are being made, but on other side, the cost to close a business and the number of years it takes to close a business remained constant over much of the period 2005-2009, without catching-up to the EU-averages. While there has been a progress as regards start-up conditions, in the other subsegments, i.e. labour regulation rigidities and other administrative processes (tax payments, property registration, costs of enforcing contracts), progress has been much more limited. The development of SMEs depends on the business-oriented legal and regulatory framework in the country. The current practice of business environment shows several weaknesses for the smooth management rooted in macroeconomic environment. From a macro perspective the legal issues are problems associated with the operation of the judicial system, which is slow in resolving disputes. Intermediate problems include lengthy procedures for obtaining construction and use permits because of lack of regulations on Urban Planning. At the micro level - lack of business information on local, regional and national level. Ideally, companies should adopt their own rules and standards of conduct, based on best practices. Competitiveness and success, in fact, are based on flexible legal mechanisms. What is missing in the Macedonia is the lack of assessment of the effects of regulations on the business environment. This assessment and evaluation of legal rules is useful because it would lead to results in the decision-making process by the companies themselves. Sadly but true, the effort of the companies on other side is not the strongest link in the chain and leads to regression in the process of strengthening the national economy. We can conclude that the SMEs in Macedonia don't have enough information about the market they compete on, don't take the needs and wants of customers seriously enough, they look upon marketing

activities as a cost instead as an investment and rarely include them into the business plans. The owners of SMEs don't have enough knowledge about running a business, don't understand the marketing process and its meaning for the success of a company in a market economy, and don't work transparent. All of these facts lead to losing the battle with competition from abroad because of the unclear or incorrectly defined business strategies. It is necessary for the owners of the businesses to acquire more knowledge and skills about the business they are in, about the usefulness of the internationally adopted rules of doing business and the national and international laws that refer to this issue. The results of the study generate a general picture of a invidious position of our domestic SMEs, especially in the area of insufficient information, poor marketing activities mostly consisting of TV advertising, neglecting the other elements of the marketing mix. Opposite of the situation in Macedonia, marketing research and activities are taken seriously everywhere in the world. Many authors have asserted that a market-oriented approach to business will result in better corporate performance (Kotler, 1991) and many studies have found a positive association between market orientation and performance. The industry of market research is constantly rising, with exception in 2009 in line with expectations given the economic downturn (ESOMAR Industry Report, 2010), especially in the manufacturing sector where the Fast Moving Consumer Goods, pharmaceutical and health-care sectors account for the lion's share of sales in research services (ESOMAR Industry Report, 2008). Consumer researches generated 83% of the research industry turnover (ESOMAR Industry Report, 2008). Most dynamical markets which invest in market research (in billions) on a year basis are Europe (\$13,299) and North America (\$9,188), with rise in the Middle East and the Pacific (\$0,442) (ESOMAR Industry Report, 2010). The development and long-term survival of SMEs in the market are also achieved by a well-formulated legal and administrative framework of the company. The structure of the company and its management is vital for its further development and success. This is particularly reflected in the use of the opportunity offered by the Company Act in Macedonia for independent and autonomous regulation of a number of issues that are of particular interest for the company, in this case - the contract of the company. By using this opportunity offered by the law and the self-regulation of a number of issues, the SMEs become more competitive in the market, successfully build its reputation and success, avoid possible problems caused by the operation of the company at the very beginning, and thus avoid costly and lengthy court procedures. The general constitutive acts, comparatively speaking, are the foundations for building a permanent, solid and reliable structure that will be able to survive major shocks that may occur in the life of the company. These acts have a status character and represent a normative act of the company. They, by their nature constitute legal organizational arrangements. The adopted founding acts are a source of law for the enterprise or company. The founding act of the company appears as a complementary tool for the regulation of relations in the joint stock company. When the company is founded, the first question is who will bear the costs of its establishment. According to the Company Act, Article 180, the costs of establishment of a limited liability company should be covered by all the founders in proportion to their deposits, but the same article stipulates that the issue can be agreed otherwise by the contract of the company, which means at the free will of the parties. The contract of the company may determine that certain rights belong only to a certain group or certain shareholders, and such rights are called special rights of the shareholders. They can be agreed as modification of the general rights provided in the Company Act or as additional rights. The contract may specify a jurisdiction, i.e. which body of the company will decide on profit distribution, and under which conditions and

criteria it will be carried out. In the countries of the Common Law system, the contract as a general act of limited liability companies may be longer and complex or shorter and simple depending on the will of the shareholders themselves. The laws of capital companies of these countries are based primarily on dispositive legal rules (enabling model). This means that the law offers the partners the possibility, when preparing the contract of the company as a general act, to decide on a large number of legal rules that will apply in their company, which would enable them to avoid the pattern-like contracts and to shape it according to the needs of their business. A good example for comparison is the legislation in Germany. The functioning of LTD there is regulated by a small number of legal provisions and its development is based more on practice. The Law on LTD is much smaller compared with the Law on JSC as another form of capital companies. With the law reforms in Germany in 2008, 87 articles of the law allow free regulation of relations in the company with the contract of the company. This shows that German law is quite liberal in relation to this hybrid form of capital companies. We can conclude that the national strategy for the development of SMEs in Macedonia has already been largely implemented, but what is lacking is the use of legal assistance by investors who take a dip in entrepreneurial waters by founding the company. They think that legal matters are the least important for starting and running a successful business venture, which is quite wrong and leads to larger and more painful problems. The benefit of a well-regulated general act of the company as one of the factors for the development of entrepreneurship may be of internal and external nature. Internal benefits of the company are: creating an ethical, motivated and stable working environment, legal certainty for both founders and future investors, and thus better positioning in the market, improvement of competitiveness, establishing fair relations in the company, solves the problems of the agency and provides greater accountability and transparency. External benefits are: increasing the value of the company and attracting investors. This results in avoiding lengthy and expensive court procedures, which according to our research may last up to 7 years, and if such actions occur, the precise regulation of relations in the general founding act would facilitate the work of judges. Predicting future situations and their regulation in the general founding acts will contribute to establishing a balance between the obligations or duties granted to the governing bodies and their rights.

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