

LEGAL SUPPORT OF ECONOMIC COMPETITION IN UKRAINE

Oleksandr Muzychuk, Kharkiv National University of Internal Affairs

Vladyslav Teremetskyi, West Ukrainian National University

Anatolii Podoliaka, Interregional Academy of Personnel Management

Nataliia Fedchun, National University "Odessa Law Academy"

**Olexander Svitlychnyy, National University of Life and Environmental
Sciences of Ukraine**

Olena Korotun, Northern Commercial Court of Appeal

**Iryna Nagorna, National Academy for Public Administration of the President
of Ukraine**

ABSTRACT

The author's understanding of economic competition as an object of legal support is offered. The content of legal support of economic competition in Ukraine is revealed. The need to define standard rules of conduct of economic entities in economic competition at the regulatory level has been clarified. Measures of administrative coercion as a means of protection of economic competition in Ukraine are considered. The division of measures of administrative coercion into measures of administrative prevention, measures of administrative termination and measures of administrative responsibility is carried out, their essence is considered. Legal measures to ensure economic competition in Ukraine are considered. The division of these measures into legal measures, organizational measures and administrative coercive measures has been carried out. The subjects of legal support of economic competition in Ukraine are described. The existing system of subjects of legal support of economic competition in Ukraine, depending on their legal status, is divided into subjects of general competence and subjects of special competence.

The current problems of legal support of economic competition in Ukraine are clarified. The scientifically substantiated recommendations and offers directed on improvement of the administrative legislation in the researched sphere are offered. It is indicated that cases on appeal of decisions of the Antimonopoly Committee of Ukraine on refusal to consider a case on violation of the legislation on protection against unfair competition are considered by commercial courts. The inexpediency of referring this category of cases to the jurisdiction of commercial courts was emphasized and it was proposed to make respective amendments to the current legislation of Ukraine.

Keywords: Economic Competition, Unfair Competition, Legal Support, Protection of Economic Competition, Security of Economic Competition, Subject of Power, Administrative Measures

INTRODUCTION

The current state of economic relations in Ukraine, due to the European integration vector of state policy in this area, globalization and trans nationalization of economic activity of business entities demand updating of the system of legal regulation measures aimed at protection, guard, support of economic competition in business activity, prevention of abuse of monopoly dominant position in the market, illegal restriction of economic competition and manifestations of unfair competition (Pasichnyk, 2021).

Ensuring the protection of economic competition in business is an integral part of the creation of a competitive economy in Ukraine. The effectiveness of the institution of ensuring of economic competition reflects the perfection of state policy in the field of development of economic competition, the restriction of monopoly and organizational and legal principles of functioning of the subjects of power. The need for legislative and structural changes is due to the inefficiency of the entities responsible for the proper legal support of economic competition, and the lack of legislatively defined proper legal status of authorized bodies and their officials.

Carrying out administrative reform in Ukraine and adaptation of the legislation on protection of economic competition of Ukraine to the competition legislation of the European Union influenced the legislative consolidation of the legal status of state-authorized bodies and officials, as well as the system of measures applied by specially authorized entities. However, still, scientists have not developed a unified approach to understanding the concept, content and specifics of the institution of legal support of economic competition in Ukraine. Theoretical and organizational principles of legal support of economic competition have not been clarified. Therefore, the scientific research of the powers of individual entities in the field of economic competition and the adoption of legal measures taken by them to properly ensure economic competition in Ukraine are becoming especially relevant. The relevance of the topic of this study is also due to the need for an objective and comprehensive analysis of the legal support of economic competition in Ukraine and the formulation of conceptually new conclusions on this basis.

RESULTS AND DISCUSSION

The concept of the National Competition Development Program for 2014–2024, approved by the order of the Cabinet of Ministers of Ukraine dated 19.09.2012 № 690-r (Law of Ukraine, 2012), one of the priorities of state activity in this area is the implementation by public administration bodies of a set of measures aimed at the development of economic competition, its protection and restriction of monopoly. Therefore, the state recognized the need for the proper functioning of the system of legal support of economic competition in Ukraine.

Currently, at the legislative level, the definition of economic competition is given in Article 25 of the Economic Code of Ukraine (Law of Ukraine, 2003a), Article 1 of the Law of Ukraine "On Protection of Economic Competition" (Law of Ukraine, 2001) and paragraph 3 of Section I of the Regulations on Concentration (The Antimonopoly Committee of Ukraine, 2002). The adoption of these normative legal acts of Ukraine by the legislator in the field of economic competition proved the fact of Ukraine's interest in establishing on its territory the legal framework for the development of economic competition, legitimate and fair trade relations between economic entities, efforts to develop the use of fair and equitable customs in business, which, in turn, will mean the development of fair competition in business.

Fair competition in Ukraine is one of the types of economic competition and expresses the essence of fair market relations of business entities in business activities. Rapid development and support of lawful and fair legal relations between business entities, efforts to develop the use of fair and equitable customs in business are among the main tasks of Ukraine in the implementation of antitrust (competition) policy. The current Ukrainian legislation on protection of economic competition by anticompetitive monopoly offences in economic competition defines anticompetitive concerted actions of economic entities, abuse of monopoly dominant position, restrictive, discriminatory activities of economic entities, their associations, anticompetitive actions of public authorities, local self-government, administrative and economic management, control. However, the legislation does not contain an exhaustive list of prohibited manifestations of unfair competition and their content. In addition, it is impossible to do. When deciding whether the behaviour of a business entity is illegal in the course of business (*i.e.*, whether it contains signs of unfair competition) the one should refer to Article 1 of the Law of Ukraine "On protection against unfair competition" and Article 32 of the Economic Code of

Ukraine, and in case of conflict - to the Antimonopoly Committee of Ukraine, and the dispute - to the commercial courts.

The rules of conduct of economic entities in economic competition, which must comply with customs, are not enshrined in legislation and are not defined in the legal documents of the authorized state bodies - Antimonopoly Committee of Ukraine. Therefore, quite often the bodies of the Antimonopoly Committee of Ukraine in their activities are faced with the issue of defining acts in the economic competition of economic entities as those that correspond to or contradict honest customs in economic activity. Today, the Civil Code of Ukraine (Law of Ukraine, 2003b) establishes a rule according to which custom can be enshrined in a document. In our opinion, the Antimonopoly Committee of Ukraine together with the Chamber of Commerce of Ukraine should enshrine in a legal document (for example, in an information letter or recommendation) rules of conduct in the economic competition of economic entities in the course of their business activities in accordance with trade and other fair customs. This will improve legal support; enable the Antimonopoly Committee of Ukraine to provide legal protection to business entities and consumers in relations with unscrupulous, dishonest business entities more effectively. Under such conditions, the use of the term "custom" enshrined in the Economic Code of Ukraine (Law of Ukraine, 2003a) and the Law of Ukraine "On Protection against Unfair Competition" (Law of Ukraine, 1996). Will not cause difficulties in the use of this term by the Antimonopoly Committee of Ukraine in its activities.

Today, the state of Ukraine, represented by the subjects of power, provides protection of economic competition in business activities, protection of the rights and legitimate interests of all economic entities in this area. In addition to ensuring the protection of economic entities on the territory of Ukraine, Ukraine protects the rights and interests of economic entities of Ukraine abroad under the rules of international law. Protection is provided through diplomatic and consular missions, state trade missions that represent the interests of Ukraine. At the same time, the subjects of power are obliged to take measures of administrative termination and measures of administrative responsibility to economic entities that do not comply with the provisions of the legislation on protection of economic competition. This indicates that the subjects of power in the field of economic competition are endowed with functions that are not only organizational in nature, but also have a nature of human rights protection and are coercive.

Based on the fact that in the course of economic activity, economic entities illegally use their market position, thereby lead or may lead to a significant restriction of economic competition in the whole market or in a significant part of it, violation of the rights of a national producer and a non-resident business entity, infringement of their interests the most efficient way to respond to such violations and provide protection against them, in our opinion, will be the appeal of the business entity to the relevant authorized body of government for illegal actions of a dishonest business entity - a competitor, based on the fact that the state policy in economic competition, protection from unfair competition and restriction of monopoly in economic activity is carried out by subjects of power (Pasichnyk, 2021).

The task of protection is to restore by the subjects of power the legal rights and interests of business entities of Ukraine, including foreign ones, whose rights and interests have been violated during the conduct of economic activity in Ukraine. Protection is provided from the moment of detection of the offence by the subjects of power themselves or on the basis of the appeal of the subjects of economic activity, whose rights and interests are violated, to the relevant subject of state power. The protection of economic competition is carried out by state-authorized subjects of power by applying various measures of administrative prevention, administrative termination and administrative liability to economic entities that have committed anti-competitive actions.

In the field of economic competition, measures of administrative prevention are applied by the subjects of power in order to prevent violations of legislation on the protection of economic competition, support economic competition and the development of fair competition. Measures of administrative prevention do not stop administrative offences but prevent their

committing by business entities and associations. In the field of economic competition, administrative termination measures are aimed at forcible termination of violations existing on the commodity market of Ukraine and the establishment of circumstances for further application of administrative liability measures to the perpetrators.

Based on the competence of the subjects of power in the field of economic competition, which have the right to take various legal measures to ensure economic competition in Ukraine, all measures can be divided into legal measures, organizational measures and measures of administrative coercion.

Measures of a legal nature are taken by the subjects of power in the field of economic competition to perform government management functions and in order to provide administrative services to business entities. These include: providing business entities with preliminary conclusions on concerted actions, concentration in Ukraine; development and adoption of individual regulations (Decisions, Orders, Letters, Conclusions) issued for the performance of government management functions; check and review of decisions in cases; development and adoption of normative legal acts (legislative acts, orders, instructions) that establish, change, abolish, terminate the general rules of regulation of public relations in the field of economic competition; adoption of resolutions in cases of administrative offences, verification of their legality and validity; etc. Such legal measures establish rules of conduct for economic entities in the field of economic competition.

Organizational measures are aimed at ensuring the effective operation of the subjects of power in the field of economic competition and the performance of government management functions. Such measures are: informing business entities about the state of economic competition in Ukraine, about the adopted regulations and individual decisions in the cases to the protection of economic competition; implementation of personal reception of managers, representatives of business entities, consumers by officials of state bodies; appointment of expertise and expert, etc.

Measures of administrative coercion, taken by the subjects of power, which are used by them in the field of economic competition, are the decision to terminate an unfair competition, blocking of securities, cancellation of the permit for concerted actions, concentration, forced division of the business entity, imposition of a fine. Measures of administrative coercion as the means of protection of economic competition in the area of research have the following properties:

1. Are applied in connection with the presence of a real or potential threat of violation of economic competition or the actual violations of legislation in the field of economic competition.
2. Are applied against the will of the object of influence, are aimed primarily at preventing violations of competition law, preventing their committing, consist in organizational or property restrictions of the business entity.
3. Have a complex nature, the grounds and procedures for their application are determined by administrative, customs, information, and competition law.
4. Have a dual focus: they can be applied both to business entities and to officials of public administration bodies.

Measures of administrative responsibility are of particular importance among measures of administrative coercion. We note that administrative liability may be applied for violations of the legislation on protection of economic competition to business entities, associations, and officials, other employees of business entities, public authorities, local governments, administrative-economic management, control. The essence of administrative liability in the field of economic competition is to impose an administrative penalty on the subject who committed the violation (Pasichnyk, 2021).

It should be noted that all the above administrative and legal measures taken by the subjects of power in the field of economic competition are interconnected and pursue a single goal - the establishment, support, protection and guard of economic competition in Ukraine, restriction of monopoly, ensuring the proper functioning of the Ukrainian economy on the basis

of the development of competitive relations between economic entities, as well as the protection of economic entities from unfair competition in Ukraine.

The system of subjects of legal support of economic competition in Ukraine is quite extensive. Each of the subjects has specific powers, which it exercises in a certain area of legal support of economic competition in Ukraine. The existing system of subjects of legal support of economic competition in Ukraine, depending on their legal status, can be divided into.

1. subjects of general competence, which carry out exclusively normative regulation in order to create appropriate conditions for the implementation of management activities for the protection, defence and development of economic competition by the authorized institutions of public authority. We are talking about the President of Ukraine and the Verkhovna Rada of Ukraine.
2. subjects of special competence who directly take administrative and legal measures to support, protect and develop the economic competition, restrict monopoly in economic activity and protect economic entities from anti-competitive actions (monopolistic activity and unfair competition) in economic competition.

This includes the Cabinet of Ministers of Ukraine, the Ministry of Economy, the bodies of the Antimonopoly Committee of Ukraine, the Interdepartmental Commission, the State Migration Service of Ukraine and its bodies.

Legislation on the protection of economic competition stipulates that a person whose rights have been violated has the right to apply to the Antimonopoly Committee of Ukraine and its territorial branches within 6 months from the day when he/she learned or should have learned about the violation of his/her rights. At the same time, the officials of the Antimonopoly Committee of Ukraine, based on the results of consideration of the application, if they do not detect signs of violation of the legislation on protection against unfair competition, have the right to deny administrative protection for such business entity (Law of Ukraine, 2001). In accordance with paragraph 20 of the Rules of proceedings, in case of non-detection of signs of violation of the legislation on protection of economic competition, the state commissioner, the head of the department refuses to consider the case, which is notified in writing to the applicant (The Antimonopoly Committee of Ukraine, 1994). In order to protect its violated rights by the Antimonopoly Committee of Ukraine, the business entity has the right to go to court and obtain the protection of its rights and interests from the judiciary.

Cases concerning appeals against decisions of the Antimonopoly Committee of Ukraine on refusal to consider a case concerning violation of the legislation on protection against unfair competition are considered by commercial courts. We consider it inexpedient to refer the categories of cases challenging the decisions of the Antimonopoly Committee of Ukraine, including decisions to refuse to consider a case of violation of legislation on protection against unfair competition, to the jurisdiction of commercial courts. Based on the presence of public law dispute in this category of cases, of the legal status of the Antimonopoly Committee of Ukraine and public administration functions in the field of economic competition, it is necessary to provide for the consideration of an administrative case on the refusal of the Antimonopoly Committee of Ukraine to consider a case of violation of legislation on protection against unfair competition by an administrative court under the rules of the Code of Administrative Procedure of Ukraine. In this regard, it is necessary to make appropriate changes to Article 19 of the Code of Administrative Procedure of Ukraine (Law of Ukraine, 2005) and Article 20 of the Commercial Procedural Code of Ukraine (Law of Ukraine, 1991).

CONCLUSION & RECOMMENDATION

In Ukraine, the state has a constitutional obligation to guarantee the support of economic competition in Ukraine. In addition, Ukraine has ratified international legal acts in the field of economic competition and has committed itself to improve the legal status of state-authorized bodies and their activities in this area. That is why the legal provision of economic competition in Ukraine is important for the state, economic entities and consumers in general.

Considering the issues of administrative and legal support of economic competition in Ukraine, various measures of an administrative nature are taken by the subjects of power to provide the latter support, protection, protection of economic competition in Ukraine, ensuring the proper functioning of the Ukrainian economy on the basis of the development of fair competitive relations between economic entities, limiting monopolies in economic activity, as well as protecting domestic and foreign producers from unfair competition in Ukraine.

Economic competition as an object of legal security should be understood as the fair and unfair competition of economic entities in the national market and in the field of foreign economic activity. It was found that by legal means the following anticompetitive actions in economic competition can be prevented and stopped: actions that contradict trade and other fair customs in economic activity; misuse of the business reputation of the business entity; creating obstacles for the business entity in the process of economic competition and achieving illegal advantages in economic competition; illegal collection, disclosure and use of trade secrets; anticompetitive concerted actions of business entities; abuse of a monopoly dominant position in the market; anti-competitive actions of authorities, of local self-government, of administrative and economic management and control bodies; restrictive and discriminatory activities of business entities and associations; dumped imports; subsidized imports; growing imports.

Under the protection of economic competition, we propose to understand the activities of subjects of power to take measures of administrative termination and administrative liability in order to restore violated rights, legitimate interests of economic entities, and cessation of anticompetitive actions in economic competition and elimination of monopoly.

The tasks of legal support of economic competition in Ukraine are support, development, protection, guard of economic competition, prevention of restriction of monopoly in economic activity, protection of national and foreign economic entities from anticompetitive actions (monopoly offences, unfair competition) in economic competition.

The use of legal and organizational measures, administrative coercion is called the content of administrative and legal support of economic competition in Ukraine. Legal measures include the development and publication of normative acts on the organization of the activities of subjects of power to protect and defend economic competition, providing preliminary conclusions on concerted actions, the concentration of economic entities, granting permission for such actions, making preliminary decisions in cases of violation of legislation on protection of economic competition. Organizational measures are informing about the state of economic competition in Ukraine, about the adopted normative acts and individual decisions in cases of protection of economic competition, the implementation of personal reception by officials of authorized subjects, the appointment of expertise, an inspection of premises, vehicles. Measures of administrative coercion include the decision to terminate an unfair competition, blocking of securities, cancellation of the permit for concerted actions, concentration, forced division of the business entity, imposition of a fine.

It is determined that the normative-legal basis for ensuring economic competition in Ukraine is the principles and rules enshrined in the Constitution of Ukraine, international (intergovernmental, interdepartmental) agreements, agreements of Ukraine with other states, international legal acts ratified by Ukraine, legislative acts of Ukraine, normative legal acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, the regulations of the Antimonopoly Committee of Ukraine that are issued in accordance with them, as well as in acts of judicial authorities, in particular decisions and conclusions of the Constitutional Court of Ukraine, conclusions of the Supreme Court on the application of the rules of law set forth in the decisions of the Supreme Court, decisions of the European Court of Human Rights. It is defined that the regulatory framework for support of economic competition in Ukraine is fragmented; it is not a single system and contains gaps and inconsistencies in regulations.

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