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## ANTIMONOPOLY LEGISLATION OF UKRAINE: PROBLEMS AND PROSPECTS

**Formulation of the problem.** Improving the competitiveness of industrial entities is a central problem, the solution of which plays a key role in achieving sustainable economic growth, ensuring the economic security of the country. Of particular importance are the tasks of increasing the competitiveness of industry in connection with globalization. Today, the growth of enterprise competitiveness is associated with the introduction of Industry 4.0 technologies. The transformation of the industry in the conditions of Industry 4.0 requires the solution of at least two complex, difficult and interconnected tasks. First, the creation of conditions for the formation of the innovative potential of the enterprise, and secondly, the conditions for its implementation. And if the solution of the first task depends more on the internal environment of the enterprise, the solution of the second is due to the development of external institutional support.

**Literature review.** The problems of transformation of the economy and its institutional system have been sufficiently studied in scientific circles, types of models describing the behavior of economic agents, methods of decision-making characteristic of different models of their behavior, and types of firms have been developed [1-12]. However, so far no single theory of institutional systems transformation has been formed, and combinations of different theories are used to study it, which does not always take into account the specifics of specific countries against the background of changes in technological systems.

**Aim of research.** The aim of the article is to study the problems and prospects of antimonopoly law in Ukraine.

**Presentation of the basic material.** In Eastern Europe, antimonopoly law is close in nature to Western European law. The legal basis for regulating destructive competition in Ukraine is the legislation on protection of economic competition, which is based on the norms defined by the Constitution of Ukraine and consists of a

system of laws and other normative legal acts. Competition legislation of Ukraine is formed on the functional principle and aims at a comprehensive legislative regulation of relations in the field of economic competition.

The first special law aimed at protecting economic competition was the Law of Ukraine "On Restriction of Monopoly and Prevention of Unfair Competition in Entrepreneurial Activity" of February 18, 1992, which laid the legal foundations for restricting and preventing monopoly, preventing unfair competition in business and exercising state control. in compliance with antimonopoly law [13]. It should be emphasized that the first Competition Law of Ukraine was complex. It defined the basic concepts and categories of competition, the main types of violations in the field of competition, organizational and procedural principles of antimonopoly.

The law also provided that state control over compliance with antimonopoly law, protection of the interests of entrepreneurs from abuse of monopoly position and unfair competition is carried out by the Antimonopoly Committee of Ukraine in accordance with its competence. Most of the articles of the Law were devoted to the establishment and functioning of the Antimonopoly Committee of Ukraine. However, the specificity of the tasks and functions entrusted to the Antimonopoly Committee of Ukraine, necessitated the creation of a special regulation, which became the Law of Ukraine "On the Antimonopoly Committee of Ukraine" [14].

On November 26, 1993, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On the Antimonopoly Committee of Ukraine", which details the establishment of a state body whose goal is to ensure state protection of competition in business.

According to Art. 3 of the Law of Ukraine "On the Antimonopoly Committee of Ukraine" the main task of the Antimonopoly Committee of Ukraine (AMCU) is:

– implementation of state control over compliance with the legislation on protection of economic competition on the basis of equality of business entities before the law and the priority of consumer rights, prevention, detection and termination of violations of legislation on protection of economic competition;

– control over the concentration, concerted actions of economic entities and regulation of prices (tariffs) for goods produced (sold) by natural monopolies;

– promoting the development of fair competition;

– methodological support for the application of legislation on the protection of economic competition.

In addition, according to Art. 7 of the Law of Ukraine "On the Antimonopoly Committee of Ukraine", the AMCU, in addition to functions related to the control and prevention of violations of legislation in the field of economic competition, also performs functions inherent in the judiciary. He considers cases of administrative offenses, imposes fines.

The next step in the development of antimonopoly law of Ukraine was the Law of Ukraine "On Protection against Unfair Competition" [15], which entered into force in 1996. This Law defines the legal basis for protection of economic entities and consumers from unfair competition. The law is aimed at establishing, developing and ensuring trade and other fair practices of competition in carrying out economic activities in market relations.

To strengthen state regulation of the activities of natural monopolies in 2000, the Law of Ukraine "On Natural Monopolies" was adopted, which defines the bodies that carry out state regulation of natural monopolies; spheres of activity of subjects of natural monopolies; principles of state regulation of natural monopolies; responsibilities of natural monopolies; types of liability of natural monopolies, their officials and bodies that regulate their activities [16].

To create the necessary legal mechanism for the harmonization of competition and industrial policy, the Verkhovna Rada of Ukraine in 2001 adopted a basic legal act on legislation to protect economic competition – the Law of Ukraine "On Protection of Economic Competition" [17]. This Law regulates the relations of state authorities, local self-government bodies, administrative and economic management and control bodies with business entities; business entities with other business entities, consumers, other legal entities and individuals in connection with economic competition. It is important that the development of the Law of Ukraine "On Protection of Economic Competition" was preceded by a thorough study of a large number of similar laws of Eastern, Central and Western Europe, the legislation of the CIS member states [18].

With the entry into force of the Law of Ukraine "On Protection of Economic Competition" the Law of Ukraine "On Restriction of Monopoly and Prevention of Unfair Competition in Entrepreneurial Activity" expired.

The Law of Ukraine "On Protection of Economic Competition" in comparison with the Law of Ukraine "On Restriction of Monopoly and Prevention of Unfair Competition in Entrepreneurial Activity" significantly expands the list of actions that can be defined as anti-competitive concerted actions (Article 6) [17].

Exemption from liability is provided if the actions of small or medium-sized enterprises in the joint purchase of goods do not lead to a significant restriction of competition (Article 7).

There are a number of concerted actions that may be allowed by the Antimonopoly Committee of Ukraine and the Cabinet of Ministers of Ukraine (Article 10).

The new Law significantly expands the list of relations between economic entities that may be recognized as a concentration, provides a list of actions that are not considered a concentration (Article 22).

The law is aimed exclusively at those actions of economic entities that may lead to the monopolization of markets. The Law of Ukraine "On Protection of Economic Competition" provides a general and exclusive list of actions that are considered violations of legislation on protection of economic competition, introduces a mechanism according to which businesses, citizens, associations, institutions, organizations can apply directly to the AMCU concerning protection of the rights in connection with infringement of the legislation on protection of economic competition (item 36). In this case, according to the Law, such an entity has the right to apply to the commercial court with a claim for damages in the double amount (Article 55) [17].

Thus, the Law encourages businesses and consumers whose rights have been violated to take active action to protect their rights.

After the adoption of the Law of Ukraine "On Protection against Economic Competition", the rules of competition law were significantly improved. Legislation on protection of economic competition was expanded and formed on the basis of the Law of Ukraine "On Protection of Economic Competition", laws of Ukraine "On Antimonopoly Committee of Ukraine", "On Protection against Unfair Competition", "On Prices and Pricing", "On Business Associations", "On transport", "On telecommunications", "On electricity", "On advertising".

However, despite all the achievements, the legislation on the regulation of destructive competition is relatively young compared to foreign counterparts and requires consideration of specific factors that objectively exist in Ukraine.

Quantitative indicators on destructive competition in terms of basic types are given in the reports of the Antimonopoly Committee of Ukraine.

Based on the analysis of the reports of the Antimonopoly Committee of Ukraine for 2014-2020 [19-25], we can conclude that there is a tendency to reduce the total number of violations of legislation on protection of economic competition. Among the most

common violations of destructive competition are monopoly abuse, anti-competitive actions of public authorities, anti-competitive concerted actions of economic entities and unfair competition.

The analysis of the regulation of destructive competition shows that the antimonopoly legislation of Ukraine needs further development. Despite the positive feedback from leading EU and USA lawyers, antimonopoly law needs to be improved.

In Ukraine, there are active discussions on improving and developing competition law [8-9]. For example, N. Kuznetsova and Y. Semenyuk point to the lack of consistency in the system of concepts of antimonopoly law of Ukraine [9, p. 11]. Yu. Zhuryk points out the cumbersome and difficult definitions in some laws of antimonopoly law [8, p. 84]. The scientist also draws attention to the inexpediency of the AMCU's functions of drawing up protocols on administrative violations, imposing fines for violations of antimonopoly law. These functions, the scientist notes, are inherent in the judiciary and their implementation by the AMCU is a violation of Art. 124 of the Constitution of Ukraine, according to which justice in Ukraine is administered exclusively by courts [8, p. 83]. This thesis is supported by another scientist I. Dakhno, who notes that it is unacceptable that the AMCU deals with crime prevention and consideration of cases in two opposite areas of economic activity - in the field of monopolistic activity and in the field of competitive relations [10, p. 94].

S. Kobets already in his work substantiates the areas of improvement of legal and organizational mechanisms of antimonopoly regulation in Ukraine through the improvement of the terminological series of basic laws of antimonopoly law; creation of a separate body that would deal with the prevention and investigation of violations in the field of competition; transfer of authority to draw up reports on administrative violations [26, p. 32].

In addition to the work of scientists, international organizations, in particular the Organization for Economic Cooperation and Development, take an active part in developing key programs and improving competition law in Ukraine in accordance with international standards and best practices [11, p. 13]. In particular, the recommendations include limited AMCU resources and independence, the need to improve the law and impose severe penalties for creating cartels and conspiracies, eliminating inconsistencies with the Commercial Code, and a clear and transparent procedure for setting priorities and processes for the AMCU.

We agree with the statements of scientists on the expediency of delimiting some functions of the Antimonopoly Committee of Ukraine, as the AMCU performs many functions, the number of applications and appeals on violations of economic competition law

is quite large, indicating overload of the AMCU and its structural units.

It should be noted that in 2020, in accordance with the order of the Antimonopoly Committee of Ukraine dated 21.11.2019 No.23-r "On reorganization of territorial branches of the Antimonopoly Committee of Ukraine" the structure of regional territorial branches was optimized to 6 interregional territorial branches: North, West, South Southwest, Southeast and East. New regional branches of the Committee have started operating in Dnipro, Kyiv, Lviv, Odesa, Kharkiv and Khmelnytsky. At the same time, in other regional centers there are separate departments without the status of a legal entity.

In the report of the Antimonopoly Committee of Ukraine for 2020 [25] the need to reform the AMCU is provided by the recommendations of a number of international organizations, including the Organization for Economic Cooperation and Development (OECD). Also, a similar position was expressed by experts from relevant EU agencies from Germany and Lithuania, who also cooperated with the Committee in the framework of the Twinning project.

**Conclusions.** Thus, the reorganization of structural subdivisions of the Antimonopoly Committee of Ukraine is taking place gradually as an element of the national strategy of economic reform. However, the issues of functional and structural delimitation of state bodies in the field of destructive competition regulation remain open.

From the above analysis of foreign experience, it turns out that in these countries these powers are distributed among several independent bodies, that is, cross-control is used when the process of implementing competition policy is divided between several bodies: one investigates, the second makes decisions, the third (advisory) gives an independent assessment. what is happening in the field of competition [27, p. 74]. In addition, in many European countries, there are special courts that deal with violations of competition law. For example, in Poland there is a court for competition and consumer protection, in Austria cases in this area are considered at first instance by a cartel court; in Germany, a specialized court of first instance is the cartel chamber (board) of the Supreme Court of the land [12, p. 81], etc.

Given the results of the study, we can conclude that despite the dynamic development of antimonopoly law in Ukraine, which is positively assessed by foreign experts, as well as a significant increase in the effectiveness of the Antimonopoly Committee of Ukraine, a new stage of institutional support to overcome destructive competition its law enforcement in accordance with the best international experience, as well as a significant increase in the effectiveness of antimonopoly authorities due to the functional and structural separation of powers of the AMCU using cross-checking.

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### **Сердюк О. С., Петрова І. П. Антимонопольне законодавство України: проблеми та перспективи**

У статті здійснено аналіз стану розвитку інститутів, націлених на стримування деструктивної конкуренції в Україні. Проаналізовано кількісні та якісні показники, що характеризують рівень деструктивної конкуренції в Україні.

Виявлено, що простежується тенденція до зниження загального числа порушень законодавства про захист економічної конкуренції за 2014-2020 рр. Серед найбільш поширених порушень деструктивної конкуренції є зловживання монопольним становищем, антиконкурентні дії органів влади, антиконкурентні узгоджені дії суб'єктів господарювання та недобросовісна конкуренція.

Проведений аналіз регулювання деструктивної конкуренції свідчить, що антимонопольне законодавство України потребує подальшого розвитку, незважаючи на позитивні відгуки провідних юристів ЄС та США. Виявлено, що новий етап

розвитку інституціонального забезпечення щодо подолання деструктивної конкуренції потребує вдосконалення антимонопольного законодавства та практики його правозастосування.

Запропоновано напрями вдосконалення інститутів стримування деструктивної конкуренції в Україні відповідно до кращого міжнародного досвіду, а також суттєве підвищення результативності діяльності антимонопольних органів за рахунок функціонально-структурного розмежування повноважень Антимонопольного комітету України із використанням перехресного контролю.

*Ключові слова:* антимонопольне законодавство, конкуренція, деструктивна конкуренція, інститути, перехресний контроль.

#### **Serdiuk O., Petrova I. Antimonopoly Legislation of Ukraine: Problems and Prospects**

The article analyzes the state of development of institutions aimed at curbing destructive competition in Ukraine. Quantitative and qualitative indicators characterizing the level of destructive competition in Ukraine are analyzed.

It was found that there is a tendency to reduce the total number of violations of legislation on protection of economic competition for 2014-2020. Among the most common violations of destructive competition are abuse of monopoly, anti-competitive actions, anti-competitive concerted actions and unfair competition.

The analysis of the regulation of destructive competition shows that Ukraine's antimonopoly law needs further development, despite the positive feedback from leading EU and USA lawyers. It was revealed that the new stage of development of institutional support to overcome destructive competition requires improvement of antitrust legislation and the practice of its law enforcement.

The directions of improvement of institutes of restraint of destructive competition in Ukraine according to the best international experience, and also essential increase of efficiency of activity of antimonopoly bodies at the expense of functional and structural delimitation of powers of Antimonopoly committee of Ukraine with use of cross-control are offered.

*Keywords:* antimonopoly law, competition, destructive competition, institutions, cross-control.

#### **Сердюк А. С., Петрова И. П. Антимонопольное законодательство Украины: проблемы и перспективы**

В статье проведен анализ состояния развития институтов, нацеленных на сдерживание деструктивной конкуренции в Украине. Проанализированы количественные и качественные показатели, характеризующие уровень деструктивной конкуренции в Украине.

Выявлено, что наблюдается тенденция к снижению общего числа нарушений законодательства о защите экономической конкуренции за 2014-2020 гг. Среди наиболее распространенных нарушений деструктивной конкуренции являются такие: злоупотребление монопольным положением, антиконкурентные действия органов власти, антиконкурентные согласованные действия субъектов хозяйствования и недобросовестная конкуренция.

Проведенный анализ регулирования деструктивной конкуренции свидетельствует, что антимонопольное законодательство Украины нуждается в дальнейшем развитии, несмотря на положительные отзывы ведущих юристов ЕС и США. Выявлено, что новый этап развития институционального обеспечения преодоления деструктивной конкуренции требует совершенствования антимонопольного законодательства и практики его правоприменения.

Предложены направления усовершенствования институтов сдерживания деструктивной конкуренции в Украине в соответствии с лучшим международным опытом, а также существенное повышение результативности деятельности антимонопольных органов за счет функционально-структурного разграничения полномочий Антимонопольного комитета Украины с использованием перекрестного контроля.

*Ключевые слова:* антимонопольное законодательство, конкуренция, деструктивная конкуренция, институты, перекрестный контроль.

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