International legal framework for competition protection

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Abstract- What is law? The concept of legal rights is one of the most commonly defined concepts. The term law itself has several meanings and it represents the subject of study in several scientific disciplines, from legal sciences to history, sociology, philosophy, etc. Defining the term law and determining its content is not an easy task. In support of this claim, The paraphrase of the Italian legal philosopher Giorgio Del Vecchio, who claimed that everyone knows what law is, but it is difficult to define it. In legal theory, three different approaches are distinguished when defining the concept of law, so that it can be viewed as an ethical phenomenon or value system (Jusnaturalism), as a set of norms in the sense of psychological or logical-linguistic concepts (Legalism and Normativism), and as a social-material category (Socialism). Law.cocept.legal.phenomenon.hjstory

I. Introduction

The concept of competition law The term "law (protection) of competition" is a complex term that logically and content includes three elements: "law", "competition" and "protection". Therefore, determining the concept of competition law requires defining the concept of law, the concept of competition and the concept of competition protection.

Some legal authors, when defining the concept of law, start from the point of view that law represents the will of the ruling class with the aim of maintaining social order. Regarding the question of who should ensure the application of law, most legal theorists agree that the mechanism of coercion belongs to the state. However, the situation is not so homogeneous when it comes to determining the very essence of law, that is, determining which social relations, actions and behaviors are regulated by law. Some determine these relationships directly, and some indirectly in the way that they determine the goal of the law. While recognizing and respecting all the different theoretical approaches to defining the concept of law, we will distinguish between law in the broader, i.e. objective sense, and law in the narrower, i.e. in a subjective sense.

Law in broader sense is a generic and universal term that denotes a certain set of rules of conduct, the application of which is ensured by the state mechanism of coercion. It can also be defined as a totality, that is, a system of legal norms, principles and institutes that regulate the behavior of legal subjects (legal entities and natural persons), which were enacted and sanctioned by the state. Law in the subjective (narrower) sense represents the rights and obligations of the subjects of law as holders of rights that are recognized or imposed on them by the regulations of objective law.

Competition

Since the concept of competition has already been discussed under the special chapter "Defining competition on the market", we will briefly mention here, in order to remind and define the concept of "rights of competition", that the concept of competition is inseparable from the concept of market as an economic category. We said that competition is a process of competition between economic entities that takes place on the market as a place where supply and demand meet. Economic theory views competition as the basic stimulus to economic efficiency.

Protection of competition

Defining the concept of competition protection requires a preliminary determination of the concept of infringement of competition. Starting from the point of view of economic theory, the violation of competition can be defined as any behavior that reduces competitive pressure, which results in a drop in economic efficiency and a decrease in overall social well-being. The concept of "protection" in the complex concept of "competition protection" (eng. "anti" - "antitrust") necessarily stems from the nature of the law itself, which contains negative legal norms prohibiting certain behavior ("it is forbidden ...", "are void . .." etc., Eng. "prohibitory in nature" and "negative in language").[1]

Competition law

After we have individually determined the term "rights", the term "competition", the term "competition protection", we will try to determine the term "competition rights". In relation to the previous, "competition law can be defined as a set of regulations

[1] Maher M. Dabbah, International and Comparative Competition Law, Cambridge University Press, pp. 30-31.

that should ensure that competition in the market is not distorted in a way that reduces social welfare."[2]

Competition law as a branch of law

Competition law is a special branch of law that has as its object the protection of competition from actions that violate competition in the form of significant restriction, prevention or distortion of competition. In comparative legal theory and legislative practice, different names can be found for this branch of law. The very name competition law, or the right to protect competition, is a name that is primarily characteristic of countries that belong to the European-continental legal tradition ("competition law"), while in the American legal system, the right to protect competition is known as antitrust (eng. "antitrust law"). In some places it is also referred to as "antimonopoly law".

On the other hand, some countries have opted for a broader name that descriptively indicates the basic subject and goal of the law, eg "the right to suppress or control restrictive business acts and actions" ("elimination or control of restrictive business practices").[3]

Objectives of competition law

Every right, that is, every rule, has its object and goal, which justifies the reason for its existence. "The goal of the law on the protection of competition is the control or elimination of restrictive agreements or arrangements between market participants, as well as concentrations and the acquisition or abuse of a dominant position on the market, which limit access to the market or otherwise unjustifiably distort competition, thereby realizing harmful consequences on domestic or international market or economic development."[4]

Sometimes law is established to achieve multiple goals, which depending on their purpose can be divided into basic and supplementary. This is also the case with competition law. The main goal of competition law One of the dilemmas that exists in relation to competition law is determining its basic objective. Is the aim of this right to protect competition or encourage competition between economic entities? The dominant understanding is that the main goal of the law of competition protection is not to encourage competition between economic entities, but rather to protect it from acts and actions preventing, distorting and limiting competition, and that is through the use of negative legal provisions on the prohibition and nullity of such acts and actions. Therefore, the main goal of competition law is to prevent the distortion of competition that leads to a decrease in social well-being.

Supplementary objectives of competition law Competition law, in addition to the protection of competition as its main goal, also has a number of other supplementary, complementary goals, which according to their character can be divided into: economic, social, development and political goals. These additional objectives of the law of competition protection provide the possibility of adapting the law of competition to the level of economic development of individual countries, their needs for incentives of certain strategic economic branches and strengthening the competitiveness of the nation, i.e. the competitiveness of domestic producers on the international market.

Economic goal of competition law: One of the goals of competition law is the economic goal, more precisely, competition law should enable efficient and optimal allocation of resources and newly created values while respecting the principle of ensuring fairness and maximizing the distribution of realized benefits to consumers. Political goal of competition law: Competition law has as one of its goals the creation of conditions for the functioning of a democratic political system, ie the political system of liberal democracy. Competition is democracy in the "economy", for there can be no true political democracy if economic power rests in the hands of a few. Therefore, competition law realizes its political goal by opposing the excessive concentration of economic power. Developmental goal of competition law: Competition law indirectly aims to facilitate the development of the economy and increase the overall well-being of society as its supplementary goal. The development goals are related to the degree of economic development of individual countries, the structure and level of competitiveness of the national economy. Increasing the productivity of the domestic economy leads to the national competitiveness of the country in the system of international economic relations. Socio-political goal of competition law: Socio-political goals of competition law include the interests of particularly sensitive social groups, such as: "the interest of employees to preserve jobs, the interests of members of the environmental movement to preserve the environment, the interests of producers in the so-called declining activities, and so on."[5]

Content of competition law

In the world today, there are more than 110 national jurisdictions that apply competition law. Given that law is a social creation and that it regulates existing social relations in each individual society, it is logical that there are numerous differences between national legislations regarding competition law, as well as certain common characteristics. Regulations aimed at protecting competition from actions that prevent, distort, or limit competition are usually contained in several regulations of legal rank. Due to the dynamics of economic life, the complexity of the matter they regulate, the difficulties that exist in designing an effective competition protection policy, there is a tendency to constantly improve the regulations. The matter of competition protection is complex and intertwines elements of civil,

[2] Boris Begović, Vladimir Pavić, Introduction to competition law, Faculty of Law, University of Belgrade, 2012, p. 23

[3] United Nations Conference on Trade and Development, „Model Law on Competition“, United Nations, New York and Geneva, 2010, TD/RBP/CONF.7/8, pp. 3, 11 („Title of the Law“).

[4] United Nations Conference on Trade and Development, „THE UNITED NATIONS SET OF PRINCIPLES AND RULES ON COMPETITION“ („The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices“), United Nations, Geneva 1980 (rev. 2000), TD/RBP/CONF/10/Rev.2, pp. 10, ad 1, Chapter I, Objectives or purposes of the law.

[5] Alison Jones and Brenda Sufrin, EC Competition Law – Texts, Cases, and Materials, OxfordUniversity Press, 2004, pp. 15-17; Maher M. Dabbah, International and Comparative Competition Law, Cambridge University Press, 2010, pp. 36-44.

administrative and criminal law. It represents one of those matters in which regulations and judicial practice often change. Also, in a large number of countries there is a tendency to unify and express most of the legislation in this matter through a single law. However, what constitutes the content of competition law?

The content of competition law consists of legal norms of material and procedural character. That is, according to the character of the legal norms they contain as well as depending on the issues they regulate, the content of competition law can be divided into two legal entities:

1. Substantive competition law
2. Procedural competition law

Substantive competition law

The material law of competition consists of legal norms contained in several regulations of legal rank, which define: subjects to which competition law is applied, basic types and forms of acts and actions that have as a result or goal a significant limitation, prevention or distortion of competition, jurisdiction, method of conducting supervision over the application of rights, sanctions for violation of rights, etc. . These norms represent the so-called substantive legal framework of competition law.

The application of substantive and legal norms on the protection of competition depends on jurisdictional and procedural-institutional restrictions on the application of law. In terms of jurisdiction, most laws contain provisions on the personal and territorial application of competition law. The increase in the number of countries that have adopted laws on competition protection in recent decades, as well as the content of those laws, indicate a trend of informal harmonization according to the model of the laws of developed countries or regional organizations, first of all, according to the model of the laws of the United States of America and the European Union.

In this sense, we can talk not only about comparative models of the laws of developed countries, but also about general, that is, common basic principles and standards of competition protection in general. When it comes to the personal application of competition law, the principle of application of rights to market participants with citizenship of the country of origin of the law (principle of personality) is accepted, but also to participants who have the citizenship of another country, if they perform economic activity in the country of origin of the law (principle of territoriality).

When it comes to the territorial application of competition law, the principle of territoriality is the basic principle of establishing the jurisdiction of domestic legislation. The principle of territoriality means that in the event of a violation of competition rights, the law of the state in whose territory the violation occurred will be applied. As a result of the liberalization of international trade and the process of globalization, the basic principle of establishing territorial jurisdiction was supplemented. The generally accepted principle of territoriality in the application of law is supplemented by the principle of the jurisdiction of the state in whose territory the effects (consequences) of the acts and actions taken in violation of competition are realized, regardless of where these actions were taken.

Procedural competition law

Procedural provisions of competition law form its procedural-legal component. These provisions determine the procedure in which the rights and obligations of subjects of law enforcement are exercised. These are provisions that determine the following relevant issues: - What is the type of procedure in which rights and obligations are exercised? (administrative, judicial civil-procedural and judicial criminal-procedural), - What conditions must be met? - How can the procedure be initiated? (authorized proponents, initiation of the procedure ex officio - According to which procedure is the law applied? - What instruments are used to protect competition? (protection measures, administrative measures, sanctions)

Forms of competition law violations

Violations of competition rights are actions, that is, acts that prevent, distort, or limit competition on the market. What is the goal of these actions? The goal is to reduce the competitive pressure and ensure the best possible position in the market competition for the business entity that undertakes the actions, i.e. acts of infringement of competition. Due to the fact that such actions reduce economic efficiency and that they reduce overall social well-being, violations of competition law represent undesirable social behavior and national legislation on competition law contains prohibitions of such behavior. Violations of competition rights can be divided into three basic forms:

1. Restrictive Agreements and Arrangements
2. Abuse of a dominant position on the market
3. Concentration of market power

Restrictive agreements or arrangements ("restrictive agreements or arrangements") are agreements between market participants who are in the relationship of competitors or potential competitors with the aim of establishing a monopoly and reducing competitive pressure. The mechanism of functioning of restrictive agreements is simple. Competitors agree on a price that is equal to the monopoly price, on the total market offer and how to divide it among themselves. Each individual shares the monopoly profit according to its volume of production. Competitors can also agree on market sharing.

Restrictive agreements and arrangements according to the manner and form of conclusion can be formal or informal (express and tacit), i.e. written or unwritten agreements. According to the UN Model Law on Competition Protection, restrictive agreements include:

- "agreements that determine prices and other conditions of sale, including international trade (eng. "price-fixing agreements", "collusiveagreements");
- coordinated highlighting of bids in the public procurement procedure, that is, at a public tender (eng. "collusive tendering/bidding", "bid-rigging");
- market or customer allocation ("market or customer allocation");
- restrictions on production or sale, including quotas ("restraints on production or sale, including by quota");
- group boycott of purchase or sale ("group boycotts"; "concerted refusals to purchase/supply");

- "collective denial of access to an arrangement, or association, which is crucial to competition." [6]

All listed forms of restrictive agreements and arrangements are prohibited and void. There is a possibility of individual or group exemption from the ban, whereby individual exemption is approved by the decision of the competent authority at the request of the participants in the agreement, if the conditions stipulated by law are met. For example, they can be released if the competent authority assesses that such an agreement contributes to the improvement of production and traffic and benefits consumers, and does not exclude competition on the relevant market or on its essential part.

Abuse of a dominant position on the market ("abuse of a dominant position of market power") includes all those individual forms of abuse by one or several market participants, whose individual or collective market power (the size of the market share) enables control over the relevant product market or service, that is, a group of products or services, that is, enables the undertaking of acts and actions that limit access to the relevant market or otherwise unjustifiably limit competition, which causes or may cause harmful consequences for trade or economic development.

International competition law

In addition to competition law, we can distinguish between international competition law, which aims to protect competition on the international market. The need to protect competition on the international market can arise in a situation where, due to the actions of one business entity, there is a common interest of two or more countries in taking measures in the field of competition protection, i.e. for the initiation of the investigation of infringement of competition. (E.g. This may be the case when actions infringing competition were undertaken on the territory of one of the states, or when the consequences of the actions of infringement occurred on its territory.)

The modern national and international economy is intertwined with numerous market participants, each of whom has his own interests. The aspiration of every market participant is to avoid competition on the market, to impose their own rules of the game and ensure the best possible position in the market competition, to reduce competitive pressure and thus acquire a monopoly. We have seen that in such conditions there is a decrease in efficiency, a decrease in quality at the expense of consumers and an overall decrease in social well-being, so the reasons why this kind of aspiration must be suppressed are clear. Under the influence of globalization and especially multinational companies, the competition of business entities has gone beyond the boundaries of national markets, so that in order to protect competition, there was a need to create a supranational one, i.e. of international competition law. International competition law in the true sense of the word would imply the existence of:

1. supranational (international) institutional forms of cooperation,
2. supranational (international) legal sources.

At the current level of development of interstate relations in the field of competition protection, international competition law in the true sense of the word, although there is an aspiration and tendency towards the harmonization of regulations in the field of competition law.

II. Conclusion

The legal framework for the protection of competition occupies a central place in the area of transitional reform of the economic and legal system, such as Libya, which in the recent past had a very turbulent period, marked by riots, civil war, destruction of the economy, increase in poverty, etc. All of the above affected the economy of Libya itself. Currently, the country is in the process of transition, namely in the process of social and economic transition. In order to accelerate its economic and economic growth, investments in the economy are needed. In order to ensure even and fair investment, it is necessary to provide effective laws that would regulate the procedure and methods of investment. In such situations, when the country is re-establishing its economic system, various abuses can occur, the ultimate goal of which is to increase one's personal wealth. History has shown us that the population always pays the highest price. Some of the ways of abuse are reflected in the creation of monopolies in certain economic branches. This happens if the legal framework of the country is insufficiently effective in preventing anti-competitive activities.

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