

Theoretical and Practical Aspects of Counteracting Unfair Competition and Violation of Antimonopoly Laws

Viktoriia V. Korolova^{1,*}, Inna M. Dolianovska¹, Myroslav V. Hryhorchuk¹ and Yuliia V. Vyshnevskaya²

¹Department of State Legal Disciplines, "KROK" University, Kyiv, Ukraine

²Department of Law, Kyiv Cooperative Institute of Business and Law, Kyiv, Ukraine

Abstract: Competition allows business entities to implement projects that can subsequently ensure the development of the socio-public system and the country as a whole. At the same time, an opportunity for personal development is also achieved for a business entity. At the same time, any activity aimed at increasing profitability and market share leads to the emergence of new market participants that can help destabilise the industry or bring innovations to it. This allows the implementation of scientific and technological progress due to the competition mechanism. The novelty of the study lies in the fact that unfair competition is understood only as an element of violation of economically sound norms for entrepreneurial activity. The authors consider the competition of bona fide type as an element of the formation of saturation of the commodity market. Moreover, the state is considered not only as a source of antimonopoly legislation, but also as a factor in the implementation of the principles of competition in the interests of society as a whole. The practical significance of the study is determined by the possibility of structuring the requirements for competition law on the basis of independent regulation and the additional use of judicial and restrictive measures to spread the practice of competition in any sector of the national economy.

Keywords: Competition, integrity, use, structure, entrepreneurship.

INTRODUCTION

With the development of globalisation and integration processes in the economy, the issue of ensuring the development of fair competition is becoming crucial, since only the use of the latest innovative technologies in the development and production of products, high requirements for the quality of goods, work, services and European standards of service can ensure the proper level of product competitiveness both nationally and internationally. At the same time, realising their economic interest by increasing the competitiveness of their own products, goods producers contribute to the modernisation of the entire economic system of the state, which has a positive effect on the development of society as a whole (Sidak and Teece 2009). Thus, the content of competition, as an object of legal regulation, is being formed, on the one hand, based on a combination of the totality of private economic interests of business entities that encourage market entities to engage in business activity, and on the other, on the public need for a clash of these interests, due to which society and each citizen receives the benefits of competition in the form of lower cost of goods and improved conditions of service, and the state receives income in the form of taxes and mandatory payments (Wils 2017). Given this, competition policy aims to

satisfy both private and public economic interests, contributing to the optimal balance of supply and demand, economic progress, the growth of the population welfare and, accordingly, the welfare of the state itself. The basis for the functioning of competition is profit. Competition equalises the average cost of goods and the rate of profit, on the one hand, and satisfies social needs for goods, work, and services, on the other (Massarotto 2018).

The key to economic efficiency is to improve the qualitative and quantitative parameters of the environment in which business entities interact and the latter adhere to certain business conditions. One of the means of balancing and harmonising these processes is the support and protection of fair competition, the formation of civilised relations between producers, consumers and the state (Heywood 1988). By intervening in the regulation of the activities of business entities, the state must balance the objective requirements for business entities regarding their compliance with certain rules of conduct and interaction, on the one hand, and guaranteeing freedom of a market economy (freedom to choose the type of business, freedom to invest capital, etc.) – on the other. For the effective functioning of the market system, two of the most important institutions must work fully – private property and competition.

LITERATURE REVIEW

The state supports competition as a race between business entities, which is ensured by the achievement

*Address correspondence to this author at the "KROK" University, Ukraine; Tel: +380444555707; E-mail: korolova-vv@uohk.com.cn

of their own economic advantages, as a result of which consumers and business entities – competitors are given the opportunity to choose the necessary goods and at the same time, individual business entities do not determine the conditions for selling the product on the market (Markovits 2010). Based on this, competition is understood as rivalry, competition between market participants for achieving results in any field, for better, economically more favourable conditions for the production and sale of products and the highest profit (Giocoli 2009). The right to competition, in fact, represents the ability of a person, as defined by law, to compete in the course of entrepreneurial activity by means of independent actions with other business entities (competitors) for the priority purchase of goods (works, services) by consumers (buyers). Thus, it can be said that competition allows any restriction of the interests of business entities, which is the main consequence of the competition itself, if this is achieved by legal and loyal (not prohibited) means (Bougette, Deschamps and Marty 2015). Welcoming competition and allowing for its certain, including not always positive consequences (for example, crowding out certain business entities from the market, their possible ruin, etc.), economic theory, and right after it introduce one fundamental limitation: competitive ways and methods that are manifested in the specific actions of business entities in a competitive environment should be acceptable, relevant and conscientious, that is, not prohibited by law and those that meet the requirements of morality and business turnover, the principles of good faith, reasonableness and fairness in business relationships (Wils 2017).

Considering the problem of legal support for fair competition, it is necessary to pay attention to the fact that the origins of the concept of “fair competition” are still in Roman law. Many researchers of competition legislation and law emphasise the close relationship between the principle of good conscience, which has become the basis for building the entire civil and economic turnover system in Germany, France, Italy, and Switzerland, and the development of competition law in these countries (Clancy, Geradin and Lazerow 2014). The recognition of the paramount importance of the principle of good faith in the actions of participants in a business turnover necessitated the protection of their rights and legitimate interests from manifestations of unfair competition (Wils 2019). And despite the fact that each country has its own unique system of protection against unfair competition, in most of them unfair competition is seen as a form of abuse of law,

tort or form of unlawful behaviour, in contrast to fair competition, which is protected by international treaty rules and competitive legislation and business practices (Markovits 2013).

The requirement for the fair exercise of their rights and obligations by participants in a competition is nothing more than: the obligation of business entities, in the exercise of their rights, the exercise of their legitimate interests, and the performance of their duties, to exercise due care for the observance of the rights and legitimate interests of other participants in the business turnover. The principle of good conscience is the principle of competition law aimed at achieving a balance of interests between subjects of relations (Provost 2014). The principle of good faith in competition law is supplemented and supported by the presumption of good faith in the actions of a participant in competitive legal relations and is a form of embodiment of the presumption of innocence of a participant in a competitive competition until a person whose rights are violated by unfair actions of competitors presents his claim. Fair competition implies the existence of the principle of good faith in the business of a business entity, which is an important factor in resolving conflicts of interest on a reciprocal basis, as well as mutually agreeing on reciprocal interests and claims (Gerber 2006). The essence of the term “good faith” should be revealed through the concept of “good” and “conscience”, which is the embodiment of the moral and ethical ideals of good and justice, the implementation of the rule of law in economic (competitive) legal relations (Van Cleynebreugel 2016).

Thus, good faith is a moral and ethical category that characterises the intellectual and moral qualities of a person. At the same time, the good is seen as the greater good, and conscience – as the ability of the human spirit to cognise ethical values in their reality, the way in which a sense of value becomes significant for a person, moral knowledge of what is good and what is bad, fair and unjust (Melamed and Shapiro 2018). Good faith, like rationality, are moral, philosophical categories. But, getting into the sphere of legal relations, acquiring the ability to cause legal consequences, they require a special legal approach to determination, since legal regulators, in contrast to moral ones, have a high degree of certainty and concreteness (Markham 1956).

The recognition of the presumption of good faith as a competitive law is important, since the establishment

of the boundaries for the exercise of the right to fair competition is directly related to the possibility for competition entities to go beyond these limits, i.e., to commit an abuse of the law (Glick 2019). Going beyond the limits when exercising the right to fair competition, as a rule, is associated with the need to assess the competitive behaviour of a business entity as such, which contradicts the requirements of good morals, good conscience, good faith, reasonableness and justice.

MATERIALS AND METHODS

The implementation of the subjective right to fair competition must comply with the principles of competition law and take into account the need to balance private and public interests in economic activity. Anyone can exercise their rights without abusing them and without forgetting that by their actions they can harm the rights of others (Horoschak 1992).

The application of the principle of the presumption of good faith in the regulation of competitive relations has led to the expansion of the field of dispositiveness in the regulation of competitive legal relations, the improvement and theoretical justification of socio-economic changes taking place in the public and economic life of the country (Motchenkova and Kort, 2006). Along with fairly well-defined rules of antitrust regulation, the principle of good faith in competition law plays the role of a buffer between administrative and organisational and economic influence on competitive legal relations and self-regulation, which is inherent in a free market, all this provides an opportunity to balance the advantages and limitations of an open economy with the need to realise their own entrepreneurial freedom and interests of private consumers and the state (Hylton 2010).

Thus, the principle of good faith in regulating competitive relations represents the possibility of a business entity enshrined in constitutional law and acts of economic competition law to carry out free entrepreneurial activity in a competitive environment, consciously showing due trust and care for observing the rights and legitimate interests of other participants in the economic turnover, proceeding from the belief that moral requirements will be taken into account by other participants in competitive relations, and if they are not observed, a business entity can choose an adequate way to protect the violated right and receive appropriate protection.

The presumption of good faith of participants in competitive legal relations is the assumption that participants in competitive legal relations are considered good if there is no abuse of the right to compete in their actions, with a clear understanding that in the process of competitive competition they behave in a manner that they would like their competitors to treat to them. Such an assumption is considered true until otherwise proven in the manner prescribed by law. The principle – the presumption of good faith applies to the regulation of any competitive legal relationship, however, its special properties are manifested in the process of realisation by the participants of economic competitive relations of the right to fair and bona fide competition.

RESULTS AND DISCUSSION

Fair behaviour of a business entity in a competitive relationship should be assessed based on an analysis of the behaviour of a business entity in relation to competitors, consumers and the state. When assessing the integrity of competitive behaviour, it is necessary to consider that:

- a business entity does not have the ability to influence the behaviour of other business entities in the market and the conditions of competitive competition;
- competitive advantages gained by the entity are its achievements (the result of its market strategy);
- actions of a business entity in competition comply with the moral and ethical standards in society, the requirements of morality and business customs, the principles of good faith, reasonableness and justice;
- a business entity in a competitive relationship acts reasonably and consciously.

On the other hand, if the subject of the assessment is the behaviour of a particular business entity in a contractual relationship, in particular, in the process of taking agreed actions, economic concentration, along with the criteria of good faith actions of participants in a competitive competition, general criteria for assessing good faith, such as actions by business entities should be applied, which are characterised by concern for the rights and interests of the counterparty, a reasonable prediction of the possibility of harm to these rights and interests in order to prevent a violation of the fair

balance of the rights and interests of the parties to the contractual obligation. Along with this, it is necessary to check the compliance of the content of the transaction or the actions of participants to the competitive competition and their consequences with the requirements of competition law.

Good faith in competitive legal relations can be defined as the standard of conscious and responsible behaviour of a business entity, which in the process of competitive competition uses its own achievements to defeat competitors, shows the necessary care and concern for taking into account the interests of competitors and the state, as well as society as a whole, when implementing its own striving for victory and gaining advantages, which guarantees fair and bona fide competition and does not intend to harm competitors or consumers by their actions, and its behaviour complies with the rules and customs of economic turnover, the moral foundations of society. The goal of competition among business entities can only be achieved if the results of their business (goods and services) are approved and acquired by other entities that are not directly involved in the competition, that is, consumers who act as third parties in the competition. However, business entities in their attempt to win the competition quite often use unfair methods of conducting competition, levelling all the advantages of competition.

Understanding the whole danger of violating the principles of good faith in competition has necessitated international legal protection of the rights of business entities and consumers from manifestations of unfair competition. In particular, at the 1900 Brussels Diplomatic Conference regarding the revision of the provisions of the Paris Convention for the Protection of Industrial Property of 1883, it was determined that an act of unfair competition, in accordance with Art. 10bis (Unfair Competition) of the Convention is any act of competition that is contrary to fair customs in industrial and commercial matters (Paris Convention for the Protection...). Also, this article defines a list of actions that should be prohibited as unfair competition, namely:

- all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities of a competitor;
- false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;

- indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

It should be noted that according to Art. 10ter of the Paris Convention, the governments of all states that have signed the said Convention are required to provide administrative and judicial protection of the rights of business entities and citizens from manifestations of unfair competition. That is, if an entrepreneur cannot get adequate protection within the framework of the national system of protection against unfair competition, he has the right to apply for protection of his rights to international legal institutions both with a lawsuit on the recognition of the fact of an offence, and with a lawsuit against state bodies that do not provide effective protection of his rights. Thus, the recognition of unfair competition as an offence actually provides the basis for the recognition of fair competition as a generally recognised good, which requires appropriate and effective protection.

In author's opinion, the definition of "fair competition" is most thoroughly disclosed by the provision that fair competition is a form of interaction between participants in a competition in which business entities adhere to honest and good customs in carrying out business activities, the requirements of good faith, reasonableness and justice, thanks to which they gain advantages in the competition, and consumers have the opportunity to freely choose goods (work, services) of appropriate quality. An important factor in ensuring the improvement of the legislative regulation of fair competition is the consideration of international law aimed at creating a high-quality competitive environment. The country's accession to the WTO necessitates taking into account the principles of fair competition in force within the WTO. It is important to note that at the global level there is a gradual institutionalisation of various aspects of competition policy. Today, the basic rules of fair competition are contained in the following agreements:

Agreement on trade-related aspects of intellectual property rights (TRIPS) – Art. 22 (Protection of geographical indications), Art. 39 (Protection of undisclosed information), Art. 40 (On tools that WTO member countries can use in response to anti-competitive abuses of intellectual property rights) (Overview: the TRIPS Agreement);

General Agreement on Trade in Services (GATS) – Articles VIII (On the impossibility of abuse of market power by monopolies and exclusive service suppliers), IX (On interstate consultations on business practices that inhibit competition) and XIV (General exceptions) (General Agreement on Trade...);

Trade Related Investment Measures Agreement (TRIMS) – Art. 5 (Communication and transitional events) and Art. 9 (About the Council for Trade in Goods as a body that considers the need to supplement the provisions of the Competition Policy Agreement) (Agreement on Trade-Related...).

An agreement on subsidies and countervailing measures provides an opportunity for countries to impose retaliatory duties on imports of goods that receive an advantage for supporting unfair practices. Fees may be imposed provided that the fact of subsidies has been established and proven that such imports cause material damage to local industry. Studies on the introduction of such duties are usually initiated at the request of producers of the relevant industry. The Safeguards Agreement allows importing countries to temporarily restrict imports if it is proven that imports are so significant (absolute or relative to local output) that local industry producing similar or directly competing products is damaged. Protective measures are carried out by raising tariffs in excess of the established level or in the form of quantitative restrictions applicable to imports from all sources.

For a long time, Partnership and Cooperation Agreements in the European Union have occupied a special place among international agreements in the EU. Member States have harmonised national competition legislation; pledged to refrain from providing state aid to enterprises, producing goods or providing services that distort or threaten to distort competition; exchange information regarding their own assistance schemes; not apply any measures that may distort trade between countries; within the framework of the Cooperation Committee to conduct consultations on competition issues; assist in the development of competition rules. In addition, many countries have committed to bring existing competition legislation into line with WTO law. Harmonisation of EU competition legislation to WTO requirements and standards is the leading direction of its development.

Legislative regulation for the protection of fair competition in the European Union is embodied in numerous directives governing misleading and

comparative advertising, unfair trade practices of a business in relation to a consumer in the domestic market, and unfair terms and conditions of consumer contracts. The main tool for misleading, as a rule, is advertising. In this regard, most EU countries have provided protection against misleading advertising either in the rules of special legislation against unfair competition, or on the basis of a general prohibition of unfair actions and practices in the articles of the civil code. Given the fact that it is through advertising that the largest number of cases of misrepresentation are carried out, the EU governing bodies pay special attention to the issues of organising the protection of consumers and competitors from misleading advertising. In order to approximate and unify the provisions of individual states regarding protection against advertising that is misleading and its unfair influence, the Council of the European Community adopted Directive 84/450/EEC of September 10, 1984, "On the approximation of laws, by-laws and administrative provisions of states Members regarding advertising that is misleading" (or the Directive "On the prevention of misleading advertising") (Council Directive 84/450/EEC...). The said Directive is based on Article 94 of Section 3 "Approximation of Legislation" of the Treaty establishing the European Community (consolidated version of the Treaty as of January 1, 2005) (Treaty establishing the European Community). In accordance with this article, parliaments, on the proposal of the Commission and after consultation with the European Parliament and the Economic and Social Committee, have the right to single-handedly issue directives on the approximation of such legislative, by-laws and administrative rules of the member states that directly affect the introduction or functioning of the common market.

The directive, which is aimed specifically at comprehensive protection against fraudulent actions and practices, has become the Directive of the European Parliament and of the Council of 2005/29/EU of 05.11.2005 on unfair trade business practices for consumers in the domestic market and amending Council Directive 84/450/EC (Directive 2005/29 / EC...), Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council, as well as Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Directive on unfair trade practices). One of the reasons for the adoption of directive 2005/29/EC, as indicated in the directive itself, is the lack of minimum requirements for harmonisation of legislation regarding misleading advertising, which are established by the above directive 84/450/EC. In

particular, it is noted that the position of the EU Member States regarding protection against fraudulent advertising is significantly different due to the fact that Directive 84/450/EC does not prohibit Member States from resorting to measures that provide more comprehensive protection for consumers. Legal relations arising as a result of unfair competition are heterogeneous in content. As noted earlier, this offence has a complex (interdisciplinary) nature, since committing it can lead to bringing a person to both civil and administrative, criminal liability.

However, the most well-established and generally accepted point of view in modern science is that the entity of international law can be exclusively private law relations complicated by a foreign entity, since the method of legal regulation of this branch of law can overcome conflicts of private substantive law of several states. The fundamental difference between private law relations with a foreign entity and public law with a foreign entity is explained by the fact that in the latter case, the law enforcement agency does not have the question of choosing a competent law, therefore, it has no conflict of law regulation. In other words, in public law relations with a foreign entity, internal rules within the territory of a particular state are applied directly and imperatively, despite the fact that in the sphere of private relations with a foreign entity, the state, on the contrary, assumes their regulation not only by domestic (its), but also of foreign law.

In cases of protection against unfair competition, there is always a need to clarify the nature of legal relations arising in connection with the commission of this offence, since otherwise there will be a threat that a court or other law enforcement authorities may erroneously violate or not violate a conflict issue, which, as a result, may affect the correctness of the resolution of the dispute on the merits.

In general, representatives of European and American law schools have been discussing for a long time about the possibility of applying conflict of laws norms in the field of counteracting unfair competition. The overwhelming majority of specialists are inclined to think that in the studied cases a conflict problem arises, which should be solved with the methods used in international law. Despite this, the European science of private law does not focus in detail on highlighting public and private law relations to counter unfair competition, since the legislation of most states regulating relations between private entities has traditionally been of private law character.

The negative consequence of civil offences in the field of competition is the problem of property and moral harm to the injured person. It is this approach that is currently reflected in the competition law of the vast majority of European countries. For example, Art. 9 of the Swiss Federal Law "Against Unfair Competition" states that any person who, as a result of an act of unfair competition, has suffered or may suffer from loss of clientele, trust, professional reputation, business or economic interests in general, has the right to institute proceedings in court for damages according to Civil Law Act (Swiss Federal Act...). A similar norm can be found in Articles 32, 33 of the Spanish Law "Against Unfair Competition" (Reform of Spanish Unfair Competition...), in which against unfair competition (including illegal advertising), measures can be taken to recover losses incurred as a result of such actions, in accordance with the rules of the Civil Code of Spain (Spanish civil code). Also, in Art. 86 of the Hungarian Law "On the prohibition of unfair and restrictive trade practices" (The Competition Act...), it is noted that for the commission of unfair competition, interested parties have the right to demand compensation in accordance with civil law.

The identification of the legal relationship between private relations of protection against unfair competition and the rule of law of several states, of course, is of practical importance, since in the absence of legal relations of a foreign entity, the use of conflict of laws rules is not allowed. Such internal private relations are immediately subject to regulation by the rules of national law, and the conflict issue is not violated in this case. But a different situation occurs when at least one of the forms of a foreign entity appears in such relations: for the court this is a mandatory basis for the application of conflict of laws rules in order to choose between domestic or foreign substantive law.

Traditionally, in the science of conflict law, unfair competition is endowed with the same features of a foreign entity as any other types of civil law tort. For example, these are called the nationality of the parties, the place of unfair competition and the place of harm.

But it is necessary to understand that the nature of competition offences is much more complicated, because the economic nature of their negative consequences can affect not only the individual interests of market participants in the form of harm done to them. Again: there are certain acts of unfair competition, which:

- in their characteristics are directed against the individual interests of competitors (discrediting a business entity);
- affect the interests of consumers as such (distribution of advertising that is misleading);
- affect the competition of a particular market as a whole (special sales and discounts).
- given this, the author believes that in the structure of private relations of protection against unfair competition, first it is necessary to distinguish the following forms of a foreign entity:
- an offender or victim of unfair competition is a foreign entity of law (and vice versa – an offender or victim in a foreign country of unfair competition is an entity of a foreign state law);
- harm from unfair competition has arisen or may arise in the territory of a foreign country (and vice versa);
- negative influence from unfair competition has arisen or may arise in the market of a foreign country (and vice versa).

The conflict legislation contains quite clear and understandable rules for determining the subjective component of a foreign entity in private relations of protection against unfair competition, which, for unknown reasons, is not observed today in judicial practice. Thus, an analysis of a significant part of court cases in this area indicates that quite often law enforcement agencies apply national substantive law without even violating the conflict issue of the choice of competent law. At least this is confirmed in court cases.

The issue of a thorough analysis of the level of influence of unfair competition on the competition conditions in the market is important only at the stage of direct consideration of the case by the competent authorities. In this case, it is about qualification of the unlawful nature of a person's actions, establishing the amount of damage caused by market participants, or about determining the amount of responsibility that a guilty person should bear.

However, it will not be a mistake to say that in conflict legal issues, the analysis of the influence of unfair behaviour on the market of a foreign state has a completely different meaning. It should be understood that of the legal situation with foreign entities, in fact, is

qualified even before the opening (initiation) of the proceedings, since a court will already decide at this stage whether such a case is complicated by the foreign entity and whether it is subject to consideration by courts. It is quite obvious that at this stage the court is not able to establish whether unfair competition really affects the foreign market and whether such behaviour really has an international legal character by definition.

In this regard, the reasoning of some foreign scholars seems appropriate, who believe that the judicial authorities in such cases need to find out:

- whether actions were taken that served as the basis for filing a claim within the framework of competition, that is, was there a connection between the production and/or marketing of goods (provision of services) of one side and similar activities of the other;
- whether such activity of the parties to the dispute has taken place simultaneously on the territory of 2 or more states.

Based on the circumstances of the case, the court may assume that the actions of business entities were directed to the market of a foreign country, and therefore the disputed legal relations are simultaneously connected with the legal orders of several countries - foreign and domestic. From our point of view, such an approach can be of practical importance, because the manifestation of a foreign entity in the form of harm on the territory of a foreign state may not always be obvious to the court. In addition, disputes over unfair competition may not necessarily arise due to the fact of harm to one or another victim.

CONCLUSIONS

It can be argued that the formation and development of mechanisms to protect the national market from unfair external competition in the global economy is associated with an analysis of current trends in optimising trade procedures, strategies for promoting goods in domestic and foreign markets, as well as regulatory mechanisms for both national economic systems and international economic systems relations of global and regional levels.

An important role in countering unfair competition belongs to international organisations, as well as to concluded agreements and treaties between countries to prevent undesirable phenomena in the market. And

a key role in this regard is played by the complex of transactions operating within the framework of the GATT/WTO system. Thus, the WTO agreement on the application of anti-dumping procedures allows the governments of WTO member countries to apply appropriate measures against goods imported into the country at dumping prices, in cases where this causes material damage to domestic producers in this industry. In order to avoid arbitrary interpretations and unreasonable sanctions, it is stipulated that before applying anti-dumping measures, a government of an importing country must conduct the necessary investigations, following certain procedures, and according to results of an investigation, establish that dumping does occur. It is also necessary to evaluate its scope, to determine how much the price at which the exporting country supplies this product is lower than the price that is set on the domestic market of the exporting country, in other words, the “normal price” of the goods, and thus prove that dumping does occur and is detrimental.

Of course, from the point of view of preventing the use of unfair competition methods, one of the most important documents is the Agreement of the GATT/WTO members regarding subsidies and countervailing measures, which gives a general, universal understanding of the subsidies nature and countervailing measures, which, in fact, implies the possibilities of concerted international action in the relevant field.

REFERENCES

- Agreement on Trade-Related Investment Measures (TRIMs). Retrieved July 6, 2020 (https://www.wto.org/english/tratop_e/invest_e/trims_e.htm)
- Bougette, Patrice, Marc Deschamps, and Frederic Marty. 2015. “When economics met antitrust: The second Chicago School and the economization of antitrust law”. *Enterprise and Society* 16(2): 313–353. <https://doi.org/10.1017/eso.2014.18>
- Clancy, Michael, Damien Geradin, and Andrew Lazerow. 2014. “Reverse-Payment Patent Settlements in the Pharmaceutical Industry: An Analysis of U.S. Antitrust Law and EU Competition Law”. *Antitrust Bulletin* 59(1): 153–172. <https://doi.org/10.1177/0003603X1405900107>
- Van Cleynenbreugel, Pieter. 2016. “Sharing powers within exclusive competences: Rethinking eu antitrust law enforcement”. *Croatian Yearbook of European Law and Policy* 12(1): 49–79. <https://doi.org/10.3935/cyelp.12.2016.245>
- Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising. Retrieved July 6, 2020 (<https://op.europa.eu/en/publication-detail/-/publication/84562917-1ad5-43a3-9b5e-eaf61780821d/language-en>)
- Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005. Retrieved July 6, 2020 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0029>)
- General Agreement on Trade in Services. Retrieved July 6, 2020 ([https://www.google.com/search?client=safari&rls=en&q=General+Agreement+on+Trade+in+Services+\(GATS&ie=UTF-8&oe=UTF-8\)](https://www.google.com/search?client=safari&rls=en&q=General+Agreement+on+Trade+in+Services+(GATS&ie=UTF-8&oe=UTF-8)))
- Gerber, David. 2006. *Comparative Antitrust Law*. The Oxford Handbook of Comparative Law. <https://doi.org/10.1093/oxfordhb/9780199296064.013.0038>
- Giocoli, Nicola. 2009. “Competition versus property rights: American antitrust law, The Freiburg School, and the early years of European competition policy”. *Journal of Competition Law and Economics* 5(4): 747–786. <https://doi.org/10.1093/joclec/nhp003>
- Glick, Mark. 2019. “Antitrust and economic history: The historic failure of the Chicago school of antitrust”. *Antitrust Bulletin* 64(3): 295–340. <https://doi.org/10.1177/0003603X19863586>
- Heywood, John. 1988. “Are the Antitrust Laws an Effective Tool for American Economic Revitalization?” *Economic Development Quarterly* 2(1): 69–77. <https://doi.org/10.1177/089124248800200106>
- Horoschak, Mark. 1992. “Medical staff privileges and the antitrust laws: a view from the Federal Trade Commission”. *The Medical Staff Counselor* 6(2): 17–24.
- Hylton, Keith. 2010. *Encyclopedia of Law and Economics*. Antitrust Law and Economics. <https://doi.org/10.4337/9781849805285>
- Markham, Jesse. 1956. “The report of the attorney general’s committee on antitrust laws”. *Quarterly Journal of Economics* 70(2): 193–216. <https://doi.org/10.2307/1884265>
- Markovits, Richard. 2010. “The limits to simplifying the application of U.S. antitrust law”. *Journal of Competition Law and Economics* 6(1): 51–117. <https://doi.org/10.1093/joclec/nhp034>
- Markovits, Richard. 2013. *Economics and the Interpretation and Application of U.S. and E.U. antitrust law* (Vol. 1). Retrieved July 6, 2020 (<https://doi.org/10.1007/978-3-642-24307-3>)
- Massarotto, Giovanna. 2018. “From standard oil to Google: How the role of antitrust law has changed”. *World Competition* 41(3): 395–418.
- Melamed, Douglas and Carl Shapiro. 2018. “How antitrust law can make FRAND commitments more effective”. *Yale Law Journal* 127(7): 2110–2141. <https://doi.org/10.2139/ssrn.3075970>
- Motchenkova, Evgenia and Peter Kort. 2006. “Analysis of current penalty schemes for violations of antitrust laws”. *Journal of Optimization Theory and Applications* 128(2): 431–451. <https://doi.org/10.1007/s10957-006-9024-9>
- Overview: the TRIPS Agreement. Retrieved July 6, 2020 (https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm)
- Paris Convention for the Protection of Industrial Property. Retrieved July 6, 2020 (<https://www.wipo.int/treaties/en/ip/paris/>)
- Provost, Colin. 2014. “Antitrust law and distributive politics in the American states”. *Law and Policy* 36(4): 408–431. <https://doi.org/10.1111/lapo.12025>
- Reform of Spanish Unfair Competition Law Obliges Companies to Review Their Trade Policies. Retrieved July 6, 2020 (<https://www.jonesday.com/en/insights/2010/04/reform-of-spanish-unfair-competition-law-obliges-companies-to-review-their-trade-policies>)
- Sidak, Gregory and David Teece. 2009. “Dynamic competition in antitrust law”. *Journal of Competition Law and Economics* 5(4): 581–631. <https://doi.org/10.1093/joclec/nhp024>

Spanish civil code. Retrieved July 6, 2020 (<http://derechocivil-ugr.es/attachments/article/45/spanish-civil-code.pdf>)

Swiss Federal Act against Unfair Competition (federal classified compilation 241.0). December 19, 1986. Retrieved July 6, 2020 (<https://wilmap.law.stanford.edu/entries/swiss-federal-act-against-unfair-competition-federal-classified-compilation-2410>)

The Competition Act (Act LVII of 1996). Retrieved July 6, 2020 (<https://www.wipo.int/edocs/lexdocs/laws/en/hu/hu085en.pdf>)

Treaty establishing the European Community (Nice consolidated version). Retrieved July 6, 2020 (<https://eur-lex.europa.eu/legal-content/EN/TEXT/?uri=CELEX%3A12002E095>)

Wils, Wouter. 2017. "Private enforcement of EU antitrust law and its relationship with public enforcement: Past, present and future". *World Competition* 40(1): 3–45.

Wils, Wouter. 2019. "Legal professional privilege in EU antitrust enforcement: Law, policy & procedure". *World Competition* 42(2): 21–41.

Received on 16-10-2020

Accepted on 16-11-2020

Published on 07-12-2020

DOI: <https://doi.org/10.6000/1929-4409.2020.09.174>

© 2020 Korolova *et al.*; Licensee Lifescience Global.

This is an open access article licensed under the terms of the Creative Commons Attribution Non-Commercial License (<http://creativecommons.org/licenses/by-nc/3.0/>) which permits unrestricted, non-commercial use, distribution and reproduction in any medium, provided the work is properly cited.