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Current issues of antimonopoly policy in the market of agricultural products of Ukraine

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Abstract

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This study investigated the prospects for the development of antimonopoly policy concerning the regulation of the market of agricultural products. The relevance of this study is determined by the need to update the legal framework of Ukraine on antimonopoly regulation of agricultural product markets, considering the current challenges and international standards. The purpose of this study was to analyse the features of antimonopoly policy as a leading area of the economic policy of Ukraine, to analyse the features of antimonopoly policy in the field of agricultural product markets and to identify the prospects for their development. To fulfil the purpose, the following scientific methods were used: dialectic, analysis, formal-legal, comparative-legal. The result of the conducted study was the determination of the following measures to improve the antimonopoly regulation of agricultural product markets in Ukraine: to

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adopt the Draft Law of Ukraine “On the Association of Agricultural Producers” No. 8149, after finalizing it; to supplement the current legislation of Ukraine in the field of antimonopoly policy concerning the regulation of the market of agricultural products with a norm according to which the most vulnerable category of agricultural producers (small producers) will be able to unite to solve problems related to the full-scale invasion of the Russian Federation on the territory of Ukraine and response to wartime challenges; in the development of the project of such changes regarding the regulation of the relevant monopoly exceptions, to consider the available international practices. The practical significance of the present study is that the results can be used to develop draft laws on the antimonopoly regulation of agricultural product markets in Ukraine, as well as to prepare studies on the legal regulation of the antimonopoly policy of Ukraine

Keywords: restriction of monopolies; antimonopoly regulation; agricultural market; international standards; development of Ukrainian legislation

Introduction

A prominent place in the development of the economy of Ukraine is occupied by the development of agriculture, which is one of the main branches of the national economy from the standpoint of the formation of the gross domestic product and ensuring the food security of the country (Olshanska *et al.*, 2022). Ukraine is one of the largest producers of the main types of products of the agro-industrial sector. Ukraine ranks first in sunflower and barley exports, second in grain crops and rapeseed, eighth in chicken, and ninth in soybeans (Kruglyak, 2021). Therewith, Ukraine continues to strive to expand agricultural production both for the needs of its population and to develop exports (Nikitchenko, 2022). This explains the urgency of improving the activities of the Antimonopoly Committee in the market of agricultural products.

At the same time, rising prices, new and ongoing issues with the supply chain, considerable destruction of agricultural infrastructure, mining of cultivated areas and reduced production, and much more due to Russia's unprovoked war against Ukraine and the COVID-19 pandemic are making questions about markets, competition,

antitrust law, and agriculture very relevant. And not only at the Ukrainian level, but also at the world level. The main purpose of the general norms of antimonopoly legislation in the area under study is to promote the development of agriculture (Nikitchenko, 2022). In turn, influencing the development of the agricultural market, antimonopoly regulation is an essential factor in ensuring stable economic growth (Nie, 2018) and food security (Okhrimenko, 2019), competitiveness of the economy (White, 2022) of any state.

The above causes the need to review the antimonopoly policy of Ukraine.

The issues of antimonopoly policy are actively investigated in scientific circles. Among the most recent studies devoted to this issue, one can note the works of K.S. Okhrimenko (2019), who examines the activities of the Antimonopoly Committee of Ukraine in the agricultural sector and suggests areas for its activation to improve the working conditions for agricultural producers; I. Kravtsova (2020) examines the influence of the state in general, as well as individual executive bodies on the market and relations in the field of

competition, examines the activities of the Antimonopoly Committee of Ukraine.

M.V. Zakhodym (2022) investigates the concept and current state of the country's food security and determines its role in the structure of Ukraine's economic security. The author emphasizes that to maintain the level of food security, the state must establish parity inter-sectoral relations of agriculture with other spheres of the economy; to maintain the profitability of the agrarian sector of the economy at the level of the average rate of profit of the economy of Ukraine by effective limitation of monopoly, to ensure the regulation of prices for the products of natural monopolies, as well as the introduction of the mechanism of minimum guaranteed prices, and the introduction of state investments, including the financing of targeted programs of the state, etc.

Works related to foreign practices of antimonopoly regulation of agricultural product markets are also valuable for this study. These are the studies of M.M. Csirszki (2022a) on a comparison of the sectoral antitrust exemption for agriculture that exists in the United States (US) and the European Union (EU), as well as an analysis of the legal history of the antitrust and trade regulation provisions that apply exclusively to the agricultural sector of the United States of America (Csirszki, 2022b). And also, such authors as A. Bradford *et al.* (2019), comparing US and EU antitrust laws. The authors found that EU competition law is followed considerably more often than US antitrust law. They attribute the attractiveness of the EU competition regime to the fact that the EU actively promotes its model through preferential trade agreements and has an administrative template that is easy to follow.

J.-R. Borrell *et al.* (2022) assess the impact of competition authority reform on the effectiveness of antitrust laws using causal inference methods. They examine the reform of antitrust authorities

in 1995-2020 using the example of 20 countries and its impact on the effectiveness of competition policy and emphasize that reforms, paradoxically, do not always increase the effectiveness of anti-trust legislation.

The purpose of this study was to find and analyse ways to improve Ukraine's antimonopoly policy on agricultural markets. According to the defined purpose, the following tasks were set: to investigate the current legislation, scientific works and international practices regarding antimonopoly policy on the market of agricultural products; to determine the features of the antimonopoly policy, favourable for the development of small agricultural enterprises, which are the most vulnerable in current conditions; to develop proposals for improving the legal regulation of the antimonopoly policy of Ukraine, aimed at the development of the agricultural sphere of Ukraine.

Materials and Methods

To fulfil the specified purpose and perform the tasks, three groups of scientific methods were used: dialectical, general scientific (method of analysis) and special legal methods (formal legal method and comparative legal method). The application of the dialectical method helped identify the trends in the development of legislation in the field of antimonopoly policy. The analysis methodology is based on the investigation of scientific approaches to antimonopoly policy in general and antimonopoly regulation of the market of agricultural products in particular. A comparison of the antimonopoly policy of the USA and the EU was made using the comparative legal method. In the end, the content of legal norms in the field of antimonopoly policy was clarified using the formal legal method and proposals were developed to improve the antimonopoly regulation of the market of agricultural products in Ukraine.

The regulatory framework of the study was based on Ukrainian and international regulations. These include the Law of Ukraine "On the Protection of Economic Competition" (2001), Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (2014), Treaty on the Functioning of the European Union (Consolidated version of the Treaty..., 2012), Regulation (EU) No. 1308/2013 (2013), Regulation (EU) 2020/593 (Commission Implementing Regulation (EU) 2020/593..., 2020), Regulation (EU) 2020/594 (Commission Implementing Regulation (EU) 2020/594..., 2020), Regulation (EU) 2020/599 (Commission Implementing Regulation (EU) 2020/599..., 2020).

Special attention was also paid to the Draft Law of Ukraine No. 8149 "On the Association of Agricultural Producers" (2022).

Summary information about Ukraine's place in the ranking of large producers of the main types of agricultural products is based on official data of the State Statistics Service of Ukraine (Kruglyak, 2021).

Results and Discussion

Providing the population with safe and high-quality food products is a strategically important priority of the national agrarian policy, which determines the area of ensuring the country's food security. In this context, apart from the direct producers of agricultural products, the basic principles of the organization and functioning of the agricultural market, where the situation in Ukraine has become critical due to the large-scale invasion of the Russian Federation on the territory of Ukraine, are also critical. The destruction of infrastructure facilities throughout the state, the blocking of exports and imports, changes in the structure of food consumption by the population due to a decrease in purchasing power, and the

destruction of established logistical connections led to many obstacles in the functioning of the agricultural market. It is obvious that the specified conditions determine the need to develop adequate mechanisms for adapting the functioning of the agrarian market in war conditions to overcome the adverse impact of growing challenges and threats (Boiko, 2022).

At the same time, to ensure equal rights of all subjects of market relations and create favourable conditions for economic development, it is necessary to control the market and competition. The market of agricultural products is no exception. One of the mechanisms of the state's implementation of its powers is the issuance of regulations (Gutiérrez & Suárez, 2023), the control of compliance with which belongs to the competence of specially authorized entities. Factoring this in, a discussion in scientific circles regarding the principal factors influencing the effectiveness of the implementation of antimonopoly policy seems quite logical.

Antimonopoly regulation currently exists in more than 110 countries and territories around the world (Stylianou & Iacovides, 2022). J.-R. Borrell *et al.* (2022) analysed 24 reforms of national competition authorities in 20 different countries to determine the causal effect of the reforms by comparing the performance of these countries' competition policies with a control group. The results indicated that the reforms had mixed effects: most of them had the expected positive significant effect (10 reforms out of 24), but also many had an unexpected significant adverse effect (7 reforms out of 24) or had no significant effect at all in the long run. At the same time, the authors found that there are cases where reforms are used to undo the progress made by previous reforms, sometimes even in a game that results in politicians covering up their true intentions by

claiming that their reforms are also beneficial and receive negative results. Thus, in one case we see a pro-reform (Spain, 2007) and a genuine counter-reform (Spain, 2013) that partially reverses the improvements achieved by the effectiveness of the antimonopoly legislation in the long run (Borrell *et al.*, 2022). That is, outcomes are uncertain and at best consistent with expected progressive outcomes, but this is not guaranteed because sometimes reforms are outcome-neutral and do not live up to expectations.

The given data give grounds for assumptions that the priority factor influencing the effectiveness of the antimonopoly policy of any state can be considered not so much antimonopoly bodies as proper statutory regulation. Although antimonopoly law may be unable to solve all the problems in this area, enforcement of competition law can play a key role in solving the fundamental issues that underlie unfair trade practices between businesses. Furthermore, it is still indispensable for ensuring the proper performance of the internal market (Boiko, 2022). Therefore, the priority of legal regulation in the aspect of ensuring the effectiveness of Ukraine's antimonopoly policy is indisputable.

Considering the realities that have developed in Ukraine in the field of the development of the agricultural products market, in connection with the full-scale invasion of the Russian Federation on the territory of Ukraine, the antimonopoly legislation of Ukraine must necessarily consider the importance of creating conditions that will be favourable in the aspect of ensuring, first of all, the viability of small agricultural producers. Although P. Watson and J. Winfree (2021) point out that using antitrust laws to break up large agricultural companies and/or protect small farms can lead to higher food prices. Such a claim seems controversial, given that there is no evidence that the

breakup of large agricultural companies is among the reasons for the increase in food prices.

The expediency of using some methods of antitrust regulation to protect small agricultural producers seems evident. These include the relaxation of certain antimonopoly requirements.

An essential step on the way in this area can be recognized as the basis for the adoption of Draft Law No. 8149. This is a draft of the Law of Ukraine "On the Association of Agricultural Producers" (2022), introduced by People's Deputies of Ukraine O.V. Haydu, O.V. Saliychuk and others. According to the explanatory note to Draft Law No. 8149, it was developed "to perform the European integration obligations of Ukraine in terms of determining the legal and organizational framework for state recognition of associations of agricultural producers (producers' organizations, associations of producer organizations and inter-branch organizations), granting such associations representative status, creation of conditions for self-regulation of the agricultural activities of their members by such associations, as well as conditions for delegation to representative associations of agricultural commodity producers of certain powers of state authorities to regulate agricultural activity" (Draft Law of Ukraine No. 8149..., 2022). However, this draft law needs to be revised. As a result of the implementation of Draft Law No. 8149, representative associations of agricultural producers will be able to establish rules and conditions that reduce the intensity of competition, as well as the motivation of economic entities to compete vigorously on the market, create obstacles in the market access of other economic entities. The greatest danger in this case is the possibility of a conspiracy with the support of the relevant association. Representative associations of commodity producers of agricultural products can abuse this status by carrying out

anticompetitive concerted actions or creating cartels. Therewith, giving representative associations the right to establish mandatory rules and requirements for producers of agricultural products who are not members of such associations may result in a violation of the principle of equality before the law, as well as discrimination of business entities, which may result in advantages to individual business entities (members of the relevant association) and harm the interests of other business entities that are not members of such associations. At the same time, this provision is inconsistent with the Part 1 of Article 3 of Draft Law No. 8149. It refers that prohibits the association of agricultural producers to make decisions and take other concerted actions, provided that such decisions and actions distort competition in the agricultural market and/or discriminate against individual agricultural producers. Furthermore, some provisions of Draft Law No. 8149 have signs of legitimizing anticompetitive concerted actions of business entities. That is, they violate the provisions of Article 17 of the Law of Ukraine "On the Protection of Economic Competition" (2021), and are also inconsistent with Ukraine's international obligations pursuant to Article 254 and the Part 1 of Article 255 of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (2014). Such conclusions can be reached by analysing the relevant provisions of the specified legal acts.

Therewith, it is advisable to consider relevant international practices, the experience of the world's largest consumer markets, the US, and the EU, which adopted different approaches to regulating competition (Bradford *et al.*, 2019). Since the modern stage of the formation of antimonopoly regulation is counted from the moment of the adoption of the Acts of Sherman, 1890 (Daskalova, 2020; Brown, 2022), and Clayton, 1914 (Brawley,

2022), it is worth starting with the antimonopoly policy of the United States.

The United States has always played a pioneering role in competition policy. To regulate competition, not only general rules applicable to all economic sectors, but also provisions for individual industries were adopted. The United States was the first jurisdiction to adopt an agricultural exception under antimonopoly legislation to the prohibition of anticompetitive agreements and was a leader in regulating markets from an industry perspective (Csirszki, 2022b).

At the same time, the beginning of antimonopoly legislation was not in favour of the agricultural sector, even though the vulnerability of farmers played not the least role on the way to modern antimonopoly legislation. The analysis shows that the first 25 years of US antimonopoly legislation – from 1890 to 1914 – lacked legal means to distinguish agricultural producers from other market participants. This led to the fact that agricultural cooperatives, created for mutual aid, were often prosecuted for violations of antimonopoly legislation. That changed with the adoption of Section 6 of the Clayton Act, followed eight years later by the Capper-Volstead Act. Together, these laws formed the Great Charter of agricultural producers, who can join forces in cooperatives to sell their products. The legislative decision regarding the privileging of the agricultural sector was implemented by exempting agricultural cooperatives from the prohibition of anticompetitive agreements. Since then, US competition policy has established a privileged position for agricultural producers (and cooperatives) (Csirszki, 2022b). This policy persists in the USA until now.

Later, other countries joined this initiative. The active phase of the spread of competition law enforcement began in the second half of the 20th century, specifically since the formation of

the EU. In turn, the European Union has influenced the strategy of antimonopoly regulation worldwide (Daskalova, 2020). Traditionally, the European Union has placed relatively less faith in the self-regulating powers of markets, favouring regulators instead. The European Union is also considered to be more hostile towards dominant companies and therefore more inclined to limit mergers that could lead to greater dominance (Bradford *et al.*, 2019). Therewith, Article 102 of the Treaty on the Functioning of the European Union is interpreted to “ensure that the exercise of market power does not impair competitors’ possibilities to succeed or prevail on the market based on superior business performance” (Brown, 2022). Apart from economic considerations, the European Union is also concerned with the agricultural policy objectives to be achieved through the antimonopoly exception. The European Union (and its predecessor, the European Economic Community) has long been committed to a value judgment that prioritizes agricultural policy objectives over competition rules.

Furthermore, the relaxation of monopoly rules aimed at supporting the agricultural sector to mitigate the consequences of the COVID-19 outbreak deserves attention. On April 30, 2020, the European Commission (the Commission) issued three implementing regulations (Commission Implementing Regulation (EU) 2020/593..., 2020; Commission Implementing Regulation (EU) 2020/594..., 2020; Commission Implementing Regulation (EU) 2020/599..., 2020), which temporarily soften the scope of application of competition legislation in three agricultural sectors that have been seriously affected by the COVID-19 pandemic.

According to the context, Regulation (EU) No. 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets

in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No. 234/79, (EC) No. 1037/2001 and (EC) No 1234/2007 encourages cooperation between agricultural producers, but clarifies that EU competition rules remain applicable to the production and trade of agricultural products. However, according to Article 222 of the Regulation, the Commission may apply temporary derogations from Article 101(1) Treaty on the Functioning of the European Union (Consolidated version of the Treaty..., 2012) to certain categories of agreements to eliminate serious imbalances in the market. But such concessions do not apply to serious violations.

Thus, to help potato producers strike a balance during this period of serious market imbalance, agreements, and decisions of farmers, associations of farmers or associations of such associations, or recognized producer organizations, associations of recognized producer organizations and recognized inter-branch organizations regarding potatoes for processing on a temporary basis were allowed for 6 months. These measures include withdrawal from the market and free distribution; conversion and processing; storage; joint promotion; temporary production planning. At the same time, such agreements and decisions regarding potatoes for processing may include removing potatoes from the market for orderly destruction of the product or for free distribution to food banks or government agencies; processing potatoes for other purposes, such as animal feed; creation and search of storage facilities and preparation of potatoes for longer storage; promoting the consumption of processed potato products; planning measures to reduce the volume of future plantations and adjust current potato contracts. Therewith, according to the first paragraph of Article 222(1) of Regulation (EU) No. 1308/2013, permission is granted if it does not interfere with

the functioning of the internal market, and agreements and decisions are strictly aimed at stabilizing the sector. These special conditions exclude agreements and decisions that directly or indirectly result in the division of markets, discrimination based on nationality or price fixing. If agreements and decisions do not comply with these conditions or no longer comply with these conditions, Article 101(1) of the Treaty (Consolidated version of the Treaty..., 2012) shall apply to these agreements and decisions. Such practice can be valuable for Ukraine. The specified measures can be applied to other agricultural products, depending on the situation on the agricultural market.

Furthermore, farmers and producers and their recognized organizations were temporarily allowed to:

➤ conclude agreements and take joint decisions on withdrawal from the market and free distribution, joint promotion, and temporary planning of production of live plants and flowers (Commission Implementing Regulation (EU) 2020/594..., 2020);

➤ conclude agreements and make joint decisions regarding the planning of raw milk production volumes (Commission Implementing Regulation (EU) 2020/599..., 2020).

Some considered antimonopoly relaxations of the EU, introduced in connection with the impact of the pandemic on the development of the agricultural market, have value in the context of their implementation in Ukrainian legislation, with the establishment of their temporary effect during the martial law and the post-war period in Ukraine. Specifically, it would be expedient to introduce relaxations in the form of temporary permits to conclude agreements and make joint decisions regarding withdrawal from the market and free distribution, joint promotion, and temporary planning of the production of agricultural products

in relation to which a deficit is experienced at a certain stage of the wartime and post-war period.

Conclusions

It was found that there is currently a need to improve Ukraine's antimonopoly policy in the field of agricultural products. The principal vector of development of antimonopoly regulation should be the agri-food sector, and not its restrictions. Competition in the agricultural market today has already substantially decreased due to the losses that the agricultural industry suffered and continues to suffer in connection with the war in Ukraine. At the same time, the priority area of the further development of antimonopoly legislation during the war period, as well as in the post-war period during the recovery of the agri-food sector, should be ensuring the viability of small producers.

It was proved that antimonopoly regulation should be guided not only by objective realities and inherent features of the economy of Ukraine, but also by international standards. Therefore, it can be concluded on the need to legislate an exception to the general rules of antimonopoly regulation in the form of the possibility of uniting small agricultural producers to solve the issues associated with the full-scale invasion of the Russian Federation on the territory of Ukraine and responding to the challenges of wartime.

At the same time, within the framework of antimonopoly regulation, considerations should proceed from the fact that fair competition of agricultural companies is useful for society, as it leads to an increase in the supply of agricultural products, their affordability and improved properties, which is directly related to ensuring the rights of consumers of such products. Therefore, it is important to control activities that could potentially restrict competition. It is necessary to

limit the manifestations of monopoly in the field of material and technical support of the work of agricultural enterprises, in the field of trade in agricultural products, etc.

As a result of the study, the current and prospective legislation, scientific works and international practices regarding antimonopoly policy on the market of agricultural products were analysed, the features of antimonopoly policy favourable for the development of small agricultural enterprises, which are the most vulnerable in current conditions, were determined; proposals were developed to improve legal regulation of the antimonopoly policy of Ukraine aimed at the development of the agricultural sphere. Based on which, the prospects for the further development of the antimonopoly policy of Ukraine were clarified, by determining the main areas of

improvement of the antimonopoly regulation of the market of agricultural products in Ukraine.

The obtained results can become the basis for the development of the content of laws on antimonopoly regulation of the market of agricultural products and can be used in theoretical studies. Finally, the discussed subject requires further scientific research. Specifically, this refers to a more detailed analysis of the legislation of Ukraine in the field of antimonopoly regulation of the market of agricultural products, as well as the study of foreign practices in this area.

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Conflict of Interests

None.

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Актуальні питання антимонопольної політики на ринку сільськогосподарської продукції України

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Анотація

Дослідження присвячено перспективам розвитку антимонопольної політики щодо регулювання ринку сільськогосподарської продукції. Актуальність дослідження зумовлено необхідністю оновлення нормативно-правової бази України з питань антимонопольного регулювання ринків сільськогосподарської продукції, з урахуванням викликів сьогодення та міжнародних стандартів. Метою дослідження став аналіз особливостей антимонопольної політики як провідного напрямку економічної політики України, аналіз особливостей антимонопольної політики у сфері ринків сільськогосподарської продукції та визначення перспектив їхнього розвитку. Для досягнення поставленої мети використано такі наукові методи: діалектичний, аналіз, формально-юридичний, порівняльно-правовий. Результатом проведеного наукового дослідження стало визначення таких заходів для вдосконалення антимонопольного регулювання ринків сільськогосподарської продукції в Україні: прийняти проект Закону України «Про об'єднання сільськогосподарських товаровиробників» № 8149, попередньо його допрацювавши; доповнити нині чинне законодавство України у сфері антимонопольної політики щодо регулювання ринку сільськогосподарської продукції нормою, відповідно до якої найбільш вразлива категорія сільськогосподарських товаровиробників (малі товаровиробники) матимуть змогу об'єднуватися для розв'язання проблем, пов'язаних з повномасштабним вторгненням РФ на територію України та реагування на виклики воєнного часу; у розробці проекту таких змін стосовно регулювання відповідних монопольних виключень урахувати наявний міжнародний досвід. Практичне значення проведеного дослідження полягає в тому, що результати можуть бути використані під час розробки проектів нормативно-правових актів щодо антимонопольного регулювання ринків сільськогосподарської продукції в Україні, а також для підготовки досліджень з правового регулювання антимонопольної політики України

Ключові слова: обмеження діяльності монополій; антимонопольне регулювання; аграрний ринок; міжнародні стандарти; розвиток законодавства України