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DEVELOPMENT OF COMPETITIVE LEGISLATION IN THE COUNTRIES OF ASIA (COMPARATIVE AND LEGAL ASPECTS)

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SUMMARY

The article is devoted to the history of the establishment and formation of competition legislation in Japan, China, South Korea and its current state. The analysis of the regulatory framework for the regulation of economic competition in these countries was made, the system of regulatory and regulatory bodies was reviewed, and the main features of competition law were highlighted.

Key words: antitrust law, competition law, competition law, state antitrust policy, antitrust regulation.

РАЗВИТИЕ КОНКУРЕНТНОГО ЗАКОНОДАТЕЛЬСТВА В СТРАНАХ АЗИИ (СРАВНИТЕЛЬНО-ПРАВОВОЙ АСПЕКТ)

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АННОТАЦИЯ

Статья посвящена рассмотрению истории становления и формирования конкурентного законодательства в Японии, Китае, Южной Корее и его современное состояние. Сделан анализ нормативно-правовой базы регулирования экономической конкуренции в этих странах, рассмотрена система регулирующих и контролирующих органов и выделены основные черты конкурентного законодательства.

Ключевые слова: антимонопольное законодательство, конкурентное право, конкурентное законодательство, антимонопольная политика государства, антимонопольное регулирование.

Formulation of the problem. The protection of economic competition is a necessary component of the state economic policy in order to successfully ensure the functioning of the market system. The development of competition legislation in different countries has its own characteristics of the establishment and formation. Nowadays, the rules of competition law exist almost in all countries of the world, as well as the bodies for control and regulation of competitive relations. To provide a competitive policy in Ukraine, and the development of effective norms of anti-monopoly-competitive regulation successfully, it is necessary to introduce and borrow foreign experience. In this article, the author discusses the features of antitrust and competitive regulation in Asian countries, in particular, for instance of Japan, China and South Korea.

Analysis of recent research and publications. To the formation and development of antitrust policy and the formation of antitrust laws in various countries of the world, such scientists as K. Smirnova [10], A. Bakalinska [11], M. Kovtun [12], V. Logvinenko [7], A. Korchagin [7], V. Eremenko [9], B. Markov [8] and others devoted their proceedings.

The aim of the article is to consider the specifics of the establishment and formation of legal norms regarding the protection of economic competition and ensuring fair trade, as well as protection against unfair competition. To determine purposes of the objectives, principles and methods of competition policy in Asia (Japan, China and South Korea).

The presentation of the main material. The formation of competition law and legislation has its own history, but in different countries the history and the development has its own characteristics of the establishment, formation and regulation of competitive relations and the introduction of mechanisms of competition policy. Today, antitrust laws are in more than one hundred countries of the world, but competition regulation has different directions and mechanisms.

Traditionally, there are two models of antitrust regulation – 'American' and 'European', having different directions of their regulation and political, legal and social prerequisites of their origin. The 'American' model aims to combat monopolies, mergers, unfair trading practices, and other actions that weaken competition. While in the 'European' model of the existence of monopolies is not prohibited, the main purpose of limiting abuses of monopoly position and control over concerted actions and concentration. Beside this, the issue of regulation and protection against unfair competitive methods deserves special attention.

It is necessary to pay attention to the fact that competition laws and competition protection policies also exist in Asian countries, have its own characteristics. Having considered the features of competition law by the example of Asian countries, Japan, China and South Korea, it is necessary to note that they have differences and different mechanisms for monitoring compliance with competition legislation. They have common and distinctive features, it is connected with political and legal aspects of the formation and formation of a market economy in these countries.

Japan's antitrust legislation begins its formation after the Second World War, when in most countries the rapid development of mechanisms for regulating and protecting competition begins. In 1947 the Law 'On Banning Private Monopolies and Ensuring Fair Transactions' [1], which was developed on the basis of US antitrust laws, was adopted. Monopolies were prohibited by law, transactions were contravened by the parties. Japanese law was even more strict than US legislation in terms of bans on certain activities that violate healthy competition in the market. According to Japanese law, no business entity has the right to control more than 25 percent of the market or to occupy the first place in a particular industry as a result of a merger.

The main goal of the antimonopoly law is to prevent monopolism, to conclude cartel agreements, to exclude illegal production, to oppose the creation of 'private monopolies'. The definition of 'private monopoly' sounds like this – this is a market situation in which a business entity deliberately with the help of other subjects or independently restricts competition, thereby violating public interests, through control of activities or by eliminating competitors from the market in another way. Subsequently, the Japanese government reviewed the provisions of the 1947 Act, which weakened almost all critical restrictions. With the revision of the Act in 1953, Japan began to distinguish between 'good' and 'bad' cartels. Harmonization between enterprises and restriction of competition on the market, ie cartel, is prohibited only if it is contrary to the 'public interest', and if it is beneficial for a society, a cartel agreement is considered 'good'.

Illegal 'restrictive' agreements are all kinds of agreements between entrepreneurs in relation to raising, holding, lowering the cost of goods, limiting the quantity of goods, which leads to a shortage in the market as a result of all these actions is limited competition. The Law establishes a specific list of transactions that are considered 'unfair'. A monopoly or a monopolist recognizes an entrepreneur whose share is greater than the threshold set by state authorities for the issue of a certain product for one entrepreneur. In the case of Japan, this barrier is the half of the market turnover of that particular type of product, or the share for the two entrepreneurs together – respectively, three quarters.

In order to establish the fact of creating a monopoly situation, it is necessary to determine the fact of receiving a profit in the amount strictly defined in the state decree for a specific branch to which the subject of the economic entity belongs. Heads of large enterprises are subject to oversight by the state authorities for overstatement of prices.

In order to establish signs of monopoly on a specific company in Japan, there is a body with a special status – the Fair Trade Committee, which is exclusively controlled by the Prime Minister of Japan. The Committee carries out systematic accounting and analysis of changes and fluctuations in the market. The Committee monitors, in the light of the signs of the legality and integrity of various international agreements, especially those relating to large-scale mergers, mergers, the emergence of new companies in liquidated capital, the purchase and sale of controlling stakes. Only on the basis of and within the limits of the law are reimbursed losses caused by a 'private monopoly' or cartel convictions.

The law of Japan also contains several exceptions to the Law 'On the prohibition of private monopoly and the provision of fair treaties' [1], i.e. when the application of the law is limited. The first exception is natural monopolies (electric power, gas industry), as well as patents, inventions, and trademarks. The second exception is depression cartels that are artificially created by private individuals to regulate demand and supply on the market. Innovative cartels, which aim at improving the quality of goods with reduced cost and labor accumulation, are also here. Sanctions for violating the aforementioned norms and other antitrust laws provide for fairly serious penalties, in the form of fines and even imprisonment. Fines can reach 5 million yen, and imprisonment with forced labor – up to 3 years. Imprisonment may even be up to 10 years in the event of the submission of false information by an expert or witness. The peculiarity of Japanese legislation is the existence of the so-called 'double punishment', that is, when a crime is punishable as a guilty person and a legal person in whose interests a crime was committed.

The development of antitrust laws in the People's Republic of China and South Korea began later, since the 80's of the XX century. By 1980th China had a monopoly in foreign trade, all foreign economic operations could only be carried out by the Ministry of Foreign Economic Relations of the People's Republic of China. The end of the 70's and early 80's was a series of reforms that served to decentralize foreign economic relations, and provincial and other local authorities were given the right to set up their foreign economic companies.

Since 1980, the 'regulation of the development and protection of competition' has been proclaimed and the Provisional Regulations on the deployment and protection of competition have been adopted. The main focus of China's competition law was mainly to regulate unfair competition practices. The first official law was the 1993 Law 'On Protection against Unfair Competition' [2]. Along with the main law were issued and specialized acts, such as the Law 'On Commercial Banks' of 1995, which restricted the activities of banks in the field of unfair competition; The 1997 Law on Prices, which prohibited price discrimination, fixed or predatory pricing; The Law 'On Procurement and Bidding' of 1999 also prohibited price manipulation. The Law 'On Protection against Unfair Competition', establishes three main directions of activity of business entities; preventing unfair competition; control over the activity of the monopolists, which results in unfair competition; competition law is applied at the local level [2]. The law was adopted in order to create the most positive conditions for the establishment of a socialist market economy, the protection of voluntary and fair competition in the market and the protection of consumers' rights [9].

The specific feature of Chinese legislation in comparison with the legislation of other countries is the provision on corruption, which is related to the classification of corruptive crimes against the grave in China and those that particularly violate the socialist order of society.

China's anti-monopoly law is a key element in building a competitive market economy in China. The Antimonopoly Law of the People's Republic of China [3] was adopted in 2008, which aims

at regulating and preventing abuses by monopolistic structures, protecting fair competition in the market, improving economic efficiency, protecting consumer interests and protecting the interests of society and the state, and stimulating the healthy development of a socialist market economy. The law indicates such actions, which are considered 'monopolistic', that is monopolistic agreements between business operators, abuse of business operators, concentration of business operators. Consequently, we see that the law operates the notion of a business operator, which implies an individual, legal entity or organization engaged in the production of goods or the provision of services in a particular commodity market.

According to Chinese legislation, to occupy a dominant position on the market is not prohibited, only abuses aimed at eliminating or restricting competition are prohibited. Abuse can take the following forms: selling goods at unjustifiably overpriced or undervalued prices; selling goods at prices below cost; refusal to trade with third parties without valid reasons; to demand exclusive sale only with a certain business operator; imposition of related products or unreasonable terms; the application of different prices for transactions with partners that are on equal terms or conditions; and other.

'Dominant position' in accordance with this Law is the state of the business operator on the market, in which he can control the price, quantity and other conditions of the goods or interfere and in any way influence the entry of other business operators on the market.

The monopoly conspiracy provides for liability in the form of a fine in the amount of 1 to 10% of the volume of sales for the previous year. The exact amount of fines is determined taking into account such factors as the nature, scale and duration of the commission of offenses. There is also a system of mitigation and exemption from the responsibility for voluntary reporting in a conspiracy.

It is important to add certain provisions of the Ministry of Commerce of the People's Republic of China, such as the Rules for declaring the concentration of economic operators; Rules for checking the concentration of participants in economic activity, which establish the procedure for submission by participants of the economic concentration of communications in the Criminal Code of the People's Republic of China and the procedure for conducting antitrust scrutiny, the procedure for accepting permits for economic concentration with additional (restrictive) conditions.

The South Korean economic growth phenomenon is very inspiring and stimulating but not always this country was among the industrial leaders of the planet. In the middle of the XX century, South Korea, having a GDP level of less than $ 100 per capital, was one of the poorest Asian countries. This situation was conditioned by the post-war state, high population growth. Crisis years have deepened the crisis of the predominantly agrarian country, and the high level of inflation and the lack of prospects for the then economic system pushed the government for change.

It should be noted, that not only the government's attempts to correct the economic situation played a role at one time the key driver of the economy was the phenomenon of cheboli. Chebooli is a large association of enterprises under the leadership of one family (less than one person). The emergence of such associations was a response to the country's demand for entrepreneurs and the need for business development. The current military power created unique conditions for the development of entrepreneurship: any opposition was suppressed, any initiatives in business were discussed and maintained. At that time, the state assumed a large number of planning powers, developed development strategies, the government set certain quotas for enterprises, took the course of economic policy of import substitution and stimulated the development of new technologies. By combining the best elements from a planned economy and a free market, the state has given a boost to the rapid growth of business, and hence the growth of the economy as a whole.

But although growth and business combinations, especially in the context of the crisis, are a positive phenomenon, this inevitably entails an increase in monopolies, but if in the mid XX century crisis the authorities closed their eyes and sometimes supported such phenomena, then, as Chebools gained some degree of financial stability and independence, control over compliance with the principles of competition became a necessary measure of coexistence with the world economy. Since the 80 years of the XX century in South Korea, the active phase of regulatory regulation of competition begins. Proceeding from the fact that the legal system of the country was built on the Roman-Germanic system, regulation was carried out by adopting laws and creating a special body with a fairly widerange of powers.

So, to the regulatory framework of competition law of South Korea include the Law on the regulation of monopolies and fair trade [4]; The Law on the Prevention of Unfair Competition and Protection of Commercial Secrets [5], Fair Trade Marking and Advertising Law No. 5814 of February 5, 1999 [6], and others. Also, the norms of competition law can be found in other areas of law, especially the acts related to the regulation of intellectual property rights [7].

On the basis of the law on the regulation of monopolies and fair trade in 1981, the Fair Trade Commission of the Republic of Korea, which becomes the main regulatory body for the regulation of competitive relations, is established. Interestingly, the Commission has the right to issue certain acts affecting the development of antitrust laws. The priority tasks of the Commission are modernization of existing competitive legislation in accordance with modern conditions and globalization, control over observance of laws and strengthening of the influence of competition legislation to protect consumers' interests, planning for improvement of the investment climate and creation of conditions for attracting foreign capital to the economy of the country, this list is not exhaustive but only indicates the vectors of the direction of the Commission's activity. From the beginning of the XXI century, but rather even after the crisis of 1997, the Commission chose a policy of increased control over the activities of giant companies, including increased control over the activities of chaebols, which appeared in the limits of investment for chaebools and attempts to blur monopoly control over conglomerates with the help of foreign investing in companies of such groups. It is also a vivid

example of the commission's imposition of heavy fines for violating competition law for companies such as Volkswagen and Qualcomm 32 and 854 million dollars, respectively.

The main principles and prohibitions of the Korean antimonopoly legislation include prohibition of abuse of monopoly status. A monopoly (dominant) company is a company with more than 50% market share, or more than 3 companies with 75% market share. There is also control over economic concentration, the prohibition of the formation of cartels and the anticompetitive activities of firms. Stopping unfair competition practices.

Competition law and practice of anti-monopoly activities in South Korea have a deep foundation and are sharpened by logical sequential actions, which are explained by the specific economic and political situation in the country. Therefore, Ukrainian anti-monopoly legislation would be appropriate to borrow from the legislation of South Korea not so much clear algorithms of actions and institutions, but the principles of economic activity in crisis conditions.

Conclusions. 1. The development of the competitive right of Asian countries has its own peculiarities and development path. These states have built up a competitive relationship in their own way and have specific features of competition policy. But to talk about a separate type of Asian model of competition law does not make sense, because each of the countries under consideration (Japan, China and South Korea) has developed a model of competitive regulation under the influence of the American or European model.

2. Antitrust laws in Japan are more prone to the American model of anti-trust legislation and are aimed at prohibiting monopolies. The first legislation on the protection of competition was adopted after the Second World War. The main objective of the antitrust regulation of Japan – the prevention of monopoly, the conclusion of cartel agreements, the exclusion of illegal production, the opposition to the creation of 'private monopolies'. In this case, in Japan, distinguish between 'good' and 'bad' cartels. Harmonization between enterprises and restriction of competition on the market, ie cartel, is prohibited only if it is contrary to the 'public interest', and if it is beneficial for a society, a cartel agreement is considered 'good'.

3. Antitrust policy of the People's Republic of China is based on the basic principles of the European model and is aimed at prohibiting abuses of a monopoly position and combating unfair competitive practices. The law operates with the notions of 'business operators', which are legal entities and individuals who are competitors in a certain commodity market. Monopoly agreements are prohibited, monopoly is abused, control over the concentration of business operators is provided; prohibition of abuse of administrative authority with the aim of eliminating or restricting competition. The specific feature of Chinese legislation in comparison with the legislation of other countries is the provision on corruption, which is related to the classification of corruptive crimes against the grave in China and those that particularly violate the socialist order of society.

4. Antitrust regulation of South Korea is also more prone to a European model of competition law. The main principles of the Republic of Korea's competitive legislation include: exposing and stopping the activities of cartels and anti-competitive policies of various associations; strict control over unfair trade practices that may be manifested in price fixing agreements, terms of sale of goods and services, or in unfair advertising, or infringement of intellectual property rights in terms of the use of designations which may mislead the consumer, that is, unauthorized use Goodwill; preventing high levels of concentration, which is a rather serious problem due to the activity of chaebools (large associations of enterprises under the guidance of one family).

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ПОНЯТИЕ ПОЛИЦИИ И ПОЛИЦЕЙСКОЙ ДЕЯТЕЛЬНОСТИ. СОЗДАНИЕ НАЦИОНАЛЬНОЙ ПОЛИЦИИ УКРАИНЫ

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АННОТАЦИЯ

В статье исследуются исторические условия формирования понятий полиции и полицейской деятельности, раскрывается содержание и различия этих категорий. Анализируются предпосылки становления полиции как отдельного государственного органа. Рассматриваются порядок и принципы создания Национальной полиции Украины как центрального органа исполнительной власти.

Ключевые слова: полиция, полицейская деятельность, исполнительная власть, реформирование, законодательство.

DEFINITIONS OF POLICE AND POLICING. FORMATION OF THE NATIONAL POLICE OF UKRAINE

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SUMMARY

This article deals with the historical terms and conditions for the concept formation of police and policing, the content and the differences between these categories are also revealed. The backgrounds for the creation of police as a separate state body are analyzed. The procedure and principles for the creation of the National Police of Ukraine as a central executive body are considered.

Key words: police, policing, executive authority, reforming, legislation.

Постановка проблемы и актуальность темы исследования. Нынешняя сфера административного права Украины находится на этапе кардинального реформирования, прежде всего это касается воплощения человекоцентристской идеологии административного правопонимания. Этот процесс связан с курсом на укрепление государственности в Украине и на сближение правовой системы со странами-участницами Европейского Союза. Конечно, осуществление такого реформирования было бы невозможно без использования в законотворческой и правоприменительной деятельности органов государственной власти Украины сложившихся веками подходов европейских стран к административному праву. К тому же правовая система Украины по большинству признаков относится к европейской семье континентальной правовой семьи. Важной предпосылкой укрепления государственности в таких странах стало создание особого инструмента, который охватывает ключевые сферы жизнедеятельности гражданского общества, а именно полиции. Недавно в Украине тоже был создан новый орган исполнительной власти – Национальная полиция Украины, который еще называют органом европейского образца. Учитывая указанное, актуальным является исследование становления понятий полиции и полицейской деятельности, анализ образования такого органа власти в европейских странах и в Украине, а также определение правовых актов, которые сыграли ключевую роль в этих процессах. Это улучшит понимание Национальной полиции Украины как элемента механизма государственного управления, будет способствовать ее дальнейшему эффективному развитию.