

ЕКОНОМІКА ТА УПРАВЛІННЯ НАЦІОНАЛЬНИМ ГОСПОДАРСТВОМ

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THE ANTIMONOPOLY POLICY OF REGULATING ANTICOMPETITIVE CONCERTED ACTIONS IN THE GOODS MARKETS

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Problem formulation. The problems facing economy of Ukraine in recent years increased relevance of the pricing process management as one of the key elements of the policy impact on a consumer, which performs important functions. These functions are necessary to inform a manufacturer about the real impact on demand for goods and a consumer about the ability of satisfying his needs at a certain value of supply and income.

The lack of theoretical knowledge and practical skills of price policy formation leads to deterioration of the general state of national enterprises in all economic sectors. Therefore, the pricing process is fundamental for the functioning process.

In case of enterprise's adaptation to changeable environmental conditions, price as an economic element is becoming increasingly important. In this case, management decisions concerning prices are becoming important as they significantly affect the performance of the company and its market position. It is important to realize that pricing is the most significant process in the activity of any undertaking as it creates competitive advantages of manufacturers. Most frequently price is established at the goods entering the market when changes of goods for a certain period of time are not considered. In particular, the efficiency and results of pricing at the enterprise depend on creating competitive advantages in the market and ability to control them.

However, negative developments which lead to the deepening of social problems in the national economy and relate to anticompetitive concerted actions and unjustified price increase in socially important goods markets, occur in pricing policy of non-monopoly businesses. The topicality of this issue is growing in terms of threats to national security and humanitarian crisis in Ukraine.

The presence of the above-mentioned problems led to the choice of the research sphere, **aimed at** comparative analysis of the world experience of applying state regulatory instruments that can detect anticompetitive concerted actions and promptly eliminate their negative effects and determination of conceptual principles of improving competitive policy on this issue in Ukraine.

Analysis of the recent publications. Analysis of the publications concerning objectivity and efficiency of pricing in the market has shown that this issue is quite problematic in the contemporary economy. Thus, both national and foreign scientists have paid much attention to determination of nature and mechanism of pricing in the market environment. The authors of scientific works regarding pricing are K. Buzhymyska, I. Erukymovych, O. Kolesnykov, O. Kostusev, such classics of economy as A. Smith, D. Ricardo, A. Marshal, etc. Legal and economic aspects of combating cartel agreements were covered by the scientific works of such Ukrainian and foreign researches as I. Artemeva, O. Bakalinska, M. Barash, A. Harahonych, O. Kashtanov, O. Melnychenko, L. Ptashchenko,

K. Tkachenko, etc. In our opinion, the problem of regulating this type of violating competition law in Ukraine will remain current and unsolved for quite a long time.

Presenting new material. The performed research shows that methods of creating a competitive environment in Ukraine should be based on the gained international experience of economic development. It provides implementing reforms in various spheres of social life: economic, legal, tax sphere in order to create a favorable environment for the development of productive forces and economy in general.

Social problems are deepening in the economic crisis and political instability. In our opinion, one of the fundamental reasons of such problems is violation of competition law, anticompetitive concerted actions or cartels.

The analysis of competition law development has confirmed that in general concerted actions are concluding agreements by undertakings in any form, making decisions by associations in any form, and another concerted competitive behavior (activity, inactivity) of undertakings. These are agreements between entrepreneurs in a certain market behavior that can result in setting identical prices, territorial or goods division of the market. Concerted actions are creating undertaking or association aimed at coordination of competitive behavior between economic undertakings which created a certain undertaking or association, or between them and a newly created entity, or entrance to such association. Concerted actions can destroy competition, therefore only the Antimonopoly Committee can grant permission.

Anticompetitive concerted actions (alliances or cartels) are considered to be the most dangerous type of violating competition law which is the most difficult to detect and prove.

In recent years, Ukrainian antimonopoly law has changed dramatically. Obviously, the European competition law principles had and are still having a direct impact on the development of legislation on economic competition protection in Ukraine. However, despite the fact that the Antimonopoly Committee of Ukraine proclaimed the conception of approximation of Ukrainian legislation to European competition samples, there are not enough specific steps in this direction [1].

It is therefore necessary to determine efficient methods and tools for conducting competition policy in Ukraine. It should be oriented towards the development of large-scale entry into the international economic community, considering trends of economic development. These trends provide that supranational regulation of macroeconomic processes at different levels of functioning of the world economy will become increasingly important with the mechanism of price competition in the market. There will be the combination of administrative, legal and economic instruments within the corporate, government and supranational regulation. However, economic forms and methods of regulation of micro- and macroeconomic processes will dominate.

It should be noted that the Antimonopoly Committee of Ukraine in 2003 adopted the regulation on the approval of Committee Regulations for evaluation positive and negative effects of concerted actions and concentration of undertakings [3]. The purpose of creating Commission is preparation of conclusions concerning consequences of granting permission for concerted actions, concentration of undertakings and making a reasonable decision on granting permission by the Cabinet of Ministers of Ukraine for concerted actions, concentration of undertakings or refusal to provide.

The main tasks of the Commission are:

1. Realizing:
 - forecast of effects on concerted actions and concentration of undertakings;
 - detailed foundation of effects on concerted actions and concentration of undertakings;
 - analysis of quantitative and qualitative indicators that characterize effects on concerted actions and concentration of undertakings;
 - risks valuation and obstacles to achieve the expected positive effect.
2. Developing:
 - possible ways and means of avoiding negative consequences of concerted actions and concentration of entities;
 - in case of claims and liabilities to the participants of concerted actions, including certain committed acts.
3. Concluding:
 - positive effect for public interests from concerted actions and concentration of undertakings, as well as the factors for achieving the effect, i.e. improvements, including extensions and / or amendments;
 - indicators of main types of products (services);
 - structure of production;
 - service maintenance (for technical products);
 - competitiveness of goods

- export business of the enterprise with determination of existing and planned contracts and cash receipts;
- existing system of raw material supply to the enterprise, raw replacement capacity (low quality, high monopoly price);
- production process, existing technologies, machinery and equipment at the branch enterprises;
- number of workplaces;
- benefits of positive effect for public interests from concerted actions, concentration of undertakings over the negative consequences of restricting competition by these concerted actions or concentration of entities;
- negative consequences of restricting competition by these concerted actions and concentration of entities;
- grounds of obligations of concerted actions and concentration participants as for providing specific quantitative indicators that characterize positive effect from concerted actions and concentration of undertakings in short-term (up to 1 year), medium-term (up to 3 years) and long-term (over 3 years) outlook;
- sufficiency or insufficiency of proofs by participants of concerted actions or concentration of undertakings, the fact that positive effect on the public interests from concerted actions and concentration of undertakings overcomes negative consequences of competition restriction by these concerted actions, concentration of undertakings;
- existence or absence of necessity for competition restriction caused by the concentration or restrictions that are applied by the participants of concerted actions for achieving purpose of concentration or implementation of these concerted actions;
- lack of threat to the market economy system due to competition restriction from concerted actions and concentration of entities;
- if necessary, applying specific requirements and obligations to the participants of concerted actions and concentration, also in relation to concerted actions and concentration of undertakings performed by them with terms of their implementation to include specified claims and obligations to the draft decision of the Cabinet of Ministers of Ukraine, concerning granting a permission on concerted actions and concentration.

4. Making a motivated decision concerning granting or refusing a permission on concerted actions and concentration of undertakings by the Cabinet of Ministers of Ukraine [4].

Thus, the purpose and objectives of the Commission do not provide influence or regulate anticompetitive concerted actions in the goods markets that may lead to unjustified price increases. At the same time, trade liberalization cannot stimulate competitive behavior and functioning in economic markets that are concentrated at the national and international levels; it does not provide the required manner and competitive behavior as competition policy does. Undoubtedly, the best way is to review antitrust policy and trade liberalization as complementary means and instruments for achieving economic efficiency. However, the regulatory authorities should take into account the social aspect of forming the efficient competition policy that provides rapid response and intervention in the agreed unjustified price increase for socially important goods markets.

It should be noted that the negative effects control of the cartel conspiracy is kept in the countries worldwide (Fig. 1), particularly in the European Union. Then in 2008 the European Commission introduced a procedure for the peaceful settlement of the cartel dispute without negotiations aimed at achieving procedural efficiency after the completion of the investigation for accelerated decision [5]. Cartel members may resort to such settlements whose examination turn had not been approached or who otherwise would not have full immunity or could count on mitigation. Almost six years of experience in implementing this instrument showed its importance in addressing the charges against those who did not qualify for mitigation. Features of the implemented measures have mutual nature: a) for employees of the antimonopoly agency – release of critically important resources, gaining valuable cooperation, getting a push for further investigation; b) for members of cartel collusion – getting 10% sanction reduction, confidence at a faster withdrawal of the charges against them. Therefore, peaceful settlement in cases of cartels, especially in combination with the release program and liability mitigation acts as a new efficient means of detection and prevention of cartel conspiracies. As it was repeatedly emphasized in the expert community, benefits from the use of such procedures are not limited by acceleration of investigation concerning the facts of anticompetitive agreements or decisions. The positive effects of these changes are much deeper. They involve releasing time, organizational and financial resources of state control entities to investigate other cartel collusions [6]. Besides, the possibility to confess the offense and thus dispose or mitigate the liability of one of its members is an important psychological fuse which is used for enhancing preventive effect of a peaceful settlement in cases of cartels. Considering the significant advantages of

the peaceful settlement introduction of the dispute cartel in European countries, all the existing oral agreements between the parties of concerted actions and AKMU (Antimonopoly Committee of Ukraine) concerning mutual reconciliation should be legalized at the legislative level, providing therefore distinct and clear procedure to resolve conflict. The official introduction of this procedure in a competitive legal framework should be implemented by amending the Law of Ukraine “On Protection of Economic Competition” [7] by provisions concerning the possibility to recognize by market participants its participation in the cartel conspiracy with the corresponding refusal of appeal against the decision of the Antimonopoly Committee of Ukraine and in this case provide 10% fine reduction. Thus, experts suggest to add new parts to the article 6 of the Law of Ukraine “On Protection of Economic Competition” as follows: “Legal or individual person is a member of anticompetitive concerted actions who intends to reduce fine amounting to 10% for committing a violation of legislation on economic competition protection, under paragraph 1 of the article 50 of the Law of Ukraine has the right to appeal to the Committee with a statement on the conclusion of a settlement agreement for the whole duration of the proceedings on the merits.

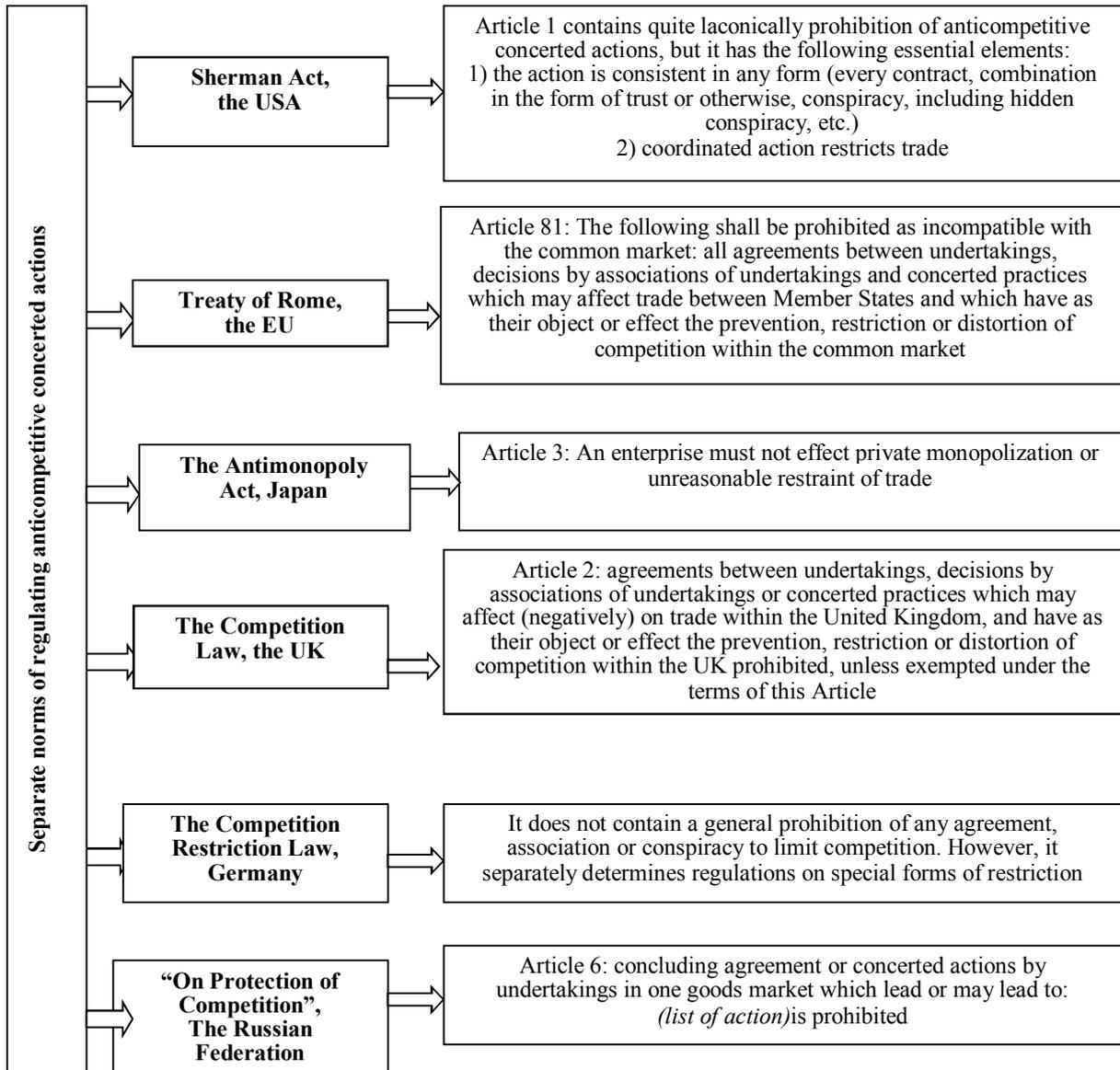


Fig. 1. World experience of regulating anticompetitive concerted actions [1]

Decisions of the Committee concerning the application to initiate a settlement of a peace treaty between the Antimonopoly Committee and member(s) of concerted actions is taken after the presentation of the preliminary findings of the case” [8]. A detailed mechanism for implementation of the specified provisions at-law or a separate legal act or a separate section in the Rules of cases of violation of the antimonopoly legislation of Ukraine should exist for their efficient functioning. One should also use the positive experience of the USA in terms of the antitrust law formation and ensure

the independence and transparency of the antitrust authorities. The specified mechanism must particularly include such elements as:

- content of the statement of intention to settle a peace treaty in the cartel case indicating: a) the admission of responsibility by market participants for anticompetitive concerted actions;
- b) anticipated maximum possible penalty imposition by the authorities of the Antimonopoly Committee of Ukraine; c) the contact person's name (for legal entities), communication number (telephone, fax, etc.) and, if available, email address; d) etc.;
- duty of the applicant concerning non-disclosure of the information on statements of intent settlement agreement in the cartel case;
- confirmation by participants of cartel conspiracy to deny judicial review of the indictment decision of the Antimonopoly Committee of Ukraine;
- duty of affiliates (branches) of a company or association of undertaking in the case of anticompetitive concerted actions which desires to resolve the conflict situation peacefully and appoint joint representative aimed at accelerating completion of the case;
- inability to exempt from responsibility or mitigation after the commencement of a settlement agreement between the Antimonopoly Committee of Ukraine and participants of economic activity;
- content of cartel settlement;
- cases when a settlement agreement in a cartel case is impossible and the possibility of changing provisions of the settlement agreement offered by the Committee;
- appeal procedure in the case of anticompetitive concerted action settlement agreement.

Positive effects from the introduction of the procedure offered by us on peaceful settlement of cartel cases are hard to overestimate. One of the possible outcomes of the results of this system activity is facilitating the reduction of administrative procedures, simplification of eliminating anti-competitive effects of concerted actions, significant reduction in the risk of appeal accepted the Antimonopoly Committee of Ukraine solutions and many other mutual benefits that can be got by national competition authorities and participants of concerted actions in Ukraine.

Conclusions. Nowadays, some major components of market participants are out of sight of a Ukrainian legislator. An example of insufficient regulation is the issue of anticompetitive concerted actions of economic undertakings in matters of unjustified high prices for socially important goods markets. To remove it, one must apply to the EU legislation and adopt the positive elements of competition and regulation to implement them in the legislation of Ukraine in the form of regulations. Additionally, an efficient mechanism for these rules implementation must be created as substantive rules without their procedural implementation are devoid of content. International experience confirms the real possibility of such implementation. Despite the fact that economic theory is being developed around the world, political, cultural and economic history of the United States created a unique antitrust jurisprudence which is considered to be the most developed and can be adapted to the national practice of the competition policy.

REFERENCES:

1. Ptashchenko L.O.State regulating anticompetitive concerted actions in socially important goods markets / L.O.Ptashchenko // Economy and state. – 2012. – No. 4. – P. 4 – 7.
2. Zhupanin A.Comparing approaches to anticompetitive concerted actions in the Ukrainian legislation and legislation acts of the EU/ A. Zhupanin // [Electronic resource]. – Access mode: <http://pravotoday.in.ua/ru/press-centre/publications/pub-397/>
3. Regulation of the Commission on evaluation of the positive and negative effects of concerted actions and concentration of undertakings. Registered at the Ministry of Justice of Ukraine on May 14, 2003 under No. 366/7687// [Electronic resource]. – Access mode: <http://www.yur-info.org.ua>.
4. Adapted from“Correspondent”// [Electronic resource]. – Access mode: net <http://news.finance.ua/2011/08/04>
5. Antitrust: Commission introduces settlement procedure for cartels. Reference: IP/08/1056 Date: 30/06/2008 // [Electronic resource]. – Access mode: [http:// europa.eu/rapid/pressReleasesAction](http://europa.eu/rapid/pressReleasesAction).
6. Cartel settlements. Report to the ICN Annual Conference. – Kyoto, Japan. – International Competition Network. – April 2008. // [Electronic resource]. – Access mode: <http://www.internationalcompetitionnetwork.org/uploads/library>.
7. The Law of Ukraine“On protection of economic competition” dated on 30.03.2001 under No. 292/5483 // State privatization newsletter. – 2001. – No. 6. – P. 27-41.
8. Sarhan I.M. Control of concerted actions in the competitive legislation of the European Union and Ukraine/ I.M. Sarhan // Journal of the Academy of Advocacy of Ukraine – No. 13 (4'2011).

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Ptashchenko Liana Oleksandrivna, Doctor of Economics, Professor. **Rudych Olga Anatoliivna**, PhD. Poltava National Technical Yuri Kondratiuk University. **The antimonopoly policy of regulating anticompetitive concerted actions in the goods markets.** The issue of anticompetitive concerted actions and unjustified price increase in the goods markets was considered, the world experience of applying state regulatory

instruments that can detect these actions was analyzed, and the problems of competition policy in Ukraine and ways of their solution were determined.

Keywords: Anticompetitive concerted actions, pricing process, price policy formation, competition law, restriction of competition, state competitive policy.

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Птащенко Ліана Олександрівна, доктор економічних наук, професор. **Рудич Ольга Анатоліївна**, здобувач. Полтавський національний технічний університет імені Юрія Кондратюка. **Антимонопольна політика регулювання антиконкурентних узгоджених дій на товарних ринках.** Розглянуто питання антиконкурентних узгоджених дій і необґрунтованого зростання цін на товарних ринках, проаналізовано світовий досвід застосування державних регуляторних інструментів, котрі дозволяють виявити такі дії, визначено проблеми конкурентної політики в Україні та напрями їх розв'язання.

Ключові слова: Антиконкурентні узгоджені дії, процес ціноутворення, формування цінової політики, конкурентне законодавство, обмеження конкуренції, державна конкурентна політика.

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Ключевые слова: Антиконкурентные согласованные действия, процесс ценообразования, формирование ценовой политики, конкурентное законодательство, ограничение конкуренции, государственная конкурентная политика.