

АНАЛИЗ НА РАЗЛИЧИЯТА В СИСТЕМИТЕ НА АНТИМОНОПОЛНИ И РЕГУЛАТОРНИ ПОЛИТИКИ НА ДЪРЖАВИТЕ

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Резюме. В статията се анализира понятието „конкуренция“ и възприемането на това понятие, изведено от редица изявени икономисти. Разгледана е еволюцията на разбирането за понятието „конкурентен пазар“. Разработката идентифицира разликите в дейността на антимонополните комисии в страни като Съединените американски щати, Великобритания, Япония, Германия, Испания и Франция. Особено внимание се отделя на развитието на законодателната рамка в тези страни. Предоставят се сравнителни характеристики на отговорностите на антитръстовите агенции в Европейския съюз и Съединените американски щати. Проучването установява, че антитръстовата политика в Европейския съюз има по-либерален характер.

Ключови думи: конкуренция, монопол, антимонополна комисия, Закон на Шерман, Закон за Федералната комисия по търговията, Закон на Клейтън

JEL: K21, L44

ANALYSIS OF DIFFERENCES IN THE SYSTEMS OF ANTI-MONOPOLY AND REGULATORY POLICIES OF STATES

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Abstract. The article analyzes the term "competition" and perception of this notion given by various prominent economists. The evolution of understanding of the concept of "competitive market" has been considered. The article identifies the differences between the activities of anti-monopoly committees in countries such as the United States of America, the United Kingdom, Japan, Germany, Spain, and France. Particular attention was paid to the development of the legislative framework in these countries. The comparative characteristics of the responsibility areas of the antitrust agencies in the European Union and the United States of America has been provided. The study established that antitrust policy in the European Union is more liberal.

Keywords: competition, monopoly, antimonopoly committee, Sherman Act, Federal Trade Commission Act, Clayton Act

JEL: K21, L44

Introduction

Development of the countries clearly shows that the effective functioning of market economy is conditioned by the presence of competition, in which all economic entities have equal opportunities for carrying out their economic activities. The existence of market monopoly leads to negative consequences:

1. Monopolies suppress competition, which is a driving force for economic progress;
2. They are capable of increasing profits, reducing the amount of output and thereby raising its price;
3. Monopolies tend to slow down scientific and technological progress;
4. The latter are prone to predatory use of natural resources and environmental pollution;
5. Monopolies ruin small and medium-sized businesses;
6. They monopolize the media (press, radio, television), by means of which they influence the consciousness of the population in the direction they need;
7. Monopolies put pressure on governments in order to obtain illegal privileges, etc.

Anti-monopoly policy is a set of measures developed and implemented in many countries to stop, prevent and limit the activities of monopolies, as well as to create appropriate legislation.

The purpose of this article is to investigate the features of antitrust regulation in different countries.

1. Analysis of research and publications on the topic

A. Smith, J. Mill, J. Clark, W. Jevons, P. Sraffa, A. Pigou, J. Robinson, E. Chamberlin, F. von Hayek, M. Porter, as well as contemporary Ukrainian economic researchers V. Bazylevych, L. Didkivska, A. Ihnatiuk, O. Kostusieva, V. Lahutin, G. Lozova, S. Chernenko and many others devoted their attention to the problems of competition development. However, this topic is still relevant and needs further investigation.

It was A. Smith who described competition for the first time as a force capable of establishing and regulating market equilibrium. He noted that the reduction in supply leads to competition among buyers - a pursuit for a limited offer that raises prices. Supply surplus leads to rivalry between producers for the sake of getting rid of surplus, which leads to lower prices. Competition deprives market participants of the power to control prices¹. The greater the number of economic rivals, the quicker they start fighting over for benefits by means of reducing and raising the prices². Therefore, it can be concluded that one of the defining characteristics of competition is the large number of market participants. A. Smith defines perfect information and perfect mobility of resources as other defining characteristics of competition. Smith's defining characteristics of competition bring his teaching closer to interpreting the theory of competition inherent in economic thought of mid-twentieth century, which can still be found in many textbooks on microeconomics. However, the analysis of A. Smith's competition does not coincide with the static concept of perfect competition, because it primarily refers to the process of competition, through which market prices become natural. However, he does not refer to specified characteristics of the final state of

¹ Блауг М. Экономическая мысль в ретроспективе / М. Блауг : пер. с англ., 4-е из. — М. : Дело Лтд, 1994.

² Сміт А. Добробут націй. Дослідження про природу та причини добробуту націй / А. Сміт. — К. : Port-Royal, 2001

perfect competition. That is, Smith defines competition as a dynamic process, a mechanism of the market self-regulation, which the scientist calls the "invisible hand", that directs the selfish interests of individual market participants for achieving higher social goals.

Continuing with Smith's research, J. Cairnes identified free competition as a condition in which goods exchange in proportion to their production costs (labor and capital)³. This extends the scope of application of the «competition» category from just a certain industry to the entire economy. In fact, we are talking about the emergence of the concept of "cross-industry competition", which equates profit margins, thereby optimizing the allocation of resources in the economy, although neither Smith nor Cairnes used the category "cross-industry competition". J. Mill also defines competition as very important in economic theory. He warned against being over enthusiastic for equilibrium competition. He also noted that political economy uses a mechanism of competition for building an abstract model of economy rather than develops an action plan⁴. Speaking of such an abstract model of economics, J. Mill predicted the further direction of economic theory development in the works of representatives of mathematical school, neoclassicists, and so on.

For example, A. Cournot has used Smith's thesis about the absence of control over prices of the competitive market participants for determining the horizontal nature of the individual demand curve in conditions of competition, which was done in his own mathematical form⁵. In doing so, he took the first step in creating a perfect competition market model that changed the meaning of the competition category for decades. There has been a dynamic approach to understanding competition as a process that provides for economic development, moving from a non-equilibrium to an equilibrium state of the economy, to a static approach that defines competition as a specific, defined state of the market - a "standard for evaluating the performance of non-competitive market structures.

The most illustrative alterations were reflected in the work of W. Jevons "Theory of Political Economy". His concept of competition was part of the market conception, and the perfect market is characterized by two conditions: the market is theoretically perfect when all traders have comprehensive knowledge of the conditions of supply and demand, as well as the relative prices that follow; there is free competition in the market⁶. W. Jevons mixed the concept of "competition" and "market," and this was largely repeated by his followers. So, the late nineteenth century has seen a change of theoretical paradigm of research and understanding of competition. Prerequisites for active development of the theory of static competition or the theory of perfect competitive market were also formed. The latter is a market structure in neoclassical economic theory characterized by: •

- a large amount of market participants, none of whom influences the conditions of products turnover on the market independently;
- homogeneity of products sold on the market;
- lack of barriers for entering the market (exiting from the market);
- full awareness of all market participants about the market conditions.

³ Стиглер Дж. Совершенная конкуренция: исторический ракурс / Дж. Стиглер // Вехи экономической мысли. Теория фирмы. Т. 2. / под ред. В. М. Гальперина. — СПб. : Эконом. шк., 2000.

⁴ Милль Дж. С. Основы политической экономии / Дж. С. Милль : пер. с англ. ; общ. ред. А. Г. Милейковсукго. — М. : Прогресс, 1980. — В 2 т. — Т. 1

⁵ Cournot A. Mathematical Principles of the Theory of Wealth / A. Cournot. — New York, 1929., p. 90

⁶ Jevons W. S. Theory of Political Economy / W. S. Jevons. — 1st ed. — London, 1871., c. 92

The sophisticated market model of perfect competition had not only supporters who recognized its advantages, but also critics of both the model and its individual provisions.

2. Features of anti-monopoly policy in USA, Japan and EU countries

There are two types of antitrust systems in the world - European and American⁷:

The US antitrust system is based on the principle of monopoly prohibition. This principle means that all statutory acts of monopoly activity should be considered illegal. This assessment of activity is carried out regardless of the assessment of the offender's degree of influence on competition. The principle of monopoly prevention is enshrined in the antitrust laws of Canada, the United States, Argentina, as well as many other countries. The laws of these countries envisage some exceptions for the prohibition of monopolies. Exceptions are developed and adopted on the grounds of an adequate assessment of the current market situation and the degree of their impact on the competitive environment.

Unlike the American one, the European system of antitrust regulation is based on the principle of regulation and control of monopolistic activity. This principle allows to create monopolies and pursue their subsequent activities, however only in cases when these actions do not violate the freedom of competition. On this basis, it can be concluded that every act with characteristics of monopolistic activity should be evaluated according to the degree of its impact on competition. The legislation provides for and establishes a special system of institutions exercising antitrust control and supervision, as well as mechanisms of monopolistic activity control. In cases where the fact of violation or possible threat of distortion of competition is established, the activity of the monopolist is declared illegal. The principle of regulation and control is enshrined in the antitrust laws of Japan, most Member states of the European Union, and a wide range of other countries. The laws of these countries may provide for exceptions to the principle of control and regulation, mainly prohibiting certain monopolistic activities.

The first steps toward large-scale antitrust regulation in Western countries began in the late nineteenth century. This was due to the industrial revolutions that resulted from rapid economic growth and development, extreme aggravation of competition and the first manifestations of economic monopoly.

The United States were the main contributors of the anti-monopoly legislation development. The States passed laws against monopolies, which has become later the basis and example for other countries seeking to implement the relevant legislative field⁸.

In 1890, the United States adopted a bill which was called Sherman Antitrust Act. This law prohibited activities aimed at monopolizing markets, and stipulating penalties for relevant violations. Inquiries of antitrust law cases and their prosecutions were assigned to the U.S. Department of Justice. This piece of legislation was very effective in supporting state competition. The only omission of the law was that it did not cover a range of sectors of the economy that also had some monopolistic sentiments. The United States adopted two additional antitrust laws later. Those were: Federal Trade Commission Act (came into force in 1914) and Clayton Antitrust Act in 1914.

⁷ История государства и права зарубежных стран. Законодательство о компаниях, монополиях и ограничительной торговой практике [Электронный ресурс] // Библиотекар.Ру – Электрон. дан. – [Б. м.], 2006-2017. – URL: <http://www.bibliotecar.ru/teoria-gosudarstva-iprava-5/155htm>

⁸ Бондаренко А. Ю. Антимонопольное регулирование экономики в России, США и странах Европы [Электронный ресурс] // Экономика и менеджмент инновационных технологий. – 2014. – № 5. – Электрон. версия печат. публ. – URL: <http://ekonomika.snauka.ru/2014/05/2325>

Clayton Act has subsequently undergone significant changes. The law was amended basing on the market situation. The Act enshrined the provisions on the inadmissibility of unfair competition and provided for new types of unfair trading activities, thereby prohibiting them. Clayton Antitrust Act established a host of measures for combatting anti-competitive mergers of companies.

At present, the Federal Trade Commission and the Ministry of Justice are engaged in active antitrust policy in the United States. These antitrust authorities issue regulations and guidelines, as well as decide on specific antitrust cases. These decisions are often characterized as a source of law and are put in a separate legal section as administrative precedents.

Jurisprudence, or rather the tradition of judicial precedents plays a big role in antitrust decision-making. Courts considering antitrust cases may decide on the constitutionality of the rules present in antitrust legislation, acts of administrative bodies and the legality of the behavior of market participants.

When dealing with antitrust violations, courts often create doctrines or concepts of antitrust regulation. A vivid example of judicial precedent is the so-called "Rule of reason" formulated by Chief Justice of the United States Supreme Court Edward White in 1911. The rule of reason interprets the following consensus when adjudicating on an antitrust case: in all cases where the judge is in doubt, it is necessary to evaluate the pros and cons and decide, in accordance with the developed analysis, either to dissolve the company or to prohibit one of its actions only when the damage caused to the competition in a particular market outweighs the benefits that society receives from the same activity.

The introduction of the rule of reason has mitigated the prohibition of market monopolization previously introduced in the Sherman Act. In fact, the rule on the admissibility of monopolies of companies or several related structures was put into practice, but on condition that they do not take advantage of their position in the market. This principle, along with a range of other rules produced by the US court system, was subsequently fully or partially transposed or modified to a specific economic model in other countries.

US antitrust legislation has had a direct impact on the development of Japan's antitrust law. Following the end of World War II in 1947, Japan drafted Law №54 to ban private monopoly and support fair trade with the help of consultants from the United States. The law also prompted the establishment of Fair Trade Commission, which was empowered to adopt regulations governing antitrust trading practices.

European competition law was developed under the strong influence of US antitrust law. The latter has had a major impact on German antimonopoly legislation. In 1957, the Anti-Competition Law (the Cartel Law) was passed in Germany. This law prohibited anti-competitive agreements between market actors, abuses caused by dominance and other forms of monopoly.

In the United Kingdom, antitrust and competition laws are exercised traditionally by the courts according to the rules of the case law.

Following the Second World War, the United Kingdom has adopted a range of laws governing antitrust relations in the market, including: Fair Trade Act and the Competition Act in 1998, which was issued in 1973⁹. This Competition Law was based on the antitrust law developed by the European Union and has many basic principles

⁹ Опыт и задачи совершенствования законодательства в области государственного антимонопольного регулирования // Финансовый бизнес. – 2015. – № 5. – С. 13–16.

borrowed from the same legislation. In the same year, the EU adopted a law restricting monopolistic activity and unfair competition.

For a long time, due to a strong state intervention in the French economy, the competition in the country was underdeveloped. In 1986, the market situation changed, which was triggered by the issuance of the President's Order, that initiated such processes as: freedom of pricing, economic deregulation, market development as the most important regulator of economic relations. The Competition Council was created according to the order.

Currently, France's antitrust and competition laws are based on the provisions of Law No. 4 on «Freedom of Pricing and Competition», adopted in 2000. The law does not prohibit the creation and operation of monopolies, however establishes state control over merger-related processes and other forms of capital concentration in cases defined by law.

The European Union enshrined the rules on the protection of competition in its Founding Act, Treaty of Rome, which created the European Economic Community in 1957. This agreement established a ban on anti-competitive agreements, price dumping, dominant position abuse, as well as prohibited governments to subsidize state-owned enterprises. European Union legislation contains competition rules in the Acts of the EU Commission and the EU Council. The directives, regulations and decisions made by these authorities are also recognized as competition rules. Decisions taken by the courts of the European Union are also sources for antitrust regulation.

In the world practice, it is customary to apply the norm of antitrust law through special authorities of antitrust regulation and courts of special and general jurisdiction.

The monitoring function of antitrust regulators differs. In countries such as the USA, Japan, France, market entities are not obliged to notify the country antitrust authorities whether their agreements have the monopolistic nature. Control functions can only be exercised when an interested person or a competent state authority open the case.

In countries such as Spain, Germany, and the United Kingdom, there is a procedure for obligatory notification of the authorized body of future monopolistic agreements. Such information and contents of agreements are recorded in special registers designed to inform consumers and competitors.

In a range of countries such as Sweden, the United States, and the United Kingdom, judicial precedents are of prime importance in resolving disputes in the area of antitrust regulation. Court precedents arise after preliminary hearings of cases in administrative bodies which decisions were partially executed by a defendant or not executed at all. In countries such as Germany, Japan and France, disputes are settled by administrative bodies which decisions may be appealed to court.

In the United States, Federal Trade Commission and the Antitrust Division of the Department of Justice are vested with functions related to antitrust regulation. The competencies of the authorities are partially the same. However, the legislation also gives them exclusive powers. Anti-monopoly authorities are empowered to conduct both criminal and civil cases. The Federal Trade Commission is authorized to conduct only civil cases. Inquiries are also shared between the Commission and the Office of Economics and Industry. It is important to note one peculiarity inherent in the US anti-monopoly authorities. In cases when the defendant in an antitrust case does not object to the claims directed against him, a settlement agreement may be concluded between him and the authorized antitrust authority. According to statistics, about 80% of such cases end up in signing those agreements. These arrangements, after being analyzed and reviewed, are subject to mandatory approval by the federal district court.

The Fair Trade Commission fulfills the anti-monopoly responsibilities in Japan. The Commission deals with antitrust control, examines complaints about violations of antitrust laws, issues orders on the distribution, termination of violations and so on. Decisions taken by the Commission in case of disagreement of one of the parties may be appealed to the Supreme Court of Tokyo, which is vested with exclusive powers and full jurisdiction in antitrust cases. The next highest court of appeal is the Supreme Court of Japan.

In Germany, the antitrust authority is the Federal Cartel Office, which controls and regulates the monopoly activity. There is also a Competition Commission as an advisory body to the Ministry of Economy. The task of the latter is to analyze the tendencies of economic entities concentration and the results of monopoly control.

In the United Kingdom, the Secretary of State for Trade and Industry is responsible for monopoly control. The Competition Commission is vested with some competencies, which is the advisory body to the Secretary of State. Issues related to the case are dealt with by the Administrative Court of Restrictive Practice and the Chief Executive of the Department of Fair Trade. Their responsibilities are distributed as follows. The Competition Commission, when addressed by the Secretary of State or the General Director, prepares and publishes official reports on the cases of monopolization of any commodity market, their impact on competition and remedial measures. The General Director is empowered to investigate cases of monopolization and anti-competitive behavior. If the General Director is unable to persuade the offenders to conclude a settlement agreement, he or she appeals to the Court of Restrictive Practice, the decision of which may be appealed to the Supreme Court of Great Britain and then to the House of Lords.

In France, the Anti-Competition cases are reviewed by the Competition Commission. The decisions of the Commission may be appealed by one of the parties to the Paris Court of Appeal. The merger of companies provides for a different decision-making process and their appeal: the final decision is made not by the Competitive Competition, but by the Minister of Economy, whose actions may be challenged not in court but in the State Council.

In the European Union, the designated supervisory authority is the European Commission. It receives notifications of actions and monopoly agreements, carries out audits and deals with offenses, applies sanctions to offenders.

The antitrust laws of developed countries provide for different types of sanctions. Sanctions range from civil law (compensation to the injured party for damage, invalidation of agreements) to administrative law (imposition of various prohibitions, injunctions on addressing the consequences, administrative penalties) and criminal law.

US antitrust law provides for the possibility of compensation to the victim of damages. In some cases, victims can receive triple damage compensations. The Ministry of Justice and the Federal Trade Commission have the authority to issue orders that impose a ban on anti-competitive activities. Criminal penalties may involve a fine of 50,000 to 1 million dollars and imprisonment for up to three years.

Japanese law provides for innocent civil liability, which envisages compensation. The Fair Trade Commission could have an administrative impact on violators. The most serious monopoly manifestations are liable to criminal prosecution.

German law can only apply administrative and civil liability. Sanctions can be manifested in the form of invalidation of the cartel agreement and compensation of damages. In case a business entity is denied admission to a trade union, it may require

compensation for non-pecuniary damage. Administrative penalties are used as administrative sanctions.

In the UK, civil penalties for breach of antitrust law are invalidation of an anticompetitive agreement and compensation for damages. Antitrust authorities have the right to issue an order banning anticompetitive actions, impose a fine on the offender, issue an order for the coercive division of a company.

In France, the legislation provides for all types of liability. For anticompetitive actions, civil liability comes in the form of damage compensations. Administrative responsibility may be expressed in the binding orders of the Competition Council (on the termination of anti-competitive activity, prohibition of an anti-competitive agreement conclusion or changing the form of activity, etc.), as well as the imposition of fines. Criminal liability is also expressed in penalties.

European Union competition law provides for civil penalties in the form of compensation for damage caused by illegal activity, as well as administrative fines of up to 1 million euro or more, but not more than 10% of the enterprise's total turnover.

The following table compares the areas of responsibility of antitrust agencies in different countries.

Table 1
Responsibilities of EU and US antitrust agencies [36]

Responsibility / Country	EU	USA
Competition restrictions from large sellers	+	+
Restrict transaction competition	+	+
Preliminary merger control	+	+
Competition restrictions from large sellers		
Unfair competition		+
Government procurement		
State aid		
Consumer protection		+
Advertising legislation		
Industry regulation		+
Tariff regulation		
State Defence Order		

Based on the analysis in the table, it can be argued that antitrust regulation in the United States encompasses a lot more areas of economic life.

Conclusion

There is also a range of differences between the laws on monopolies in most countries. For example, there are disagreements on such issues as the purposes of the law, dominance, conduct, prohibited or necessary for dominant entities, whether attempting to prohibit monopoly, identify and balance harms and benefits, institutions and organizations that investigate these laws, and the appropriate legal remedies that can be introduced.

Understanding and differentiating between the monopoly laws of different jurisdictions is essential for minimizing operating costs for enterprises, as well as to bring them closer together and cooperate. While this seems to be an area ripe for international cooperation, there are at least some public signals about potential problems in the globalization of this area of law. Ongoing anti-monopoly research of "globalization" initiatives reveal the importance of understanding the antitrust laws of different countries. Although the globalization of anti-monopoly legislation does not necessarily mean a broader approximation, understanding the differences is essential for moving forward with cooperation in law enforcement activities on what now appears to be a multilateral arena.

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Детерминанти на борсовата активност в условията на българския фондов пазар

JEL: G19, E44, C32

Ключови думи: борсова активност, детерминанти на борсовата активност, индикатори на борсовата активност, борсов обем, борсов оборот, стационарност, случайно блуждаене, авторегресия

Резюме: Популярните научни и практически изследвания на фондовите борси обичайно разглеждат ценовите индикатори и най-вече борсовите индекси, което по същество отразява икономическите очаквания. За разлика от тях, настоящото изследване е...

[Моника Михайлова](#)

Дискуссионни аспекти в моделите за операционализиране на динамичните способности

Ключови думи: динамични способности, конкурентоспособност, конкурентни предимства

Резюме: В настоящата статия е направен обзор и систематизиране на разработените в литературата базови модели за операционализиране на динамичните способности, оказващи значимо влияние за развитието и разбирането на теорията, както и за...

[Юлия Ишчук](#)

Двигатели на формиране на глобалния стоков пазар

JEL: F6, F10, F13, F23, O10

Ключови думи: либерализация, глобализация, стоков пазар, мултинационални компании, информационни технологии

Резюме: Изследването разглежда структурните промени, настъпващи през 21 век, епохата на променяща се световна икономика под влиянието на научно-техническата революция, специализацията и сътрудничеството в сферата на промишленото...

[Артем Валериович Иванов](#)

Анализ на различията в системите на антимонополни и регулаторни политики на държавите

JEL: K21, L44

Ключови думи: конкуренция, монопол, антимонополна комисия, Закон на Шерман, Закон за Федералната комисия по търговията, Закон на Клейтън

Резюме: В статията се анализира понятието „конкуренция“ и възприемането на това понятие, изведено от редица изявени икономисти. Разгледана е еволюцията на разбирането за понятието „конкурентен пазар“. Разработката идентифицира разликите в...

[Павлина Пеева](#)

Ефекти от потребителското позициониране на предприятията за търговия с животозастрахователни продукти в България

JEL: M31

Ключови думи: животозастраховане, потребителски нагласи, анкетно проучване, конкуренция

Резюме: Животозастрахователният пазар бележи ръст с всяка изминала година в страните от ЕС, а практическият и научен интерес към животозастраховането в специализираната литература е съвременна тема. За разлика от общоевропейските тенденции,...