

ҚАЗІРГІ БӘСЕКЕЛЕСТІК ҚҰҚЫҚТЫҢ ТАБИҒАТЫНА СЫНИ КӨЗҚАРАС: ҚҰҚЫҚ ПЕН ЭКОНОМИКА АРАСЫНДА.

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Түйіндеме. Бұл мақалада қазіргі бәсекелестік құқықтағы экономика мен құқықтың өзара әрекеттесу мәселелері талданады. Бәсекелестік - нарықтық қатынастардың негізгі тетігі-кәсіпкерлерді бір-бірімен бәсекелесуге мәжбүр етеді, осылайша бағаның төмендеуіне және өнім сапасының артуына, тұтынушылардың қажеттіліктерін қанағаттандыруға және экономиканың өсуіне ықпал етеді. Бәсекелестік туралы Заң, мемлекеттің жеке істерге араласуының басқа нысаны сияқты, экономикалық ғылым өкілдері тарапынан үнемі сынға ұшырайды.

Автор әлемдегі құқық пен экономиканың өзара байланысының әртүрлі теорияларын қарастырады, жекелеген елдердегі бәсекелестік құқыққа экономикалық әсер әр түрлі және бұл бәсекеге қабілетті елдің немесе тіпті аймақтың экономикалық саласының жұмысына әсер етеді деген қорытындыға келеді. АҚШ, ЕО және ТМД елдері бәсекелестік туралы заңнаманы қабылдау мәселелерінде тарихи тұрғыдан әртүрлі аймақтар болып табылады, сондықтан экономикалық салдары әртүрлі. Автор АҚШ-та ең дамыған монополияға қарсы заңнамасы бар ел ретінде экономикалық құрамдас бөлікке ар-

тықшылық беріледі деген қорытындыға келеді. Сонымен бірге, ЕО Заңының авторлары автордың пікірініше, құқықтық деңгейдің Үстемдігі әрдайым ақтала бермейді деп болжайды. Соған қарамастан, автор ЕО - ның Бәсекелестік саясат құралдарының икемділігі, оның біртұтас нарықтағы әр түрлі мүдделерін ескере отырып, бәсекелестіктің жекелеген бұрмалануларының - бірігу, бірігу, мемлекеттің кейбір түрлерінің пайдалылығы ЕО экономикасының бәсекеге қабілеттілігін арттыруға мүмкіндік береді деген қорытындыға келеді. ТМД-да, бәсекелестік құқығы дамып келе жатқан аймақта құқық пен экономиканың арақатынасы өте ерекшеленеді, қолданыстағы заңнама көбінесе экономикалық ғылымның жетістіктерін көрсетпейді және ЕО немесе АҚШ-тағы сияқты сәтті дамымайды. Қорытындылай келе, автор экономика мен Бәсекелестік туралы заңнаманың өзара оң әсерін айтады және қолданыстағы бәсекелестік туралы заңнаманы реформалау бойынша ұсыныстар енгізеді.

Түйінді сөздер: бәсекелестік, құқық, экономика, ЕО құқығы, Кәсіпкерлік құқық, коммерциялық құқық, ұлттықтан жоғары құқық.

КРИТИЧЕСКИЙ ПОДХОД К ПРИРОДЕ СОВРЕМЕННОГО КОНКУРЕНТНОГО ПРАВА: МЕЖДУ ПРАВОМ И ЭКОНОМИКОЙ

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Аннотация. В данной статье анализируются проблемы взаимодействия экономики и права в современном конкурентном праве. Конкуренция - основной механизм рыночных

отношений - заставляет предпринимателей конкурировать друг с другом, способствуя тем самым снижению цен и повышению качества продукции, удовлетворению потребно-

стей потребителей, подъему экономики. Закон о конкуренции, как никакая другая форма вмешательства государства в частные дела, находится под постоянной критикой со стороны представителей экономической науки. Автор рассматривает различные теории взаимосвязи права и экономики в мире, приходя к выводу, что экономическое влияние на конкурентное право в отдельных странах различно и оно, безусловно, влияет на функционирование экономической сферы конкурентоспособной страны или даже региона. США, страны ЕС и СНГ исторически являются разными регионами в вопросах принятия законодательства о конкуренции, и поэтому экономические последствия различны. Автор приходит к выводу, что в США как стране с наиболее развитым антимонопольным законодательством предпочтение отдается экономической составляющей. В то же время авторы права ЕС предполагают, что доминирование правового уровня, по мнению автора, не всегда оправдано. Тем не менее, ав-

тор приходит к выводу, что гибкость инструментов конкурентной политики ЕС, учитывая его самые разнообразные интересы на едином рынке, полезность отдельных искажений конкуренции - слияний, поглощений, некоторых видов государства - позволяет повысить конкурентоспособность экономики ЕС. В СНГ, в регионе с развивающимся конкурентным правом, очень сильно отличается соотношение права и экономики, действующее законодательство часто не отражает достижений экономической науки и развивается не так успешно, как в ЕС или США. В заключении автор констатирует: положительное взаимное влияние экономики и законодательства о конкуренции и вносит предложения по реформированию действующего законодательства о конкуренции.

Ключевые слова: конкуренция, право, экономика, право ЕС, предпринимательское право, коммерческое право, наднациональное право.

A CRITICAL APPROACH TO THE NATURE OF MODERN COMPETITION LAW: BETWEEN LAW AND ECONOMICS.

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Abstract. *This article analyzes the interference problems of economics and law in the modern competition law. Competition - the basic mechanism of market relations - makes entrepreneurs compete with each other, thereby contributing to reduction of prices and improve the quality of products, meeting the needs of consumers, the economic recovery. Competition law, as no other form of public government interference in private affairs, is under constant fire from representatives of economic science.*

The author examines various theories of the relationship between law and economics in the world, coming to the conclusion that the economic impact on competition law in individual countries is different and it certainly affects the functioning of the economic sphere competitive country or even

region. U.S., EU and CIS countries are historically different regions in matters of establishment of competition law, and thus the economic impact is various. The author concludes that in the United States as the country with the most advanced competition law, preference is given to the economic component. At the same time, EU law authors hypothesize that the dominance of the legal level, that, according to the author, is not always justified. Yet, the author comes to the conclusion that flexibility instruments of competition policy of the EU, taking into account, its most diverse interests of the single market, the usefulness of the individual distortion of competition - mergers, acquisitions, some kinds of state - to enhance the competitiveness of the EU economy. In the CIS, in the region with developing

competition law is very much different ratio of law and economics, current legislation often not reflected the achievements of economic science and the development is not as successful as in the EU or U.S.. In conclusion author states on a positive mutual influence of the economy and competition law and makes proposals to reform the existing competition law.

Keywords: *competition, law, economy, EU law, business law, commercial law, supranational law.*

DOI 10.61995/bela/2023.2.5

Introduction

Competition law - the main core of market relations. The need to ensure fair competition in life requires a well thought-out legal policy. Thus the ratio of economics and law in matters of competition has always been a hot topic. Modern world knows various approaches and attitudes to competition law, and also very different ratio of economics and law in this aspect. Critics of the main argument, and rightly point to a strengthening of the legal aspects of the regulation of competition.

At the present stage due to difficulties in the formation of domestic market economy is the relevance of research questions its relationship with the right has increased substantially. Along with these recent events caused by economic recession that swept many countries require rethinking of problems in the functioning not only of the economic system, but also the question of the relationship of law and economics.

1. Main trends in coordination of law and economics in competition law

Market competition intensifies economic activities internally, avoiding external coercion by the state. At the same time, when each economic agent makes an effort to ensure its own prosperity, and that society as a whole becomes richer. This approach avoids the state coercion, excessive concentration of resources and power in the bureaucracy that poses a serious threat to social progress. Thus, the specificity of the relation freedoms market economy is the right can be represented by the following

formula: the right to focus only on the protection of relations existing between The economy spending subjects without interfering in their internal affairs, except for some of the prohibitions imposed on the abuse of the right, and the monopolization violation of the rights of other economic actors.

The market is not able to withstand the monopolistic tendencies. In terms of market forces inevitably arise monopolistic structures that restrict free competition, are unjustified privileges for a limited number of market participants. To support the extremely high prices, monopolists artificially reduce production. This calls for regulation of prices, say, product raw material monopolies, electricity and transport [1, p.232].

Economic analysis of law involves three separate but interrelated elements. First - is the use of economic theory in order to determine the effect of legal rules. Second - attracting economic theory to determine the cost-effectiveness of legal norms to develop recommendations for their further use. Third - the use of economic theory in order to determine what should be the law. So, the first related to the theory of pricing, the second - with the economic theory of welfare, and the third - the theory of public choice [2, p. 344].

Market as a highly complex sphere of interaction of buyers and sellers, producers and consumers, operates on the basis of price movements in the regulatory impact of institutional rules and regulations. Perfectly competitive market based on a set of principles and institutions such as private property, free enterprise and choice, self-interest as a motive power and competition. Competition is the main regulatory mechanism in a market economy. This force helps to establish some order in the market, guaranteeing the production of sufficient quality and sold at the equilibrium price of goods.

The legal system is designed to maintain internal order, use a system of standards for evaluating the quality of products and provide monetary system facilitates the exchange of goods and services. This will increase the volume of commercial transactions committed significantly expand markets and achieve greater specialization in the use of material and human resources. But such specialization in turn means more efficient functioning of the economy.

“Success stories”: USA & EU competition law experience

Competition law is considered the birthplace of the United States, where it is traditionally referred to as antitrust law. U.S. Antitrust Law regulates relations not only related to the monopolization of the market, but the repression of unfair competition. It should be emphasized that, standing on the protection of “normal”, “bona fide» competitive relations, antitrust law protects the interests of the business, not for the “good manners” and “fair practices” in commercial and industrial operations, but only in order to preserve and maintain competition as the most important economic foundations of a market economy. After all, “good faith” competition leads to the ruin of the economically weaker competitors stronger. Therefore, it is submitted to the relative moral concepts such as “fairness”, “justice”, “good conscience” and “good manners”. It is also important: antitrust never set itself the task of combating the existence of large corporations as production and economic and legal associations of financial capital [3, p.265].

Then compared, for example, U.S. antitrust law, regulation in Europe is performed more gently. In general competition law focused on the market behavior of companies. Less attention has been paid to the control over the structure of the market, i.e. market shares of specific companies. Recently, however, this issue began to be treated more carefully.

Single internal market of the European Union - is a unique inter-state space, which abolished the barrier function of the internal state borders, there are no national barriers to market relations, prohibited discriminatory restrictions on the movement of goods, services, capital, labor, legal and natural persons, reduced spatial factors and differences in economic performance.

This feature of EU competition law due to the fact that at the time the Treaty of Rome the world's major companies were American. To strengthen the position of European companies, the participating countries have expressed interest in the Treaty of powerful firms in the Common Market. At the moment this reason retains its relevance, since most of the major corporations located outside the EU [4, p.134].

Competition law in post soviet area: law against economy?

As a result, over the past few years, competition law states - participants of CIS has undergone significant changes, due to the need to improve it with current economic realities and the need to meet new economic challenges, including the financial and economic crisis of 2009-2010. Thus, in a number of states - participants of the CIS adopted amendments to the national competition laws in accordance with international rules and regulations and best foreign practices in this area.

In the Republic of Belarus in accordance with international rules and regulations, foreign best practices in order to improve the anti-monopoly regulation and competition, as well as the liberalization of economic activities of businesses and individuals in 2009 was adopted by the Presidential Decree “On some measures to improve antitrust regulation and competition”. “The decree allowed to expand the powers of the competition authority to apply measures aimed at curbing monopolistic activity of economic entities that control or eliminate competition and to simplify administrative procedures antimonopoly control over economic concentration by setting thresholds on the appeals of legal persons for obtaining the consent of the antimonopoly body execution of transactions with shares in the statutory funds of economic entities [5, p.38].

In 2009, the Russian Federation has adopted a “second antimonopoly package”, which includes a number of federal laws providing for amendments to the Federal Law “On Protection of Competition”, the Russian Federation Code of Administrative Offences and the Criminal Code of the Russian Federation. Adopted amendments aim to clarify the conceptual apparatus of the Law “On Protection of Competition”, the expansion tool of combating cartels, control over the authorities, increasing thresholds for control of economic concentration, etc. These acts mostly prefer the legal aspects of competition law.

From 1 January 2009 the Republic of Kazakhstan, the Law of the Republic of Kazakhstan “On Competition», which is directly applicable law and regulations which combines the Laws of the Republic of Kazakhstan “On Competition and Restriction

of Monopolistic Activity” and “Unfair Competition”. The main innovations, specified in the Act are: defining the principles of fair competition, the list of grounds and forms of state involvement in business activities, the admissibility of cases agreements or concerted actions of market participants, extraterritoriality, exemption from liability in connection with active repentance, consideration of a group of persons as a single entity law, collegiality in decision-making by the antimonopoly body; grounds for granting state aid and other [6, p.97].

In sectors with large economies, tend to have a high level of concentration. Such a situation is characteristic for Moldova, covering areas such as fixed telephony, infrastructure, electricity, gas, water, air and rail transport, etc. The aim of EU policy in this area - the development of competition in the services provided by these agencies, and maintaining open access to the infrastructure for the effective charge. These issues tend to regulate and monitor the sector regulators.

Furthermore, the amount of state aid in the Republic of Moldova is very significant and is comparable in size with the same funds identified in Central and Eastern Europe (for example, in Hungary in 2008, the amount of state aid amounted to 3% of GDP).² According to the reports of the International Monetary Fund, charge state in the real economy in 2007 amounted to 2.5 billion lei, while in 2010 their volume was projected at a rate of 1.4 billion lei (118 million euros), ie 3% of GDP in Moldova. It can be concluded on the growth of state aid the Republic of Moldova, that given the current economic and financial situation is alarming [7, p.56].

The first authority in the country responsible for the conduct of antimonopoly policy was established in 1992 as the State Committee for Antimonopoly Policy and Support for Entrepreneurship of the Azerbaijan Republic. According to the decree of the president of Azerbaijan of 11 June 2001 about the formation of the Ministry of Economic Development, the committee was reorganized into the Department of Antimonopoly Policy of the Ministry of Economic Development. According to the decree of the president of 28 December 2006, the Department of Antimonopoly Policy of the Ministry of Economic Development was reorganized into the

State Antimonopoly Service under the auspices of the Ministry of Economic Development. The activities of the State Antimonopoly Service are guided by antimonopoly and competition legislation. Currently, the new State Antimonopoly Service Competition Code is Code is soon to be adopted by Parliament, having already passed the first review [8].

The provisions of the Azerbaijani antimonopoly and unfair competition laws are valid and effective in the territory of Azerbaijan Republic and are applicable to all legal entities and natural persons. These laws shall also apply to cases when agreements and contracts concluded between economic subjects, executive power and administrative bodies with natural persons and legal entities of foreign countries lead to direct or indirect prevention, restriction or distortion of competition within the Azerbaijani market. However, the antimonopoly regulations shall not be applicable to relationships resulting from the rights of economic subjects to inventions, trademarks and authorship with the exception of deliberate use of such rights with the aim of restriction of competition

Conclusion

The analysis of the current state of the economy and law in competition law, both from the theoretical point of view and with respect to certain regions and countries led to the conclusion of the diversity of forms of relation of law and economics in a complex understanding of competition law. Successful examples of the development of competition law are undoubtedly the U.S. and EU. In these systems managed two very different areas as economics and law, preferring economy. Post-Soviet development, both the competition law and questions the relationship between economics and law are extremely complex. We can say that in Belarus and Russia more attention is given to law, law of Kazakhstan there is some relation of law and economics in good way. Undergoing great changes and competition law of Azerbaijan seems to us that it develops in a positive way, introducing the best achievements in the world of competition law. Sure, grand reforms are implemented in Moldova, where one of the goals is the integration in the European Union and, therefore, join the union, where there is

a balance of law and economics in addressing competitive issues.

References

Oliver Black - Conceptual Foundations of Antitrust . Cambridge University Press. 2010, p.232.

1. Burrows P., Veljanovski C.G. Introduction: The Economic Approach to Law // The Legacy of Ronald Coase in Economic Analysis. 1981. Section 1.1. The Economic Approach to Law. Vol. II. P. 344.

2. W Adams and JW Brock, Antitrust Economics on Trial: Dialogue in New Learning (Princeton 1991) p. 265.

3. David S Evans. Microsoft, Antitrust and the New Economy: Selected Essays (2002). p.134.

4. Наталья Агешкина . Конкурентное право, - Минск, 2011. - С. 38

5. S. J. Reynolds. Competition Law in Kazakhstan: Priorities for Improvement. 2008. p. 97.

6. The Impact of the EU-Moldova on the Transnistrian Economy: Quantitative Assessment under Three Scenarios, 2013 BE Berlin Economics p. 56.

7. More Common Ground for International Competition Law? - Josef Drexl, Warren S. Grimes, Clifford A. Jones - 2011 - Law.