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ADVOCACY OF COMPETITION IN THE WORLD AND UKRAINE: COMPARATIVE CHARACTERISTICS

Olga Bakalinska, Olena Honcharenko, Tetiana Kaptsova and Haiane Babadzhanian

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Olga Bakalinska: Dr. Sc. (Law), Professor, The Academician F. H. Burchak Scientific-Research Institute of Private Law and Entrepreneurship of National Academy of Law Sciences of Ukraine https://orcid.org/0000-0002-1092-0914 bakalinskayaolga@gmail.com/ bakalinskaya@ukr.net
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Olena Honcharenko: Dr. Sc. (Law), Senior researcher of the Academician F. H. Burchak Scientific-Research Institute of Private Law and Entrepreneurship of National Academy of Law Sciences of Ukraine https://orcid.org/0000-0002-0178-2003 o.goncharenko.com@gmail.com
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Tetiana Kaptsova: Postgraduate student, The Academician F. H. Burchak Scientific-Research Institute of Private Law and Entrepreneurship of National Academy of Law Sciences of Ukraine https://orcid.org/0000-0001-5957-6782 t.p.kaptsova@gmail.com **Co-author**, responsible for data collection and writing. **Competing interests:** No competing interests were announced by the author. **Disclaimer:** The author declares that her opinion and views expressed in this manuscript are free of any impact of any organizations. Competing interests: The author declares that no competing interests exist.
Haiane Babadzhanian: Postgraduate student, State University of Trade and Economics https://orcid.org/0000-0002-6048-8787 tenca@ukr.net **Co-author**, responsible for data collection and writing. **Competing interests:** No competing interests were announced by the author. **Disclaimer:** The author declares that her opinion and views expressed in this manuscript are free of any impact of any organizations.

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Keywords: advocacy of competition, analogy of law, analogy of legislation, competition law, self-regulation, economic and commercial activity, interaction of competitive bodies, advocacy of competition in conditions of war

ABSTRACT

Background: *The advocacy of competition is a modern civilisational mechanism of cooperation, which balances private and public interests in economic activity and realises the functions of state management and control of economic activity, ensuring reasonable distribution of public goods. Competition is a fundamental driving force that determines the course of economic processes and contributes to the growth of economic prosperity and innovation in society. Its provision, protection, and development are among the main priorities of state economic policy in general and competition policy in particular. The purpose of this article is a comparative legal analysis of the advocacy of competition in different countries. This study will also identify the peculiarities of the use of advocacy tools in these places.*

Methods: *In studying the proposed problem, the following methods were used: general philosophical and general scientific (dialectical, systemic, formal-logical, etc.); universal (induction, deduction); special-scientific (formal-legal, comparative law); interpretation of the rules, etc. One of the main methods used is the comparative method for researching the common and distinctive features of the advocacy of competition in the EU, USA, Mexico, the Republic of South Africa, and Ukraine.*

Results and Conclusions: *The results show that countries with advanced economies have approached advocacy of competition gradually after more than a century of anti-monopoly competition legislation. In post-transformational economies, we see the formation of competitive policy principles activated after independence and the transition to market-based business practices. The globalisation of international trade relations leads to the need to implement complex competition advocacy programs and unify norms at the level of individual states and unions. Advocacy of competition remains important as a tool of self-regulation of economic activity. The European vector of Ukraine's development caused the emergence of new mechanisms of interaction between the state, the individual, and society. Having chosen to strive for European integration, Ukraine began to build a new model of cooperation between all market participants, the introduction of which was based on the provisions of the Association Agreement between Ukraine, on the one hand, and the EU, the European Atomic Energy Community and their member states, on the other hand, using implementation mechanisms of both individual norms and entire institutions of public-private partnership. The implementation of competition advocacy mechanisms in Ukraine is applied using the mechanisms of the analogy of individual norms and tools of competition policy. The formation of new good competitive practices is connected with russia's war.*

1 INTRODUCTION

Competition is a fundamental driving force that determines the course of economic processes and contributes to the growth of economic prosperity and innovation in society. Its provision, protection, and development are among the main priorities of state economic policy in general and competition policy in particular.

Competition may be reduced significantly by various public policies and institutional arrangements as well. Indeed, restrictive private business practices are often facilitated

by various government interventions in the marketplace.[1] Advocacy of competition is any activity carried out by a competition authority to promote the values of the market environment by way of non-compulsory means.[2] The advocacy of competition as a vector of competition policy originated at the end of the twentieth century, particularly in the USA in the 1970s, as the USA was the leading country for anti-monopoly regulation. Since the mid-1980s, multinational donors and individual Western countries have spent substantial resources advising countries with centralised economic and political systems on legal reforms designed to promote economic and political liberalisation.[3] Advocating competition stipulates the enforcement of compulsory measures of competition policy and promotes the awareness of all market participants of the correct application of competition legislation. Advocating competition prevents the adoption of legislative acts, the provisions of which are contrary to competition rules.

Competition advocacy is seen as part of a state's competitive policy. Some scholars take into account the globalisation component of competition policy: 'Competition policy, today, is an essential element of the legal and institutional framework for the global economy. Whereas decades ago, anti-competitive practices tended to be viewed mainly as a domestic phenomenon, most facets of competition law enforcement now have an important international dimension'.[4] Therefore, the advocacy of competition is also becoming a global phenomenon. According to P. Buccirossi and others: '… the effectiveness of competition policy is also likely to depend on external factors: the quality of a country's institutions in general and its judicial system, in particular … the general quality of the institutions of a country creates an environment that affects the effectiveness of all public policies'.[5] Ensuring maximum transparency contributes to both a broader understanding of the importance of competition policy and the increase of public confidence in the activities of competition authorities. Advocacy attempts to convince the authorities not to take anti-competitive measures to protect certain groups of interests, which can harm the public interest.[6] Competition advocacy is an important tool for preventing further infringement of competition rules, as it promotes positive market practices. In this case, the activities of public organisations and business associations are of primary importance because they can explain good practices. The activities of state bodies that protect competition are more aimed at 'calling out' negative practices: do not do that because there will be sanctions. Such activity also has a high effect on competition advocacy.

Comparative legal analysis of competition advocacy tools is an important task for scientists in a globalised world. The globalisation of international trade relations leads to the need

1 *A Framework for the Design and Implementation of Competition Law and Policy* (The World Bank, OECD 1998) Chapter 6, at 93.

2 A decade of ICN activity: overview of the main achievements. EU Competition & Regulatory. Legal and policy developments at the EU level, 19-25 August 2011 <http://www.slaughterandmay.com/media/1591488/eu-competition-and-regulatory-newsletter-19-aug-25-aug-2011.pdf> accessed 19 March 2019.

3 For an overview of contributions of foreign donors to economic development, see 'Assessing Aid What Works, What Doesn't, and Why' (1998) World Bank policy research report <http://documents.worldbank.org/curated/en/262281468181493001/Assessing-aid-what-works-what-doesnt-and-why> accessed 5 March 2019' .

4 RD Anderson, WE Kovacic, AC Müller, N Sporysheva , 'Competition Policy, Trade and the Global Economy: Existing WTO Elements, Commitments in Regional Trade Agreement, Current Challenges and Issues for Reflection' (2018) World Trade Organization Economic Research and Statistics Division. Staff Working Paper <https://www.wto.org/english/res_e/reser_e/ersd201812_e.pdf> accessed 29 March 2019.

5 P Buccirossi, L Ciari, T Duso, G Spagnolo, C Vitale , 'Competition Policy and Productivity Growth: An Empirical Assessment' (2010) 95(4) The Review of Economics and Statistics 1324-1336.

6 Ch Pleatsikas, DJ Teece, 'The Analysis of Market Power and Market Definition in the Context of Rapid Innovation' (2001) 19(5) International Journal of Industrial Organization 665-693.

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to implement complex competition advocacy programs and unify norms both at the level of individual states and unions. Currently, the issue of mutual influence and interaction of trade and competition policies is particularly relevant. Art. 9 of the WTO Agreement on Trade-Related Investment Measures clearly establishes this connection, where it provides for the consideration of provisions on investment policy and competition policy by the end of the century. In the preamble of the same Agreement, it is noted that certain investment measures may cause consequences that limit and distort trade. Two new initiatives – trade and environmental sustainability (sustainability) – were supported by the EU in the aspect of developing the competitive policy of states. In particular, these policies are related to the global challenges of climate change, as well as plastic pollution. Therefore, the main idea is to have agreed-upon rules of competition at the international level.

Advocacy is also viewed through the prism of self-regulation. Self-regulation of the advocacy of competition is implemented in those cases when there is no timely response of the state to the changes taking place, or it is necessary to apply other approaches that differ from the tools of direct management.[7] An example of self-regulation in trade activities is the agreement at the international level of the rules for regulating trade services, as well as unified rules for the supply of products for state and public needs. In addition, there are developments in the form of unified approaches to the regulation of relations in the field of public procurement.

In studying the proposed problem, the following methods were used: general philosophical and general scientific (dialectical, systemic, formal-logical, etc.); universal (induction, deduction); special-scientific (formal legal, comparative law); interpretation of the rules, etc. One of the main methods used is the comparative method for researching the common and distinctive features of the advocacy of competition in the EU, USA, Mexico, the Republic of South Africa, and Ukraine. The universal method of induction and deduction is used to determine advocacy tools present in the world. On the basis of formal legal and system functional methods, the competence of state bodies that protect competition is established. The system method helped to identify proposals for improving the advocacy of competition in Ukraine. The method of interpretation of the law is used to clarify the specifics of advocating competition in Ukraine.

2 THE EXPERIENCE OF STATES IN ADVOCACY OF COMPETITION

Each state has its own unique legal system. Despite the globalisation trends, advocacy of competition in different states has its own characteristics both at the level of state regulation and at the level of self-regulation. Important trends are the cooperation of competition authorities in the European region.

The formation of a socially-oriented economy provides the involvement of the whole spectrum of social regulation (economic, legal, moral, and ethical) in order to achieve the set goals – honest and fair competition in economic activity on the market and in the economic process regulation in the state.[8] State regulation of the competitive environment is a necessary tool for achieving a balance between public and private interests.[9]

7 O Bakalinska, O Belianevych, O Honcharenko, 'Advocacy of Competition in the Mechanism of State Regulation of the Economy' (2020) 11(1) International Journal of Financial Research 431

8 O Bakalinska, 'Fair competition as a form for implementation of the fairness principle in the economic activity' (2017) 2(4) Visegrad Journal on Human Rights 19.

9 O Redkva, O Haran, L Prystupa, 'Determinations of State Regulation of the Competitiveness of Modern National Economies' (2018) 4(4) Baltic Journal of Economic Studies 265-273 DOI: http://dx.doi.org/10.30525/2256-0742/2018-4-4-265-273.

Hetham Abu Karky shows that the International Competition Network (ICN) had an impact on members' legislation and that a substantial percentage of ICN members consider ICN-recommended practices when they draft their legislation, and this is an indication of the ICN's achievements in convergence upon substantive and procedural standards.[10] Hong Dae Sik considers the Korean experience of competition advocacy, given the scope of power granted to the Korea Fair Trade Commission (KFTC).[11]

The adaptation of Ukrainian legislation to EU rules and the implementation of EU competition law provisions into Ukrainian law actually began immediately after gaining independence. However, competition advocacy still requires significant effort and the development of good practices. The Antimonopoly Committee of Ukraine should pay more attention to competition advocacy as an element of preventing violations of competition rules. In the conditions of the legal regime of martial law in Ukraine, the competition department continues to work actively and cooperate with competition departments from other countries, in particular, the EU and the USA. Considerable attention is paid today to an important general issue – the application of sanctions to the aggressor state and its residents. The issue of competition protection is also relevant for business associations, which have faced new challenges: the formation of good competitive practices in the conditions of war.

An overview of competition advocacy systems, particularly in EU countries and the USA, allows us to identify the following groups of instruments for working with market actors:

1. Conducting seminars and conferences aimed at familiarising and explaining the norms of anti-monopoly legislation among representatives of both business and government.

2. Placing printed and electronic media of a comprehensive campaign that will provide both the clarification of the benefits of competition and the provision of analytical materials aimed at preventing violations of antitrust laws and legislation on advertising, as well as highlighting the results of activities of anti-monopoly bodies.

3. Edition of thematic collections, monographs, translations of foreign books, and articles that reveal the content and role of competition policy.

4. Support for the official site of the anti-monopoly agency on the Internet, periodic disclosure of the essential information on the activities of the anti-monopoly bodies through the site, and the modernisation and creation of sites for local authorities.

5. Interaction with public organisations, professional unions and associations, and the scientific community.

6. Interaction with state authorities and local self-government to take into account the comments and suggestions of the Committee aimed at ensuring competition during regulatory document preparation.

7. Establishment of appropriate Expert Councils.

8. Cooperation with academic institutions, such as scientific institutes and establishments of higher education, to train young specialists.

The introduction of sanctions against the aggressor state and its residents is a new requirement that requires comprehensive attention from the business community and

10 H Abu Karky, 'The Impact of the International Competition Network on Competition Advocacy and Global Competition Collaboration' (2019) 40(10) European Competition Law Review <https://ssrn.com/abstract=3473156 or http://dx.doi.org/10.2139/ssrn.3473156>.

11 DS Hong, 'Competition Advocacy of the Korean Competition Authority (December 13, 2013)' in TK Cheng, I Lianos, DD Sokol (eds), *Competition and the State* (Stanford University Press 2014 <https://ssrn.com/abstract=2819439> date of access 01 Sep 2022.

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competition agencies. Therefore, advocacy of competition in this aspect should play a role in forming 'a culture of behaviour of refusing any cooperation (direct, covert, circumvention of sanctions)' with russia, its residents, and those who cooperate with them.

3.1. The EU

The coordinated competition policy of the countries of the EU is one of the cornerstones of European integration. Common rules on the regulation of competition issues were introduced in 1957, simultaneously with the creation of the European Economic Community, which was later transformed into the EU. Arts. 85-86 of the Treaty of Rome defined the basic rules regarding the prohibition of cartels (concerted actions aimed at eliminating competition) and abuse of monopoly (dominant) positions and defined their main types. The specified basic provisions are included in Arts. 101-102 of the Treaty on the Functioning of the EU. Accordingly, Art. 101 of the Treaty on the Functioning of the EU defined as incompatible with the internal market all agreements between economic entities, decisions of associations of economic entities, and concerted practices that may affect trade between member states and whose purpose or effect is obstruction or restriction – these are prohibited or a distortion of competition in the domestic market. In 1989, Regulation No. 4064/89 was adopted, which provided for obtaining a single permit from the European Commission for concentrations that, by their scale, could affect competition at the level of the entire community. This regulation was later replaced by Regulation 139/2004, which continued to improve the merger control mechanism.

Since the launch of the European Green Deal in 2019, the EU has intensified the issue of environmental and climate policies, which are supported and complemented by competition policy. Emphasis is placed on understanding fundamental problems. The Roadmap for a Sustainable EU Economy turns climate and environmental challenges into opportunities in all policy areas, enabling modern growth and making the transition fair and inclusive for all. The main task is to transform the entire European economy to carbon neutrality by 2050. For example, EU antitrust rules allow companies to jointly implement truly environmental initiatives.[12] Therefore, the advocacy of competition and the application of relevant instruments in the EU will be connected with the general aim of achieving a sustainable economy.

Today, a vivid example of the functioning of competition advocacy in the EU is the digital market. In particular, legislative initiatives have been developed to regulate and advocate competition, namely the Digital Markets Act (DMA). These provisions provide precautionary measures to regulate in detail the activities of large companies in the digital markets of high-tech goods and services. For example, the criteria for determining which platforms have a dominant position and which platforms have significant market power; a list of prohibited practices applicable to all such platforms and/or a case-by-case assessment of what behaviours should be prescribed; provisions allowing prohibited behaviour in certain cases and others. Therefore, advocacy of competition should help smaller companies in their respective markets and enable them to develop more effectively, taking into account the examples of regulation of large companies.

12 Competition policy brief, September 2021 <https://op.europa.eu/en/publication-detail/-/publication/63c4944f-1698-11ec-b4fe-01aa75ed71a1/language-en/format-PDF> date of access 01 Sep 2022.

3.2. The USA

The Federal Trade Commission (hereinafter – FTC/the Commission) is an independent competitive body that reports to Congress about its activities. These actions involve active and effective law enforcement measures; the promotion of consumer interests through the exchange of experience with federal and state legislative bodies and departments of the USA and international governmental institutions; developing strategies and research means through holding hearings, seminars, and conferences; creating practical and accessible educational programs for consumers and enterprises to review new technologies that appear on the world market.[13]

Conducting research, writing reports, advocacy law-making, and organising hearings are widely used methods to improve consumer welfare. The FTC implements various measures in addition to law enforcement and learning (trainings) to strengthen the protection of consumer rights. The agency conducts and co-organises conferences and seminars, during which experts and other interested parties can identify new and complex issues of protection of consumer rights and discuss ways to resolve them. The FTC also issues reports that analyse consumer protection problems and provides recommendations for their elimination. In addition, the FTC has the authority to comment on the principles of advocacy aimed at protecting consumer interests and draw attention to the results of empirical research on the role of consumers in decision-making processes to federal and state authorities. The Commission also provides advice on consumer rights protection during court hearings.

The Commission has exclusive authority (jurisdiction) to collect, analyse, and publish certain information about the trends in the development of the competitive environment and the impact of the level of competition on trade in the USA. The Commission uses this right to conduct public hearings to organise conferences and seminars to coordinate and conduct economic research on socially significant issues in the field of competition and then to publish reports on the results and conclusions of its activities. This right contributes to the advancement of competition principles, which is decisive in many areas of activity as a key component of the agency's strategy in the context of improving consumer welfare.

3.3. The Mexican US

In Mexico in 1992, the Federal Law on Economic Competition (FLES) was adopted, and the Federal Commission on Competition (hereinafter – the Commission/FCC) was established.[14] The law came into force in mid-1993. The task of the FCC was to protect and secure competition and free access to markets by preventing and eliminating monopolies, monopolistic activities, and other restrictions on the rational and adequate promotion of goods and services on the market. The creation of the FCC was part of the structural reform and economic changes that took place in Mexico from the late 1980s to the early 1990s when the Law on Competition was considered a natural addition to the privatisation, deregulation, and liberalisation processes that were taking place in the economy (Organization for Economic Co-operation). This resembles the situation in Ukraine in the 1990s. Reforms were also needed to enter the Free North American Trade Agreement (NAFTA) with the

13 The Federal Trade Commission's Fiscal Year of 2011, Performance and Accountability report (PAR) <http://www.ftc.gov/opp/gpra/2011parreport.pdf> accessed 29 March 2019.'

14 Federal Law on Economic Competition (FLES) Mexican United States, Official Gazette of the Federation 24 December 1992 <https://unctad.org/Sections/ditc_ccpb/docs/ditc_ccpb_ncl_mexico_en.pdf> accessed 29 March 2019.

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USA and Canada. Consequently, the country recognised that competition policy had to become an essential tool for improving the country's competitiveness and the welfare of society.

3.4. Brazil

Brazil has a system of competition protection, which is formed of such institutions as the Secretariat for Economic Monitoring (SEAE) linked to the Ministry of Finance, the Administrative Council for Economic Defense (CADE), and the Secretariat of Economic Law (SDE), linked to the Ministry of Justice. They perform complementary roles enforcing Competition Law no. 8.884/94, enacted in June 1994. The SEAE and other agencies seek to demonstrate the value of competition in public authorities and civil society. The competition advocacy role performed by the SBDC has encompassed a variety of initiatives that ranged from an intensive campaign in the media to participating in task forces with different governmental bodies.[15]

3.5 The South African Republic

The activities of the South African Competition Commission were defined by the 1998 Competition Law No. 89, which entered into force on 1 September 1999 and reflected the orientation of the first democratic government in the South African Republic to strengthen the principles of competition due to the high level of concentration of the country's economy. The law contains provisions for the establishment of a Competition Commission, whose main task would be to investigate mergers and anti-competitive behaviour, in most cases with the participation of the Competition Tribunal. A Competitive Appeal Court has also been established, which has the right to consider any complaints regarding decisions taken by the Competition Tribunal.[16]

Let us take into consideration an example of advocacy and control of the Commission for such activities.[17] The purpose of the Commission was to raise awareness of abusive trading practices and to prevent government procurement violations by training government officials involved in government procurement; introducing training on falsifications during the bidding as part of the Academic course of study on Management Training along with the chain of supply to the Academy of Governmental State Service; advocacy for changing rules between participants, including the use of the Certificate of Independent Bid Determination established by the Commission for the public procurement process. The strategy of the advocacy activity of the Commission is aimed at raising awareness of the Law on Competition and the role of the Commission; the mobilisation of active participation of non-governmental organisations in the activities of the Commission, and support of voluntary interaction between business circles and the Commission; ensuring the compatibility of the Law on the competition with other norms of legislation (in this regard, the Commission interacts with

15 CM Considera, MT de Ara˙jo, 'Competition Advocacy in Brazil – Receipt Development' (2003) 16 Buletin Latino Amerikano de Competencia 77

16 Competition Commission and Competition Tribunal, Pretoria, South Africa, 'Ten years of enforcement by the South African competition authorities' (September 2009) <http://www.compcom.co.za/assets/Uploads/AttachedFiles/MyDocuments/10year.pdf> accessed 8 March 2019.

17 ICN Advocacy Working Group, 'Advocacy Toolkit. Part I: Advocacy process and tools' (2011) Presented at the 10th Annual Conference of the ICN, The Hague <http://www.internationalcompetitionnetwork.org/uploads/ library/doc745.pdf> accessed 2 March 2019.

government departments, sectoral inspectors and legislative bodies in accordance with its competence, depending on the existing or proposed legislative amendments).

Consequently, the advocacy of competition in the countries under consideration has both common and distinctive features. For the USA, which traditionally pays considerable attention to the development and protection of competition, the activities of the Federal Trade Commission are aimed at close cooperation with all target groups. Public relations are an integral part of the Commission's competition policy. The criteria for assessing the effectiveness of advocacy measures are of interest. According to the statistics provided by the department on measures to support competition and the protection of consumers' rights, increasing requirements for the effectiveness of advocacy measures are obvious. The policy of advocating competition in the USA is simultaneously complex and flexible. The FTC report states that it is impossible to predict exactly what direction and in what volume the problematic issues may arise in the field of competition policy. Therefore, it is somewhat problematic to plan a specific number of seminars, conferences, notes, etc. But even if the goals were not achieved and the plan was not implemented for a certain reporting period (year), nevertheless, the scale of the work is appreciated due to its positive results.

Mexico focuses on regulatory issues in certain sectors where the economic policy does not always take into account the principles of a 'free' market. Therefore, there is a necessity to strengthen legislative support of competition policy in these sectors: there were changes to the Law on Competition, and there was the declaration of Commission Conclusions and General Recommendations. Due to gradual reforms in the pension system, the banking market, and the telecommunications and broadcasting market, the gradual achievement in the energy sector of Mexico's trade was positively attained. These achievements positively affected the competitiveness of national enterprises and the welfare of citizens, which made it possible to lower prices and use limited funds both by the state and by consumers.

In the South African Competition Commission, even though there is a special advocacy unit, the Commissioner and Deputy Commissioner are doing a very important job on advocacy, just like other executives and teams do. There are two main areas of the advocacy strategy raising public awareness of the Law on Competition and the Law on the role of the Commission, as well as mobilising the active participation of civic organisations in the work of the Commission and businesses supporting voluntary approval of this as well as establishing closer links and effective interaction with governmental and sectoral departments, as well as legislatures.

4 STATE POLICY OF ADVOCACY OF COMPETITION IN UKRAINE

Having chosen the direction of European integration, Ukraine began to build a new model of cooperation between all market participants, the introduction of which was based on the provisions of the Association Agreement between Ukraine, on the one hand, and the EU, the European Atomic Energy Community and their member states, on the other hand, using implementation mechanisms of both individual norms and entire institutions of public-private partnership. Chapter 10 of this Agreement (Arts. 253-261) is devoted to competition issues. Art. 256 of the Agreement provides for the further approximation of Ukrainian legislation to EU law and has a list of provisions of EU Regulations that must be implemented into Ukrainian legislation.

The implementation of competition advocacy mechanisms is based on the principle of the rule of law and is applied using the mechanisms of the analogy of individual norms and tools of competition policy, such as the Lianci Program, the reduction or increase of fines, depending on the intentionality of competitive actions. The application of the analogy is also

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connected with the lack of relevant experience in the application of the rules of competition law by state authorities – the Anti-monopoly Committee of Ukraine. That is why the majority of local acts of the Anti-monopoly Committee of Ukraine directly or indirectly use the analogy of law both in the process of law-making and in law enforcement. Legal regulation of competition in Ukraine is defined in the Constitution of Ukraine, international treaties, the Economic Code of Ukraine, laws of Ukraine, and by-laws.

The Concept of the National Program for the Development of Competition for 2014-2024 does not define the concept of competition advocacy, but the ways and means of solving the problem in the field of competition development include: the improvement of state policy in the field of protection of economic competition, in particular through further harmonisation of legislation on the protection of economic competition with European legislation in the relevant field; the involvement of civil society institutions in the formation and implementation of anti-monopoly and competition policies.[18] The expected results include the formation of a positive attitude in society towards economic competition as a fundamental social value.

The Constitution of Ukraine consolidates the principle of state protection of competition in Ukraine. At the time of the independence declaration of the country, there were no legislative and regulatory acts regarding competitive relations. The first of them was the Law of Ukraine 'On Limiting Monopolies and Preventing Unfair Competition in Business Activity', adopted in 1992. This was the basic regulatory document in the system of law competition in Ukraine before the adoption of the Law of Ukraine 'On Economic Competition'. The competitive legislation of Ukraine is similar to that operating in other countries, due to which there are increasingly strong integration processes in the world and a globalised economy, which leads to the acceleration of the unification of rules of international trade and protection of competition. But there are certain differences stipulating the specifics of the economic and historical development of different countries and their positions in the ranking of international competitiveness. Art. 10 of the Economic Code of Ukraine (ECU) defines the main directions of the economic policy of the state, one of which is the anti-monopoly/competitive policy of the state. The anti-monopoly/competitive policy is aimed at creating an optimal competitive environment for business entities, ensuring their interaction on the conditions of preventing the manifestations of discrimination of some subjects by others, especially in the field of monopoly pricing and at the expense of reducing the quality of products and services, promoting the growth of the effective socially oriented economy.[19]

At the same time, there are urgent problems in working out a mechanism for the implementation of adapted legal provisions and creating appropriate conditions for the proper mechanism of their provision so that the adaptation of the legal system of Ukraine to the EU legal system takes place in full and in a qualitative manner.[20] In particular, the role of individual citizens and private companies as objects of competitive regulation is extremely important in the advocacy of competition.

18 On the approval of the Concept of the National Competition Development Program for 2014-2024: Order of the Cabinet of Ministers of Ukraine dated 19 September 2012 No 690 <https://zakon.rada.gov.ua/laws/show/690-2012-% D1%80?find=1&text=%D0%B7%D0%B0%D1%85%D0%B8%D1%81%D1%82#w1_7> accessed 10 October 2022.

19 Economic Code of Ukraine, 16 January 2003 <https://zakon.rada.gov.ua/laws/show/436-15> accessed 20 March 2022.

20 T Humenyuk, V Knysh, 'Problems of Development of the European Integration of Ukrainian Legislation (2014-2018)' (2019) 22(1) Journal of Legal, Ethical and Regulatory Issues <https://www.abacademies.org/articles/Problems-of-development-of-the-European-integration-of-Ukrainian-Legislation-2014-2018-1544> accessed 29 June 2019.

In Western scientific literature, there is a point of view that the authorities must act in different ways in developing countries with transition economies. For example, initially, advocacy is advisable to diminish propaganda activity and gradually move toward competitive regulation, primarily focusing on the anti-competitive behaviour of market subjects and leaving research on vertical constraints and abuses of a dominant position for the future, when the culture of competition and the accumulated experience will allow for this.[21] Different arguments are put forward to support this point of view. Let us consider two of them.

First of all, to investigate the anti-competitive behaviour of private firms, the competition authority should have access to private information on these firms. In developing countries and countries with transition economies where the judicial system and the culture of competition need further strengthening, firms may refuse to provide such information in order to avoid punishment for competition violations. However, in practice, there is often no need for hidden information of that kind. Even if the information is not publicly available, it is easy to gather it indirectly through the analysis of their reporting, which the company submits to different public authorities. Regarding the last argument about comparatively easy access to information, it would be like this if all government agencies would cooperate with each other to exchange necessary information, which does not always take place. In practice, relations between regulatory bodies and the competition authority often require adjustments to establish more effective cooperation. Nevertheless, it must be recognised that access to the necessary information for propaganda is easier than to strategic information of private companies, especially in developing countries and countries with transition economies.

The second argument is that law enforcement authorities often refuse to initiate cases in competition spheres because the competition authority is not in force to fully provide evidence to initiate a case against an offender. Often, the system functions as an appellate instance (party), which pays more attention to the procedure rather than the merits of the case. In addition, the investigation usually takes considerable time, often several years, to resolve the matter.

In circumstances of that kind, the first step involves limitation within advocating competition propaganda. On the advice of Western experts, the authorities take considerable risks if they remain alone without appropriate levers of influence on competitive relations, jeopardising a broad field of activities to ensure the fulfilment of their functions, credibility, and stability in the country. In other words, the choice between different measures of competition policy and advocacy is a difficult task for the Anti-monopoly Committee of Ukraine during institutional alterations.

An important point is the development of institutional mechanisms of self-regulation in advocating competition because public associations are endowed with certain self-organising peculiarities, such as self-regulation.[22] The protection of consumer rights as an imperative serves as a kind of limitation for competition advocacy. The activity of self-regulatory organisations of business entities to support competition is a positive and relevant tool. In the internal documents of business entities and their associations, the policy of anti-monopoly compliance can be defined, which is a means of both self-regulation and competition advocacy. It should be noted that compliance policy is quite intellectually and materially expensive, requiring substantial analytical processes.

21 AE Rodriguez, BC Malcom BC, 'Competition Policy in Transition Economies: The Role of Competition Advocacy' (1997) 23 Brooklyn Journal of International Law 365.

22 O Goncharenko, L Neskorodzhena, 'Self-regulation of culture: the role of public associations and electronic communication' (2018) 4 Herald of National Academy of Managerial Staff of Culture and Arts 123.

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Today, for Ukraine, it is important to restructure the economy along military lines, i.e., to transition to a military-type economy. Such a system involves greater state intervention in the activity of economic entities. Therefore, new challenges arise for competition advocacy in the conditions of the legal regime of martial law. However, the main direction of the state's policy should remain – the development of competition and its comprehensive advocacy. At the same time, the imperative when advocating competition are prohibitions against: cooperation with the companies of the aggressor state; activity in the aggressor state; cooperation with companies that work with counterparties from the aggressor state.

5 CONCLUSION

Countries with advanced economies have approached advocacy of competition gradually, after more than a century of anti-monopoly competition legislation. In post-transformational economies, the formation of competitive policy principles was activated after independence and the transition to market-based business practices. Initially, the competition policy was built on the mechanisms of coercion, realised only through the detection and fight against violations of legislation, and its objects were mainly business entities. The introduction of competition advocacy mechanisms in the practice of anti-monopoly/competitive agencies took place over ten to fifteen years. To date, advocating competition in countries with a post-transformation economy deserves some criticism. Competitive/anti-monopoly agencies should be more active in this matter. It is necessary to pay attention to the field of the advocacy of competition: it is necessary to identify the most economically important and significant elements for the development of the country. In this case, the competition/anti-monopoly departments should apply those actions for which they have sufficient confidence in their success.

In the process of socially-oriented economy development and formation of the competitive environment in Ukraine, an important task of the state is to create an environment in which formal institutions would prevail and ensure the rule of law in the country, the main criteria of which are: transparency, relative stability, absence of reversal of laws, openness, clarity, and the universality of law-making rules and procedures. Competition is a special institution that needs state support and adjustment not only in the form of anti-monopoly policy but also as the purposeful advocacy of competition in society. It is the advocacy of competition that promotes clarification of the norms of competition law and the formation of a competitive culture in society and creates a flexible, supportive structure for the development of competition. The formation of a competition advocacy program in Ukraine is to be aimed at creating such rules, regulations, and mechanisms for implementing a competitive policy that would allow the state to achieve high rates of economic development and social sustainability in society and to be coherent with the criteria for membership in the EU defined by the European Council (the Copenhagen criteria).

The implementation of competition advocacy mechanisms in Ukraine is applied using the mechanisms of the analogy of individual norms and tools of competition policy, such as the Lianci Program, and reduction or increase of fines, depending on the intentionality of competitive actions. The application of the analogy is also connected with the lack of relevant experience in the application of the rules of competition law by state authorities – the Anti-monopoly Committee of Ukraine. That is why the majority of local acts of the Anti-monopoly Committee of Ukraine directly or indirectly use the analogy of law both in the process of law-making and in law enforcement. New challenges are emerging for the protection of competition in the conditions of the legal regime of martial law.

REFERENCES

1. A decade of ICN activity: overview of the main achievements. EU Competition & Regulatory. Legal and policy developments at the EU level, 19-25 August 2011 <http://www.slaughterandmay.com/media/1591488/eu-competition-and-regulatory-newsletter-19-aug-25-aug-2011.pdf> accessed 19 March 2019.
2. Abu Karky H, 'The Impact of the International Competition Network on Competition Advocacy and Global Competition Collaboration' (2019) 40(10) European Competition Law Review <https://ssrn.com/abstract=3473156 or http://dx.doi.org/10.2139/ssrn.3473156>.
3. ICN Advocacy Working Group, 'Advocacy Toolkit. Part I: Advocacy process and tools' (2011) Presented at the 10th Annual Conference of the ICN, The Hague <http://www.internationalcompetitionnetwork.org/uploads/ library/doc745.pdf> accessed 2 March 2019.
4. Anderson RD, Kovacic WE, Müller AC, Sporysheva N, 'Competition Policy, Trade and the Global Economy: Existing WTO Elements, Commitments in Regional Trade Agreement, Current Challenges and Issues for Reflection' (2018) World Trade Organization Economic Research and Statistics Division. Staff Working Paper <https://www.wto.org/english/res_e/reser_e/ersd201812_e.pdf> accessed 29 March 2019.
5. Bakalinska O, Belianevych O, Honcharenko O, 'Advocacy of Competition in the Mechanism of State Regulation of the Economy' (2020) 11(1) International Journal of Financial Research 425-433.
6. Bakalinska O, 'Fair competition as a form for implementation of the fairness principle in the economic activity' (2017) 2(4) Visegrad Journal on Human Rights 19-22.
7. Buccirossi P, Ciari L, Duso T, Spagnolo G, Vitale C, 'Competition Policy and Productivity Growth: An Empirical Assessment' (2010) 95(4) The Review of Economics and Statistics 1324-1336.
8. Competition policy brief, September 2021 <https://op.europa.eu/en/publication-detail/-/publication/63c4944f-1698-11ec-b4fe-01aa75ed71a1/language-en/format-PDF> date of access 01 Sep 2022.
9. Considera CM, de Ara˙jo MT, 'Competition Advocacy in Brazil – Receipt Development' (2003) 16 Buletin Latino Amerikano de Competencia 72-78.
10. Economic Code of Ukraine, 16 January 2003 <https://zakon.rada.gov.ua/laws/show/436-15> accessed 20 March 2022.
11. Federal Law on Economic Competition (FLES) Mexican United States, Official Gazette of the Federation 24 December 1992 <https://unctad.org/Sections/ditc_ccpb/docs/ditc_ccpb_ncl_mexico_en.pdf> accessed 29 March 2019.
12. 'Assessing Aid What Works, What Doesn't, and Why' (1998) World Bank policy research report <http://documents.worldbank.org/curated/en/262281468181493001/Assessing-aid-what-works-what-doesnt-and-why> accessed 5 March 2019.
13. Goncharenko O, Neskorodzhena L, 'Self-regulation of culture: the role of public associations and electronic communication' (2018) 4 Herald of National Academy of Managerial Staff of Culture and Arts 121-125.
14. Hong DS, 'Competition Advocacy of the Korean Competition Authority (December 13, 2013)' in TK Cheng, I Lianos, DD Sokol (eds), *Competition and the State* (Stanford University Press 2014 <https://ssrn.com/abstract=2819439> date of access 01 Sep 2022.
15. Humenyuk T, Knysh V, 'Problems of Development of the European Integration of Ukrainian Legislation (2014-2018)' (2019) 22(1) Journal of Legal, Ethical and Regulatory Issues <https://www.abacademies.org/articles/Problems-of-development-of-the-European-integration-of-Ukrainian-Legislation-2014-2018-1544> accessed 29 June 2019.

Access to Justice in Eastern Europe
ISSN 2663-0575 (Print) ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

16. On the approval of the Concept of the National Competition Development Program for 2014-2024: Order of the Cabinet of Ministers of Ukraine dated 19 September 2012 No 690 <https://zakon.rada.gov.ua/laws/show/690-2012-% D1%80?find=1&text=%D0%B7%D0%B0%D1%85%D0% B8%D1%81%D1%82#w1_7> accessed 10 October 2022.

17. Pleatsikas Ch, Teece DJ, 'The Analysis of Market Power and Market Definition in the Context of Rapid Innovation' (2001) 19(5) International Journal of Industrial Organization 665-693.

18. Redkva O, Haran O, Prystupa L, 'Determinations of State Regulation of the Competitiveness of Modern National Economies' (2018) 4(4) Baltic Journal of Economic Studies 265-273 DOI: http://dx.doi.org/10.30525/2256-0742/2018-4-4-265-273.

19. Rodriguez AE, Malcom BC, 'Competition Policy in Transition Economies: The Role of Competition Advocacy' (1997) 23 Brooklyn Journal of International Law 365-401.

20. Competition Commission and Competition Tribunal, Pretoria, South Africa, 'Ten years of enforcement by the South African competition authorities' (September 2009) <http://www.compcom.co.za/assets/Uploads/AttachedFiles/MyDocuments/10year.pdf> accessed 8 March 2019.

21. The Federal Trade Commission's Fiscal Year of 2011, Performance and Accountability report (PAR) <http://www.ftc.gov/opp/gpra/2011parreport.pdf> accessed 29 March 2019.

22. *A Framework for the Design and Implementation of Competition Law and Policy* (The World Bank, OECD 1998) Chapter 6, at 93.