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CONTEMPORARY TRENDS AND TOOLKIT OF COMPETITION ADVOCACY

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Abstract. *The article summarizes international experience on contemporary forms of competition advocacy as part of competition policy, determines the major world trends of competition advocacy. A modern competition advocacy toolkit to competitive agencies and methods of evaluating the competition advocacy effectiveness are worked out.*

Keywords: advocacy, antimonopoly policy, competition advocacy effectiveness, competition policy, competitive culture.

1. Introduction

Today the problem of increasing the effectiveness of competition is of great importance for basic socio-important markets in Ukraine. As noted in "The Global Competitiveness Report 2012–20013" published by the World Economic Forum, "Ukraine could realize further economic efficiency gains from instilling more competition into the goods and services markets". In particular, the intensity of local competition was estimated at 4.3 points (104th place among the 144 economies), the extent of dominance – by 3.2 points (108th place) and the effectiveness of antimonopoly policy – 3.2 (132th place) (The Global…2012).

It is therefore necessary to apply new approaches to the development and implementation of competition policy objectives and competition regulation First of all, it concerns the evaluation of the role and place of competition advocacy at the present stage of development of Ukraine, the nature and content of instruments and mechanisms to improve activity of the Antimonopoly Committee of Ukraine.

A commonly accepted definition of competition advocacy is that it includes all activities of a competition agency that are intended to promote competition apart from those that involve enforcement of the competition law.

2. Review of research results

Problems of competition advocacy are investigated primarily in publications of International Competition Network Advocacy Working Group (Advocacy… 2011; ICN Advocacy…2011-2016; ICN Advocacy… 2011-2012), works published by domestic and foreign scientists: S. Avdasheva (2006; 2010), O. Shastitko (2006; 2010), H. Filyuk (2011), I. Knyazeva (2010), O. Lukashenko (2010), H. Lozova (2012), O. Voznyuk (2011).

Purpose of the article is to identify the main trends of competition advocacy in the world, the contemporary tools to competition agencies and methods of evaluating the competition advocacy effectiveness.

3. Competition advocacy as part of competition policy

Ensuring competition advocacy is one of the areas of competition policy. It promotes awareness by all market participants about the importance and usefulness of maintaining competitive principles to improve the quality of life that improves the competitive environment and ensure voluntary compliance with competition law and its more effective use.

Advocacy is also necessary to promote competition culture through increased interaction with the government (executive, legislative, and judicial), business community, society, media and academics.

Providing feedback between society and the competition authorities, competition advocacy can make a competition agency information activity more transparent.

4. Current global competition advocacy trends

Studying works published by International Competition Network Advocacy Working Group allows selecting the following major trends in competition advocacy:

1) increasing activity of the national competition agencies in competition advocacy;

2) enhancing international cooperation in competition advocacy (through the creation of formal and informal international governmental organizations);

3) awareness by developing countries and countries with transitive economies necessity of supplementing enforcement tools with competition advocacy tools, the gradual inclusion of these countries in competition advocacy;

4) updating practical competition advocacy tools, focusing on conducting case studies, exploring specific situations of how competition agency-members of International Competition Network operate in field of competition advocacy in practice (Advocacy…2011);

5) assessing the competition advocacy effectiveness by the competition agencies;

6) exchange of experience in competition advocacy between countries through conferences, teleseminars, publication of information and articles on websites;

7) developing competition culture within society and encouraging competition agencies to disseminate competitive culture (ICN Advocacy… 2011-2016);

8) application of competition principles in government policy decisions;

9) conduct of a campaign by international organizations and national competition authorities to clarify the benefits of competition to different target groups;

10) recognition of the key role of competition as the driving force of economic growth and innovation (ICN Advocacy…2011-2012);

11) taking into account the impact on competition of competition agencies in the markets functioning;

12) providing benefits to such topics of competition advocacy, as: transport, energy, financial market.

Analysis of competition advocacy in developed countries, for example the U.S., allowed us to determine the following patterns:

– the role of competition advocacy in the competition policy is growing every year;

– competition agency adheres to the principles of publicity and transparency in its activities;

– competition advocacy mainly uses such tools as: briefings, seminars, public hearings, surveys and market researches, appeals to the regulators.

5. Competition advocacy toolkit

World practice shows that the tools using by competition agencies in competition advocacy should be directed to:

1) improving consumer protection;

2) maintaining a healthy economic competition;

3) strengthening international cooperation in competition, which is especially important in the information technology and globalization development.

Thus, for the consumer protection should:

– organize educational company for market participants with low level of knowledge about competition law;

– publish annual reports on the competition agency activities;

– implement and publish reports on the most important markets development;

– cooperate with authorities on the development, coordination and harmonization of legal and regulatory acts;

– advise the authorities on the harmonization of regulatory policy with competition policy;

– protect the rights of domestic consumers in the global market.

Maintaining a healthy competition may be achieved by:

– legislative activity;

– taking action against anticompetitive mergers and practices that may cause significant competition environment injury;

– challenging decisions, restricting competition, in court;

– encouraging the development of various industries;

– publishing and distributing collections of antimonopoly and competition law documents among the largest enterprises;

– providing influence on small and medium enterprises;

– organization of public forums for discussion on competition for specialized and non-specialized audiences;

– allocating special hotline for counseling entrepreneurs.

As the instruments of international cooperation can be used:

– development of bilateral and multilateral cooperation between national competition authorities, learning and knowledge sharing, technical assistance;

– participation in international forums, conferences, committees, commissions and organizations that provide a platform for interaction between national competition authorities;

– development and implementation of international projects in competition;

– distribution by International organizations information on best competitive practices;

– organization of international debates and discussions on issues that may have an impact on competition policy and enforcement;

– bringing by international organizations relevant information in competition directly to the national government through political dialogue;

– harmonization of national competition legislation and business rules;

– development and application of competition and antimonopoly law (for example, within the EU).

6. Evaluation of the competition advocacy effectiveness

The final results of the competition advocacy are to neutralize losses from monopoly in statics and receive additional prizes from competition in dynamics. Evaluation is the investigation into the effectiveness of policy interventions; policy implementation; and policy processes with a view to influencing future advocacy and policy development.

Providing competition advocacy evaluation can be useful to estimate competition advocacy activities in order to assist the prioritization of future advocacy activities and improve how competition advocacy is conducted within the agency; demonstrate that the agency has met its objectives cost-effectively; and highlight the value of competition advocacy interventions.

On the one hand, planning the competition advocacy activities is necessary to give a preliminary assessment of the impact of these measures on the market. In this case, the assessment is carried out for the future. On the other hand, advocacy competition evaluation needs for measuring the impact of the advocacy activity after its outcomes are known. This will highlight the competition priorities and plan activities for the future.

To ensure competition advocacy effectiveness, competition agency should first identify fields that need intervention. These fields must be socially important and meaningful. Competition authority must carry out those actions for which it has a reasonable assurance of success.

For example, the advocacy actions of the U.S. Federal Trade Commission had success in professional regulation (law, optometry, real estate brokerage, and morticians), wine and beer distribution restrictions, pharmacy protection legislation, physician collective bargaining, food and drug labeling, airline reservation systems, electronic fund transfers, and "do-not-email" lists. The Japan Fair Trade Commission took actions against bid rigging (Advocacy…2011).

In Canada, competition advocacy gave a positive results in the telecommunications and energy sector, in Spain – in retail distribution, public contracts, professional services, in Poland – in energy sector, financial services, postal services and public transport, wood sale regulation, in Mexico – in pension system, banking services, telecommunications, energy sector and airline industry.

Evaluating the competition advocacy effectiveness it is necessary to evaluate the impact of scarce resources (budgetary resources, personnel time, media exposure, and other inputs) have invested in competition advocacy.

The effectiveness of competition is usually assessed by qualitative methods. For example, through surveys and interviews, statements or estimates of independent experts, binary evaluating the success of competition advocacy measures ("useful"/ "useless"), evaluation of the achievement of a competition agency goals.

The quantitative indicators for measuring the competition advocacy effectiveness include:

– the percentage of the population (or legislature or judiciary) who are aware of the role of the competition authority, its outreach activities, and whether they find that the competition authority's "message" compelling;

– the percentage of respondents who recognized measures competition advocacy "useful";

– the percentage of legislative regulations that have approval with competition agencies;

– the number of initiatives taken in competition advocacy (seminars, conferences, public hearings etc.);

– the percentage of all cases filed by the competition agency that were successfully resolved through litigation, a settlement, or issuance of a default judgment;

– customer satisfaction rate with an competition agency consumer education website or microsite;

– the percentage of proposed administrative Procedure act rulemakings, conducted solely by the competition agency, completed within nine months of receipt of final comments in the final notice of Proposed Rulemaking;

– the percentage of redress cases in which the competition agency distributes redress money designated for distribution to consumers within six months;

– the percentage of the competition agency's consumer protection law enforcement actions that target the subject of consumer complaints to the competition agency;

– frequency of competition advocacy measures coverage in the media and the internet.

7. Conclusions

Today, competition advocacy is the priority of competition policy. The goals of competition advocacy are consumer protection, competition maintenance and strengthening of international cooperation.

Competition advocacy serves as complement to enforcement policy of competition agencies. Therefore, competition authorities must decide how to allocate resources (budgetary resources, personnel time, media exposure, and other inputs) between enforcement and advocacy. That it is necessary to determine the effectiveness of competition advocacy.

Researched global trends competition advocacy, modern tools and methods for assessing the effectiveness of competition advocacy can be used in the practice of the Antimonopoly Committee of Ukraine in order to choose the most effective methods and tools to advocate competition with the specifics of the national economic practice and conduct qualitative and quantitative competition advocacy evaluation.

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Узагальнено світовий досвід щодо сучасних форм адвокатування конкуренції як складової конкурентної політики. Виокремлено основні світові тенденції розвитку адвокатування конкуренції. Розроблено сучасний інструментарій впливу конкурентного відомства на цільові групи адвокатування конкуренції та методику оцінювання ефективності адвокатування конкуренції.

Ключові слова: адвокатування конкуренції, антимонопольна політика, ефективність адвокатування конкуренції, конкурентна культура, конкурентна політика.

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Обобщен мировой опыт современных форм адвокатирования конкуренции как составляющей конкурентной политики. Выделены основные мировые тенденции развития адвокатирования конкуренции. Разработан современный инструментарий влияния конкурентного ведомства на целевые группы адвокатирования конкуренции и методику оценки эффективности адвокатирования конкуренции.

Ключевые слова: адвокатирование конкуренции, антимонопольная политика, конкурентная культура, конкурентная политика, эффективность адвокатирования конкуренции.

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