

Competition Law of Ukraine

The research “Competition Law of Ukraine” by Oleksiy O. Kot is dedicated to give general overview of competition and antitrust regulation in legislation of Ukraine. After a brief description of the history of antitrust legislation development the main attention in this research paid to regulation of:

- protection from abuse of the monopoly;
- cartels (concerted actions);
- concentrations (M&A transactions);
- unfair competition;
- misleading information.

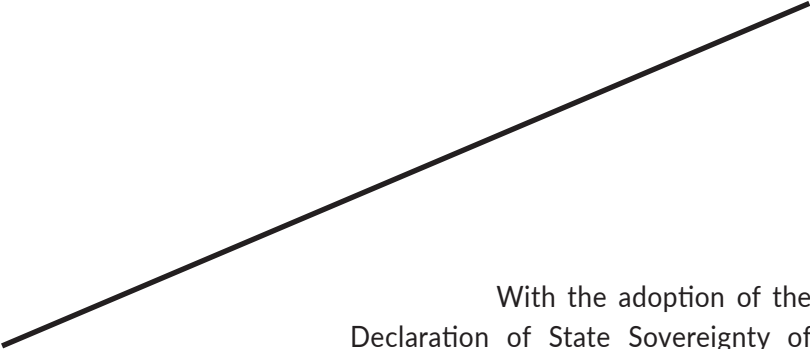
Liability for antitrust legislation breach as well as problems of the actual court practice are also analysed in this research.

Laws of Ukraine “On the Antimonopoly Committee of Ukraine” and “On the Protection of Economic Competition” (unofficial translation of their current versions with latest amendments on December 2020) are included as annexes to this publication.

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1. BRIEF HISTORY OF ANTITRUST LEGISLATION DEVELOPMENT



With the adoption of the Declaration of State Sovereignty of Ukraine on 16 July 1990 the state had taken the direction of an independent economic policy, which aims to create an effective mechanism for regulating economic relations. As the effective market competition is extremely important part of any modern economy, the steps to ensure demopolization of economy and development of fair and competitive market were taken.

In 1992 Ukraine adopted a program of economic reforms and policies on Ukraine, which included establishing control over monopolies, increased competition, organizational and economic restructuring schemes and to stimulate the creation of new

entities. As one of the steps to fulfill this program the Law of Ukraine “On Monopoly Restrictions and Prevention of Unfair Competition in Business Activities” of 18 February 1992 was adopted.

This Law was heavily based on the Soviet Union Law “On Restriction of Monopolistic Activity in the USSR” of 07.10.1991 and introduced only basic regulation in this field. Nevertheless, the start of what can be described as a first stage of antimonopoly regulation development was made. A year later this development was followed by adoption the Law “On Antimonopoly Committee of Ukraine” of 26.11.1993, which created the Antimonopoly Committee as an executive authority body with special status independent from other government bodies.

Next several years some amendments to the laws were made, but no critical changes introduced. At the same time, with the development of Ukraine economy it was clear that the outdated legislation needed substantial improvement.

Thus, in 1996 the Law of Ukraine “On Protection Against Unfair Competition” of 07.06.1996 was adopted. In two years substantial changes to the Law “On Monopoly Restrictions and Prevention of Unfair Competition in Business Activities” were introduced in 1998. Eventually, in 2001 the new Law of Ukraine “On Protection of Economic Competition” was adopted and came into force a year later.

The later was a completely new legislative act developed based on European and US antitrust legislation and best practice. The adoption of this law introduced modern principles and rules of antimonopoly legislation and has drafted it in a way we see it today. This can be marked as second stage of antimonopoly legislation development.

The Law introduced significant number of new principles, terms and concepts some of them completely new for the Ukrainian legislation, for example — leniency. The Law also introduced detailed regulations regarding the procedures of case consideration, rights and obligations of the persons involved in the case, the procedure of appeal, authority of the AMCU during the case investigation etc.

It should be noted that the developers of the Law have clearly made a significant work in systematization and adaptation of world antitrust practice to the Ukrainian legislation system. Thus, it is not surprising that the Law survived up to this date with what can be considered moderate, evolutionary changes. For Ukrainian legislation adopted in early 2000 it is a substantial achievement.

Another significant change in the antimonopoly regulation of early 2000 is a more proactive stance taken by the Antimonopoly Committee of Ukraine.

The Committee had begun actively starting its own investigations, advocacy of competition. Within several years the body has established as an independent and fair authority with minimal dependability from politics and bribes. It also established itself as a body which should not be trifled with but as the same time as an open for dialog and negotiations.

The Committee also developed its own case practice and approaches to antimonopoly legislation interpretation and adopted a number of explanatory letters regarding the complex matters of legislation application.

Next substantial stage of legislation development could be considered 2008. In December 2008 a Law of Ukraine was adopted which introduced significant changes to the Law “On Protection

Against Unfair Competition". Several articles describing the cases of unfair competition were completely redrafted, the limitation period for when the person can be liable for violation was introduced and changes were made to the procedures of investigating and consideration of the cases. Most important however was the introduction of a new type of unlawful unfair competitive practice – providing misleading information to the consumers.

This new violation have established factually separated from the other unfair competition cases practice, which dealt with unfair advertising in any form.

The Antimonopoly Committee at first was very cautious with using and investigation the cases of misleading information but in 2011-2012, after the preliminary case practice and Committee approach to the interpretation of the article was established, it became a rather active field. Additionally to opening cases on the third party statements the Committee had also actively studied the advertising and information materials used in websites, press releases etc. of the companies.

On this moment the cases of misleading information constitute the biggest portion of all unfair competition cases. For example, in 2015 the misleading information was 89 % of all unfair competition violations investigated by the AMCU.

In 2012-2013 it became clear that while the antimonopoly legislation was rather developed, the need for update for some obsolete regulations as well as introducing newly developed European and US antitrust practices. As example the problem with financial boundaries excess of which resulted in need for applying for the AMCU permit for M&A transaction may be mentioned. The established boundaries were drastically low and AMCU had to consider

substantial number of applications every year, which undoubtedly lowered the performance of the Committee.

Thus, the AMCU began development of number of the legislation drafts, including the changes to the laws. Unfortunately, due to the various political reasons this initiative mostly failed. The only legislative act change worth mentioning was the approved Regulation on submission of applications to the Antimonopoly Committee of Ukraine regarding the exemption from liability for a breach of legislation on economic competition protection under paragraph 1 of Article 50 of the Law of Ukraine "On Protection of Economic Competition" (Regulation on exemption from liability) which established detailed leniency procedure.

It was only in 2015, after the revolution in Ukraine and election of the new AMCU members the some of the mentioned drafts were finally adopted. In 2015 the changes to the Law "On Protection of Economic Competition" introduced obligation to publish all AMCU decisions were established to ensure the body transparency. The Committee also approved Recommendations which established the approach for calculation of the fines. Additionally, in 2016 the articles of the Law "On Protection of Economic Competition" regarding the concentrations were changed establishing the new reasons when the person should apply to the Committee for the permit and a revised Recommendations on fines calculation were adopted.

Further developments of the legislation were focused on updating the various legislative acts adopted on the basis of the changes to the Law "On Protection of Economic Competition". In particular several key recommendations were adopted: Methodical Recommendations on application of term "control", Standard requirements for vertical concerted actions of the business entities etc.

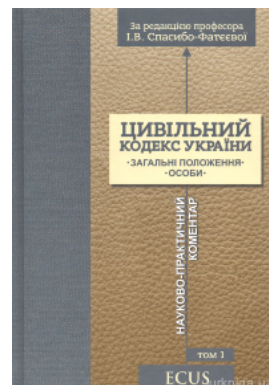
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