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DIRECTIONS OF THE ECONOMIC AND LEGAL POLICY REGARDING DEMONOPOLIZATION OF THE NATIONAL ECONOMY

Under conditions of the market transformation of the Ukrainian economy, an issue of protection of competition and putting an end to the abuse of market power by monopolistic entities are of considerable importance. Competition is a determinant factor of pricing and an incentive for development of innovative processes and, simultaneously, a mechanism of exclusion of inefficient business entities from the turnover. Hence, the legislator emphasizes the antitrust and competition policy among the main directions of the state economic policy. This policy is aimed at creation of an optimal competitive environment for the activity of business entities.

Key words: legal framework of economic competition, demonopolization of economy, natural monopolies, antitrust and competition policy of a state.

Problem formulation. Denationalization, privatization, demonopolization of the economy, and strengthening of various ownership forms are the main factors of creation of a market and competitive environment. A significant amount of monopolistic entities is a serious hindrance in this way. Thus, overcoming the mentioned hindrance requires not only measures aimed at competition development and restriction of monopolism, but also enforcement of public regulation mechanisms oriented towards prevention of formation of new monopolies. There is a need to revise the legislation on protection of economic competition and to reconsider powers of the Antitrust Committee of Ukraine (ATCU) in this field.

Analysis of recent researches and publications. An issue of legal regulation of economic competition, antitrust regulation, and a state competition policy are of particular importance and popular nowadays. H. Androshchuk, O. Bezukh, V. Bazylevych, O. Bakalinska, S. Valitov, V. Heiets, B. Kvasniuk, V. Lahutin, N. Malakhova, N. Saniakhmetova, L. Semenova, T. Udalov, I. Shumylo, etc., do researches in this area.

Formulation of aims. The article goal is to determine directions of improvement of the legislation on protection of economic competition with consideration of current conditions of the market economy and in terms of ineffectiveness of functioning of the valid legal mechanism.

The main material presentation. The Economic Code determines the very antitrust and competition policy as one of the main directions of the state economic policy [1]. The main purpose of the modern stage of the antitrust policy in Ukraine is protection of an already created competitive environment and enhancement of efficiency of functioning of existing competitive relations [2]. The state competitive policy is aimed at development of measures related to formation of a competitive environment, supporting and protection of fair competition, fighting monopolism in the economy, etc.

Carrying out radical reforms, privatization, and demonopolization have led to cardinal change of a situation in the field of competitive relations in Ukraine. Under the new social and economic conditions, the main problem of the antitrust policy is not only formal elimination of monopolism, but also formation of an effective competitive environment being able to provide sustainable economic growth and stable enhancement of the standard of living of the population. The emphasis in carrying out the antitrust policy in Ukraine at the beginning of the XX century is shifted from overcoming and restriction of monopolism to protection of economic competition.

The demonopolization process, which has begun since transition from the monopolized command model of the Soviet economy to the modern market model of the economy, is based on principles of providing a right for entrepreneurship, protection and supporting competition, putting an end to the abuse of market power, and restriction of competition and unfair competition in the entrepreneur activity. The demonopolization of the economy is a complex of measures, including mandatory ones, carried out by the state, which are directed towards decrease of a market monopolization level.

In Ukraine the demonopolization has been introduced for the purpose of formation and development of the competitive environment, which is the basis of the whole market model. Objects of the demonopolization are monopolized commodity markets, i.e. the markets, which contains at least one monopolistic entity or which restrain access for new business entities; business entities, which occupies a mo-

nopolistic position in the market and, also, state organizational entities of a monopolistic type, which are unions of state-owned companies, are generally created on the basis of former ministries and are vested with state powers regarding performing particular functions of executive authorities (asset management, rendering public contracts, and centralized allocation of resources).

During the independence period there has been forming an enough specific situation in Ukraine. Except the state monopolies, which are built due to the administrative state resource according to a principle of a monopolistic niche, there is oligarchic and monopolistic capitalism in Ukraine that creates monopolistic vertically integrated entities due to its closeness to the authority. In the process of privatization of entire property complexes of large state-owned companies, more than ten main dominative economic groups, which are headed by oligarchs, were formed [3].

Increase of property of the oligarchs was related to processes of privatization of the state-owned assets since 1990 s. It is worth highlighting that the mentioned groups allocate among themselves the main productive potential of the country, a significant share of its banking capital and assets in the field of services, construction, etc. The privatization of public ownership for productive assets in Ukraine led to formation of associated holding groups being peculiar for their social and economic and, to a great extent, for social and political importance.

Among the indicated groups, it is worth mentioning the holding SCM with its main shareholder Rinat Akhmetov, «Eastone» belonged to Viktor Pinchuk, «Privat» belonged to Ihor Kolomoiskyi and Hennadii Boholiubov, «Group DF» of Dmytro Firtash, «Ukrpominvest» of Petro Poroshenko, «IUD» of Sergii Taruta, «Finansy ta kredyt» of Kostiantyn Zhevaho, and a set of groups being somewhat smaller according to the scope of concentration, e.g. «TAS» of Serhii Tihipko, the group DCH of Oleksandr Yaroslavskyi, etc.

The main fields of the productive activity of these groups encompass: metallurgy, machine manufacturing, the fuel and energy sector, the chemical industry, agricultural production, and the food industry. The oligarchs occupy the high positions in this fields and don't give an opportunity for foreign investors to enter the market.

D. V. Zadykhailo points out that one of peculiarities of domestic concentration of business entities is formation of the oligopolistic structure of allocation of productive capacities and, in some cases, monopolistic one in a set of the economic fields. Obviously, at the expense of logistic advantages of a distribution network and a «regime of the greatest promotion» on the part of governmental bodies, the mentioned oligopolists and monopolists distort actions of market competition, expanding influence of the own macro-economic power on domestic consumers. Risks related to management of whole industries of the national economy are also

important, because their destiny depends on a small group of persons, who make authoritative decisions. The very persons determine further prospects of the most powerful clusters and segments of the national economy and almost the entire economy [4].

Oligarchs of all levels follow the single model of business building. It consists in formation of a monopoly, which suggests principally other terms. These terms are non-beneficial, but everyone ought to agree with them, taking into account the absence of alternatives.

The legislation emphasizes that occupying a monopolistic (dominative) position is not a violation of the law, because the violation is considered to be the abuse of the monopolistic position. A monopolistic (dominative) position can be legally occupied due to a monopolistic right for a patent, vertical integration, effective entrepreneurship, etc. Generally, market monopolization should be restrained. But, in the case of legal monopolization, the role of the ATCU should consist in preventing the abuse of the monopolistic (dominative) position, cartel conspiracies, and appearance of unfair competition.

The formation of the respective legislative and normative basis plays the important role in demonopolization. For the period after gaining independence, five laws on regulation of demonopolization processes were adopted, namely the laws «On Restriction of Monopolism and Prevention of Unfair Competition», «On the Antitrust Committee of Ukraine», «On Protection against Unfair Competition», «On Protection of Economic Competition», and «On Natural Monopolies». Moreover, several decrees were issued by the President of Ukraine and a set of orders of the Cabinet of Ministry of Ukraine were dedicated to problems of demonopolization of the economy. The Antitrust Committee of Ukraine developed a great number of documents regarding demonopolization of the economy and performed significant work aimed at providing the demonopolization process [1; 5–7].

The State Program of Demonopolization of the Economy and Development of Competition, which was adopted in 1993, is aimed at formation and development of a competitive environment, which would provide efficient usage of social resources, free access to the market for entrepreneurs, freedom of consumers in choosing commodities of large assortment, and better quality at lower prices [8].

Although the Program had contemplated carrying out all the immediate measures for reduction of a monopolization level and development of competition in the market, it didn't gain desired results. Up to the present day, this issue has been remaining open. Thus, there is a need for adoption of a new Program being more adjusted to the current situation in the market. The new Program should take into consideration permanent dynamics of the economic development, be more adjusted to the present time, and take into account the modern position of the na-

tional economy. More than 20 years have elapsed since the moment of adoption of the old Program of demonopolization and, undoubtedly, it is not relevant nowadays. Openness of markets and processes of globalization and internationalization of the economy require others approaches to these issues.

Up to the present day, the legislation doesn't strictly determine the status of new large structures of a monopolistic type. There is no adjusted antitrust control over their activity. These facts negatively influence development of competitive relations and prevention of restrictive practice of business entities.

Therefore, there is a need to improve the legislation regulating activities of the large monopolistic structures for the purpose of attainment of the real demonopolization of the economy, but not imitation of this process [3].

The public control over adherence to the legislation on protection of economic competition is performed by the ATCU according to its competences. As for the activity of entities of natural monopolies, the control is also performed by the national commissions for regulation of natural monopolies, which are created and function in accordance with the Law of Ukraine «On the Natural Monopolies», and by governmental bodies, and bodies of local self-governance (particularly, there is a need to meet demands of a particular region of the country).

Enterprises of monopolized economic industries, such as electronic power engineering, railway transport, communication, pipelines, ferrous and non-ferrous metallurgy, etc., produce more than the third part of sold industrial goods. One of reasons of such a position is the inappropriate legislative and normative framework of demonopolization processes and the necessity of significant acceleration of formation of such the basis.

First of all, it is worth mentioning that in order to objectively apply measures of monopoly regulation, it is necessary to understand the sense of monopolism. Existence of monopolies is peculiar burden for the economy. Since competition factually don't endanger to monopolists, they can abuse their monopolistic position, neglecting legal and economic laws and society interests. Monopolism forms such economic conditions, under which certain business entities can impose own interests on other business entities and a society on the whole, ignoring their needs. Relations occurring between monopolists and other market participators indicate: inequality of rights in the process of execution of productive, commercial, and another activity; the abuse of the monopolistic position on the part of entities, which are economically stronger; complexity of carrying out the activity in the market on the competitive principles.

The economic monopoly can be natural or man-made. The first case occurs, when competitive fight results in formation of the most powerful, economically effective, and efficient enterprises, which begins to put pressure on other market participators. The second case can appear as a result of actions and management of

governmental bodies, when they establish a peculiar legal regime or give an exclusive right for carrying out any activity to a particular business entity.

Obviously, insufficient legislative regulation of the monopolistic structures is concerned with significant concentration of economic interests in this field. It is very beneficial to be a monopolist. If a consumer has no choice, he has to pay any price for a desired service or a good. Frequently, in the fields, where monopolistic groups dominate, there are distinctive violations: overpricing; dictation of agreement terms, which are non-beneficial for a consumer; pressing undesirable goods upon a consumer; decrease of quality of commodities and servicing; preventing access of other entrepreneurs to potentially competitive adjacent markets, etc. A method of establishing discriminative prices of different types is widespread among methods of entrepreneur behavior of the monopolists. An example is a monopoly in the air transport service market, when the only monopolist in this market is Ukrainian International Airlines. On account of the absence of real competition with other air companies, citizens have to pay high tariffs for usage of air transport. Such examples occur in the markets of mobile communication, etc.

Undoubtedly, regardless of a way of occurrence of the monopolistic entities in the market, their activity must be regulated by the state. Thus, there is an urgent need for revision of competencies of the ATCU bodies and expansion of their powers in the area of control over concentration, etc.

Conclusion. In Ukraine the demonopolization has been initiated for the purpose of formation and development of a competitive environment, which is the basis of the whole market model.

Taking into consideration the modern position of the economic competition and the monopolization under market conditions, it is necessary to revise the legislation on regulation of the activity of large monopolistic entities for the purpose of achievement of the real demonopolization of the economy, but not for the purpose of imitation of this process. Up to now, the legislation doesn't strictly determine the status of new large structures of a monopolistic type. There is no adjusted antitrust control over their activity. These facts negatively influence development of competitive relations and prevention of restrictive practice of business entities.

Since the Program of Demonopolization of the Economy, which was adopted in 1993, haven't yield the desired outcome and it is irrelevant, there is a need to enforce a new contemporary legal doctrine (a strategy, a concept, a doctrine, a program), which would take into account stable dynamics of the economic development, be more adjusted to the present days, and take into account the modern position of the national economy on the whole. Its main aims and prior directions require improvement, development, and practical application according to needs of social development.

It is worth revising the competencies of the ATCU bodies and the national commissions for regulation of natural monopolies. In some cases, it is necessary to expand competencies of these bodies and to give additional opportunities in the area of monopolism regulation, concentration, opposition to oligarchism, and supporting a normal position of competition in the market.

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**НАПРАВЛЕНИЯ ХОЗЯЙСТВЕННО-ПРАВОВОЙ ПОЛИТИКИ
ПО ДЕМОНОПОЛИЗАЦИИ НАЦИОНАЛЬНОЙ ЭКОНОМИКИ**

В условиях рыночной трансформации экономики Украины вопросы защиты конкуренции, предотвращения злоупотребления рыночной властью монополистических структур являются особенно актуальными. Конкуренция является определяющим фактором упорядочения цен и стимулом для развития инновационных процессов и одновременно механизмом вытеснения из хозяйственного оборота неэффективных субъектов хозяйствования. Именно поэтому законодатель выделяет среди основных направлений экономической политики государства антимонопольно-конкурентную политику, направленную на создание оптимальной конкурентной среды деятельности субъектов хозяйствования.

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**НАПРЯМИ ГОСПОДАРСЬКО-ПРАВОВОЇ ПОЛІТИКИ
ЩОДО ДЕМОНОПОЛІЗАЦІЇ НАЦІОНАЛЬНОЇ ЕКОНОМІКИ**

Постановка проблеми. Роздержавлення, приватизація, демонополізація економіки, утвердження різних форм власності є головною умовою створення ринково-конкурентного середовища. Серйозною перешкодою на цьому шляху є значна кількість монопольних утворень. Тому для подолання зазначеної перешкоди необхідні не лише цілеспрямовані заходи на розвиток конкуренції та обмеження монополізму, але й введення в дію механізмів державного регулювання, спрямованих на запобігання створенню нових монополій. Існує необхідність ревізії законодавства про захист економічної конкуренції та перегляду повноважень Антимонопольного комітету України в цій сфері.

Аналіз останніх досліджень і публікацій. Питання правового регулювання економічної конкуренції, антимонопольного регулювання та конкурентної політики держави є досить актуальним і популярним сьогодні. Дослідженнями в цій сфері займаються такі вчені, як Г. Андрощук, О. Безух, В. Базилевич, О. Бакалінська, С. Валітов, В. Геєць, Б. Кваснюк, В. Лагутін, Н. Малахова, Н. Саниахметова, Л. Семенова, Т. Удалов, І. Шумило та ін.

Формулювання цілей. Мета статті — визначити напрями удосконалення законодавства про захист економічної конкуренції з урахуванням сучасних умов ринкової економіки та неефективності функціонування чинного правового механізму.

Виклад основного матеріалу. В Україні демонополізацію було запроваджено з метою формування і розвитку конкурентного середовища, що є основою ринкової моделі. Об'єктами демонополізації є монополізовані товарні ринки, на яких діє хоча б одне монопольне утворення або на які обмежується доступ нових суб'єктів господарювання; суб'єкти господарювання, що посідають монопольне становище на ринку, а також державні організаційні структури монопольного типу, якими є об'єднання державних підприємств, створені на основі колишніх міністерств і наділені державними повноваженнями щодо здійснення окремих функцій виконавчої влади.

В Україні, крім державних монополій, які побудовані завдяки адміністративному державному ресурсу за принципом монопольних ніш, сформувався олігархічно-монополістичний капіталізм, який завдяки своїй близькості до влади створює монопольні вертикально інтегровані структури.

Висновки. В Україні існує необхідність перегляду законодавства, що регулює діяльність великих монополістичних структур, з метою досягнення реальної демонополізації економіки. Дотепер у законодавстві чітко не визначено статус нових великих структур монополістичного типу, не налагоджено антимонопольний контроль за їхньою діяльністю, що негативно позначається на розвитку конкурентних відносин.

Існує необхідність прийняття нової сучасної правової доктрини (стратегії, концепції, доктрини, програми), яка б враховувала постійну динаміку економічного розвитку, була більш пристосована до сьогодення та враховувала б сучасний стан національної економіки. Важливим є перегляд компетенції органів Антимонопольного комітету України та національних комісій з питань регулювання природних монополій.

Коротка анотація

В умовах ринкової трансформації економіки України питання захисту конкуренції, недопущення зловживання ринковою владою монополістичних структур є особливо актуальним. Конкуренція є визначальним фактором упорядкування цін та стимулом для розвитку інноваційних процесів і одночасно механізмом витіснення з господарського обороту неефективних суб'єктів господарювання. Саме тому законодавець виділяє серед основних напрямів економічної політики держави антимонопольно-конкурентну політику, яка спрямована на створення оптимального конкурентного середовища діяльності суб'єктів господарювання.

Ключові слова: правове забезпечення економічної конкуренції, демонополізація економіки, природні монополії, антимонопольно-конкурентна політика держави.