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REGARDING THE IMPROVEMENT OF ECONOMIC AND LEGAL REGULATION OF THE ECONOMY IN THE PERIOD OF POST-WAR RECONSTRUCTION

Анотація. *Необхідною умовою функціонування здорового ринкового середовища, обмеження монополізму в господарській діяльності є економічна конкуренція.*

Перехід до конкурентних засад в економіці, забезпечення становлення і функціонування здорового ринкового середовища, запровадження і захист конкурентних відносин - є одним з державних пріоритетів. В деяких випадках, державі, замість захисту конкуренції доводиться приймати заходи з підтримки національного виробника суперечність між двома протилежностями – доцільністю здешевлення продукції для споживачів і необхідністю обмежити доступ імпортної продукції на ринок з метою боротьби з дешевим імпортом, який створює перешкоджає розвиткові власного, національного виробництва. Тому питання балансу інтересів економічних і державних інтересів в такій ситуації стає дедалі актуальнішим. Особливе значення набуває захист національного виробника у зв'язку з післявоєнною відбудовою України. Торгово-обмежувальні розслідування практично завжди конфліктують із цілями конкурентної політики. Право СОТ та українське законодавство (закони України «Про захист національного товаровиробника від демпінгового імпорту», «Про захист національного товаровиробника від субсидованого імпорту» та «Про застосування спеціальних заходів щодо імпорту в Україну») передбачають можливість застосування різноманітних інструментів, але виключно торговельного захисту. Міжнародно-правова регламентація діяльності ТНК, що суперечить національним інтересам, практично відсутня. Доцільно системно підходити до правового забезпечення обмеження монополізму, виділяючи нормативну модель, яка має бути систематизованою, достатнім та внутрішньо узгодженою.

Ключові слова: економічна конкуренція, здорове ринкове середовище, діджіталізація, захист конкурентних відносин, ефективність правового забезпечення обмеження монополізму, нормативна модель, торговельні розслідування.

Annotation. *Economic competition is a necessary condition for the functioning of a healthy market environment, limiting monopolies in economic activity.*

The transition to competitive principles in the economy, ensuring the formation and functioning of a healthy market environment, the introduction and protection of competitive relations is one of the state priorities. In some cases, the state, instead of protecting competition, has to take measures to support the national producer, a contradiction between two opposites - the expediency of making products cheaper for consumers and the need to limit the access of imported products to the market in order to fight against cheap imports, which creates obstacles to the development of own, national production. Therefore, the issue of

balancing the interests of economic and state interests in such a situation is becoming more and more urgent. The protection of the national producer is of particular importance in connection with the post-war reconstruction of Ukraine. Trade-restrictive investigations almost always conflict with the goals of competition policy. WTO law and Ukrainian legislation (laws of Ukraine "On the Protection of the National Product Producer from Dumping Imports", "On the Protection of the National Product Producer from Subsidized Imports" and "On the Application of Special Measures Regarding Imports to Ukraine") provide for the possibility of using various instruments, but only trade protection. There is practically no international legal regulation of the activity of TNCs, which is contrary to national interests. It is advisable to systematically approach the legal protection of monopoly restrictions, highlighting a normative model that should be systematized, sufficient and internally consistent.

Keywords: economic competition, healthy market environment, digitalization, protection of competitive relations, efficiency of legal support for restriction of monopoly, normative model, trade investigations**.**

The urgency of the problem. Economic competition is a necessary condition for the functioning of a healthy market environment. That is why the introduction and protection of competitive relations is one of the state's priorities, and effective legal protection of the restriction of monopolies in economic activity is an effective means of achieving this goal.

Analysis of recent research and publications. The issues of legal support for the protection of economic competition, legal responsibility for its violation, and the spread of monopolistic activity were raised in the writings of such scientists as: A.Yu. Atamanova, A.G. Bobkova, S.S. Valitov, B.V. Derevyanko, G.D. Dzhumageldiyeva, R. A. Jabrailov, D.V. Zadyhaylo, O.R. Zeldina, P.S. Matveev, V.S. Milash, S.A. Paraschuk, O.P. Podtserkovny, K.Yu. Totiev, V.A. Ustymenko, B.V. Shuba, V.S. Shcherbina and others.

Much less attention is paid to the effectiveness of legal protection of monopolistic restriction in economic activity, the requirements for this protection. Even fewer authors systematically approach the research of the normative model as a set of legal acts regulating the relevant relations and requirements for it.

Presenting main material. A necessary condition for the functioning of a healthy market environment is economic competition. That is why the organizational and ensuring the functioning of competitive relations is one of the tasks of management in the field of economy, a means of limiting monopoly in economic activity.

At the same time, in some cases, the state, instead of protecting competition, has to take measures to support the national producer, a contradiction between two opposites - the expediency of making products cheaper for consumers and the need to limit the access of imported products to the market in order to fight against cheap imports. The latter, of course, creates great obstacles to the development of one's own, national production. Therefore, the issue of balancing the interests of economic and state interests in such a situation is becoming more and more urgent. In recent years, the contradictions between the Antimonopoly Committee of Ukraine, which takes care of the protection of economic competition, and the Ministry of Economy, which introduces restrictive measures, have intensified.

The protection of the national producer is of particular importance in connection with the post-war reconstruction of Ukraine. After all, it should be expected that a stream of investments and grants will pour into the country. This flow will come with international (transnational) corporations that will have their own interests, which will not always coincide with our national interests.

WTO law and Ukrainian legislation (laws of Ukraine "On the Protection of the National Product Producer from Dumping Imports", "On the Protection of the National Product Producer from Subsidized Imports" and "On the Application of Special Measures Regarding Imports to Ukraine") provide for the possibility of using various instruments, but only trade protection. Among them, measures aimed at protecting national producers from dumping (anti-dumping measures) and subsidized imports (measures to counter the application of illegitimate subsidies) stand out. The form of application of anti-dumping measures is the establishment of anti-dumping duties.

There is practically no international legal regulation of the activity of TNCs, which is contrary to national interests. Both at the regional and universal level. Although there are already international legal documents that are used to regulate the activities of international corporations. These are, for example, the foreign investment code adopted by Latin American countries in 1970, the Charter of Economic Rights and Responsibilities of States, approved by a resolution of the UN General Assembly in 1974, the norms of which are aimed at protecting the economic rights of developing countries (according to the mentioned resolution UN intergovernmental commissions on transnational corporations and centers on TNCs were created); regional declaration on international investments and multinational enterprises dated June 21, 1976 p.; and as an appendix, guidelines for multinational enterprises. These are the "Principles for the Control of Restrictions on the Business Practices of Monopolies and Corporations", approved in 1980 by the UN General Assembly.

The TNC's system of guiding principles includes: observance of international law; subjection to the law of the host country; consideration of the policy of this country in the field of development and law; cooperation with the host country excluding the practice of bribery and subsidies, as well as mandatory non-interference in internal affairs. However, the norms of this document are not mandatory, their implementation is voluntary. That is, we are talking about the norms of the declarative document.

In addition, most TNCs have their own corporate business principles developed in practice, which are adapted to UN recommendations, as well as to local legislation. As noted by M.S. Pshenichnyi, regarding issues of legal regulation of the activities of TNCs from developing countries and capitalist countries, two approaches emerge. Countries that have embarked on the path of their independent development are trying to develop such international legal acts that would make it possible to control the activities of TNCs, while capitalist countries aim to preserve and consolidate their influence. One should agree with the opinion of the former Director General of the International Labor Office, a well-known scholar-theoretician in the field of international law, Wilfred Jencks, according to which: "...the position of law in relation to TNCs is as amorphous and helpless as was the position in relation to intergovernmental organizations, before the changes, that took place in the mid-1940s." Thus, international legal regulation of the activities of TNCs at the regional level plays a certain role, but it is not yet able to protect countries, especially those that have embarked on the

path of independent development. Therefore, it was these countries that put forward demands for the establishment of a new international economic order, within which legal regulation of the activities of TNCs would be carried out, aimed at establishing certain restrictions on the expansion of corporations, taking into account national interests. In this case, we are talking about the international legal regulation of the activities of TNCs of a universal nature. TNCs carry out economic, financial, trade, technological, and at a new stage, political and social interaction between countries. The activity of TNCs fundamentally changes the picture of the world, and therefore, without taking this into account, we cannot study the processes taking place in modern economic relations. There are various, contradictory approaches to the evaluation of the activities of these giant economic corporations, which do not take into account the national borders TNCs cannot be evaluated only negatively or positively. Each individual case has its own advantages and disadvantages, but putting the activities of TNCs in a legal framework is considered necessary in the near future [1].

It is clear that legal regulation must meet certain requirements for it. Otherwise, it will not be truly effective. These are the requirements of completeness and sufficiency, consistency (non-contradiction) of the legal regulation of relevant relations, its effectiveness, etc.

Regarding the legal regulation of competitive relations at the national level (the resolution of these issues at the universal, global level depends exclusively on the political will of Western countries). An analysis of the actual state of legal regulation of competitive relations to limit monopoly in the economic activity of economic entities in Ukraine shows that it does not meet the specified requirements.

We denote the set of legal norms that make up the legal support for the restriction of monopoly in economic activity by the term "normative model of restriction of monopoly", which (model) means a set of non-contradictory, mutually agreed-upon legal acts that regulate the processes of restriction of monopoly, demonopolization of the economy, anti-monopoly regulation, control over compliance with legislation on the protection of economic competition; protection of the interests of business entities, groups of business entities and consumers against its violations.

The normative model of monopolistic limitation, from the point of view of the branch appropriateness of the acts that are included in its structure, is complex in nature. That is, the structure of the mentioned model includes not only such complex acts as the laws of Ukraine "On protection against unfair competition", "On protection of economic competition", but also administrative acts ("On the Antimonopoly Committee of Ukraine", Code of Ukraine on administrative offenses), criminal (anti-corruption) law, etc.

The legal principles of limiting monopolies and ensuring the protection of economic competition are laid down in such normative legal acts as the Constitution of Ukraine, the Economic Code and laws of Ukraine "On the Antimonopoly Committee of Ukraine", "On protection against unfair competition", "On protection of economic competition".

According to Article 42 of the Constitution of Ukraine, abuse of a monopoly position in the market, unlawful restriction of competition and unfair competition are not allowed. Types and limits of monopoly are determined by law. Article 92 of the Basic Law stipulates that competition rules and antimonopoly regulations are determined exclusively by the laws of Ukraine.

Economic and legal principles of support and protection of economic competition, restrictions on monopolies in economic activity are contained in the Economic Code and the above-mentioned laws. In particular, in the Economic Code of Ukraine, the provisions of Art. Art. 25-29 of Chapter 3 "Restriction of Monopoly and Protection of Business Subjects and Consumers from Unfair Competition". According to Art. 27 "Limitations of monopoly in the economy" "A monopoly is recognized as a dominant position of a business entity, which gives it the opportunity to limit competition on the market of certain goods (works, services) independently or together with other entities" (paragraph 1). A monopoly is the position of a business entity whose share in the market of a certain product exceeds the amount established by law. The position of business entities on the product market can also be recognized as monopolistic if there are other conditions defined by law (clauses 2, 3). In the case of social necessity and with the aim of eliminating the negative impact on competition, it is stated in clause 4 of this article, state authorities implement antimonopoly regulation measures in accordance with the requirements of legislation and measures of demonopolization of the economy, provided for by the relevant state programs, with the exception of natural monopolies, in relation to existing monopolies. . P. 5 of Art. 27 bodies of state power and bodies of local self-government are prohibited from adopting acts or taking actions aimed at the economic strengthening of existing monopolistic business entities and the formation without sufficient grounds of new monopolistic entities, as well as from making decisions on exclusively centralized distribution of goods.

According to Art. 29 "Abuse of a monopoly position in the market" is considered such abuse: "imposing such terms of the contract that put the counterparties in an unequal position, or additional conditions that do not relate to the subject of the contract, including the imposition of a product that is not needed by the counterparty; limiting or stopping production, as well as withdrawing goods from circulation in order to create or maintain a deficit on the market or establish monopoly prices; other actions taken with the aim of creating barriers to market access (market exit) of economic entities; setting monopolistically high or discriminatory prices (tariffs) for your goods, which leads to violation of consumer rights or limits the rights of individual consumers; setting monopolistically low prices (tariffs) for their goods, which leads to restriction of competition.

The Law of Ukraine "On the Protection of Economic Competition" defines economic competition as a competition between economic entities with the aim of gaining advantages over other economic entities through their own achievements, as a result of which consumers, economic entities have the opportunity to choose between several sellers, buyers, and a separate business entity cannot determine the conditions of the turnover of goods on the market. competition is a fundamental element of the market, thanks to which a balance between supply and demand is achieved. Business entities, authorities, local self-government bodies, as well as administrative and economic management and control bodies are obliged to promote the development of competition and not to commit any illegal actions that may have a negative impact on competition.

Determination of the monopoly (dominant) position of business entities should be carried out in accordance with the appropriate methodology approved by the order of the Antimonopoly Committee of Ukraine dated March 5, 2002 [2].

Regarding inconsistencies in the legal regulation of trade investigations. In the legal community, the contradiction between the expediency of supporting the national producer and the protection of competition has intensified. Big business is interested in protection against unscrupulous imports, medium-sized business wants to be able to buy cheaper imported goods. Therefore, trade-restrictive investigations almost always conflict with the goals of competition policy. The purpose of anti-dumping duties and quotas is to limit the access of imported products to the market under the pretext of fighting against cheap imports. At the same time, lowering the price of products for consumers and zero barriers to entering the market is the goal of any state's competitive policy. The issue of coordination of relevant legal acts is becoming more and more urgent. In recent years, there have been more frequent cases when the Antimonopoly Committee of Ukraine, which has the right to vote on the implementation of restrictive measures, does not support the proposals of the Ministry of Economy on their implementation [3].

Regarding completeness of legal regulation. Legal enforcement of the limitation of monopolies in economic activity is directed, as a rule, not against monopolists, but against their monopoly capture of the market (goods, services). This provision should solve the problems of monopolistic collusion, monopolies of prices, problems of absorption by monopolists of weaker competitors. However, an incomparably greater threat to national security is created by corruption in power, especially in its executive branch. The Law "On Prevention of Threats to National Security Associated with Excessive Influence of Persons Who Have Significant Economic or Political Weight in Public Life (Oligarchs)" (Oligarchs Law) should solve the relevant problem - the problem of overcoming the oligarchic nature of the Ukrainian state. The law on oligarchs should strengthen their responsibility, since they have incomparably more opportunities to bribe the government, to carry out other dangerous acts mentioned above.

The public danger of actions that provoke corruption risks, in relation to bribing the authorities, increases in proportion to the growth of the corresponding opportunities, threatening national security. This should reflect the sanctions for the criminal actions of the persons who offer and those who receive bribes. Therefore, the law on oligarchs should adequately strengthen legal responsibility for corrupt acts, expand the list of socially dangerous corrupt acts that should be punished. Such actions should also include lobbying for draft laws, misdirecting, using, embezzling state budget funds, promoting one's protégés to relevant positions outside of competitions, etc. As for trade-restrictive investigations, they, as noted, almost always conflict with the goals of competition policy. There are certain claims to the legal regulation of trade-restrictive investigations. In particular, there are many complaints about excessive secrecy of investigation materials, relevant evidence, etc. The state is conducting a course on digitalization of management operations, including digitization of trade investigations.

In order to improve work within the framework of trade investigations/reviews (anti-dumping, anti-subsidy, special). a special IT platform was created. This software product is designed to automate the process of conducting trade investigations/reviews in the country and the participation of interested parties in them, simplifying the process of submission and exchange of information and materials within the framework of trade investigations, ensuring public access to information and materials related to the use of trade defense

tools. Information on the procedural stages of using the IT platform as part of participation in trade investigations is being prepared.

Conclusions. The transition to competitive principles in the economy, ensuring the formation and functioning of a healthy market environment, the introduction and protection of competitive relations is one of the state priorities.

In some cases, the state, instead of protecting competition, has to take measures to support the national producer, a contradiction between two opposites - the expediency of making products cheaper for consumers and the need to limit the access of imported products to the market in order to fight against cheap imports, which creates obstacles to the development of own, national production. Therefore, the issue of balancing the interests of economic and state interests in such a situation is becoming more and more urgent.

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