

A legal model of the antimonopoly regulation of food markets in the European Union

Un modelo legal de la regulación antimonopolio de los mercados de alimentos en la Unión Europea

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ABSTRACT:

The article aims to study a legal model of the antimonopoly regulation of food markets in EU members. Research methodology involves application of such specific scientific methods as comparative legal and historical legal ones, as well as general methods of scientific cognition, including generalisation, concretisation, analysis and synthesis. The food crises of 2007 and 2010 led to the transformation of modern antimonopoly regulation in member states of the European Union. It is currently focused on the evaluation of the impact of global food prices, regulations becoming more and more detailed with a view to dealing more effectively with violations of the antimonopoly legislation. However, the norms of these normative acts contravene the provisions of antimonopoly regulation. The author point out that there is a conflict between the provisions of Article 39 of the Treaty on European Union, which determines the general directions of agricultural policy in the European Union, and the provisions of Articles 101 and 102, which determine the types of unacceptable market behaviour of producers of goods and services. In order to construct a legal model of the antimonopoly regulation of food markets, it is necessary to determine the cases in which anticompetitive behaviour of participants in agrofood markets is considered to be permissible.

Keywords: Food markets, antimonopoly regulation, EU law, food crisis, prices for food products, anticompetitive agreements.

RESUMEN:

El artículo tiene como objetivo estudiar un modelo legal de la regulación antimonopolio de los mercados de alimentos en los miembros de la UE. La metodología de investigación implica la aplicación de métodos científicos específicos, como los jurídicos comparativos e históricos, así como los métodos generales de cognición científica, que incluyen la generalización, la concretización, el análisis y la síntesis. Las crisis alimentarias de 2007 y 2010 llevaron a la transformación de la regulación antimonopolio moderna en los estados miembros de la Unión Europea. En la actualidad se centra en la evaluación del impacto de los precios mundiales de los alimentos, y las reglamentaciones se vuelven cada vez más detalladas con miras a abordar de manera más eficaz las violaciones de la legislación antimonopolio. Sin embargo, las normas de estos actos normativos contravienen las disposiciones de la regulación antimonopolio. El autor señala que existe un conflicto entre las disposiciones del artículo 39 del Tratado de la Unión Europea, que determina las orientaciones generales de la política agrícola en la Unión Europea, y las disposiciones de los artículos 101 y 102, que determinan los tipos de política inaceptable comportamiento del mercado de los productores de bienes y servicios. Para construir un modelo legal de la regulación antimonopolio de los mercados de alimentos, es necesario determinar los casos en que se considera permisible el comportamiento anticompetitivo de los participantes en los mercados agroalimentarios.

Palabras clave: mercados de alimentos, regulación antimonopolio, legislación de la UE, crisis alimentaria, precios de los productos alimenticios, acuerdos anticompetitivos.

1. Introduction

As the practice shows, the use of the model of antimonopoly regulation, describing all legal relations arising in all markets of goods and services, is not effective without taking into account the specifics of the socio-economic characteristics of the regulated facility. So, the antimonopoly body makes the decision only after months of consideration, and the decision itself comes into force only after a judicial appeal, while the situation that has developed in the food market can lead to negative social consequences. Therefore, taking into account the characteristics of the circulation of primary commodities in the world market and the problem of the economic concentration of the processing and distribution infrastructure, an effective model of antimonopoly regulation of food producers is one of significant research areas.

The article considers EU legislative initiatives in the field of ensuring food security related to the restriction of food availability because of the anti-competitive behavior of agricultural producers.

2. Literature review

A number of works shows that the notion of the market power of agroproducers has significantly changed over the past 50 years [Carter, Mesbah, 1993]. Earlier it was widely believed that this market is closest to the state of perfect competition, because it was formed in conditions when the main agricultural producers were farms that could not influence the price and conditions of goods circulation [Elagina, 2015; Khlestov, 2007]. Currently, it is considered that the structure of markets from the moment of changing technological structures and increasing the importance of transnational corporations has been significantly transformed, under the influence of intensification of processes of economic concentration of production [Smirnova, 2016; Bolotova, 2015, www].

In relation to the anticompetitive behavior of agricultural producers in the world market of raw food products and end-use goods in the EU markets, the most significant are studies of antimonopoly regulation regarding the formation of food security policies, in particular regarding the role of antimonopoly regulation in selected EU food markets (such as olive oil and meat), as well as the transformation of the paradigm of antimonopoly regulation in the part of conducting market analysis [Dragoi, Iordache, 2016]. A number of studies are devoted to the study of types of market restrictions existing in the agro-industrial complex markets [Leslie, 2012]. In addition, it is very important to consider legislative initiatives adopted in the context of increasing pressure from world prices for raw food products [Schmidt, 2013].

3. Methodology

To determine the legal model of antimonopoly regulation of EU food markets, it is necessary to take into account research in the field of economic concentration of production, economic mechanism for adopting world food prices, the EU antitrust law and its application practice in regulating food markets, as well as legislative initiatives to ensure food security in conditions for a spasmodic change in the prices of raw food products in the world market. Therefore, research methodology involves application of such specific scientific methods as comparative legal and historical legal ones, as well as general methods of scientific cognition, including generalisation, concretisation, analysis and synthesis.

4. Normative definition of antimonopoly legislation in EU countries

The competition protection policy is also an instrument for achieving such strategic goals of the EU economy as sustainable economic growth, expansion of the innovation sector, efficient allocation of resources [Chernysh , 2014]. A feature of its implementation in the EU countries is the fact that antitrust regulation is carried out through the activities of both the Commission of the European Union and the national antimonopoly authorities [Tichý, 2014]. Comparing antimonopoly regulation with other methods of government influence on the real sector of the economy, it should be noted that it is not of a preventive character: in fact, instruments determine the measures of responsibility of market participants for anticompetitive behavior.

To determine the nature of these actions, we apply Art. 101, 102 of the Treaty on the European Union, which provide a complete listing of individual and collective actions, such as abuse of dominant position in various forms, including predatory pricing and price discrimination, a direct impact on prices and conditions of commodity circulation in the market, entry into illegal anticompetitive agreements with producers, including through professional associations. In this case, it is pointed out that similar actions are not prohibited in case the product is innovative.

In addition, each of the EU countries has a national antimonopoly legislation, harmonized with the provisions of the Treaty on the European Union. In this case, investigations of violations of the antimonopoly legislation can be carried out by both the EU Commission and national antimonopoly authorities. The issues of separation of jurisdiction depend on geographical boundaries of the market, where a violation of the antimonopoly legislation is revealed. If the market is cross-border, then the case is considered by the EU Commission.

Thus, modern antitrust regulation in the EU countries comprehensively determines the types of individual and group anticompetitive behavior of market participants, which allows to investigate cases of violations in national and cross-border markets.

5. Practice of antimonopoly regulation of food markets in EU countries

According to reports from the activity of antitrust authorities [ECN activities in the food sector ..., 2012, www], the national antimonopoly authorities of the European Union conducted 120 investigations in the food market from 2004 to 2011, about 60 investigations were still ongoing in 2015.

After a spasmodic increase in world food prices, the number of cases of violation of antimonopoly legislation significantly increased after 2007. According to the statistics of the activities of national antimonopoly bodies, the maximum number of cases was investigated in Greece, Germany and Spain, with the most frequent cases of violations of the antimonopoly legislation in the activity of vertically integrated entities producing several types of products, cereals, milk, fruits and vegetables, meat and coffee [Ibidem].

More than half of cases of violation of the antimonopoly law were connected with the implementation of the intermediate link of industrial processing (for example, with the production of flour) and the sale of finished products in bulk. About half (49%) of violations were related to vertical restrictions, as a result of which producers coordinated the activities of subsequent stages of industrial processing. It should be noted that in more than half of the cases for the adoption of decisions on violation of the antimonopoly law, the norms of national legislations and not the provisions of the Treaty on the European Union were applied.

6. Results and discussion

The provisions of Art. 39 of the Treaty on the European Union allow some types of anti-competitive behavior by agro-industrial producers to ensure food security. It should be noted that this approach was supported by the decisions of the Commission of the European Union No. 1184/2006 and No. 1237/2007 [Dragoi, Iordache, 2016]. On the other hand, within the framework of consideration of cases on violations of the antimonopoly legislation, decisions were made, according to which agricultural producers should take into account the provisions of Art. 101, 102 of the Treaty on European Union.

In addition, the Commission of the European Union adopted a special document specifying the rules for the antimonopoly regulation of agri-food markets, according to which there are some differences in the regulation of this sector. So, according to the world practice, often agricultural producers join in special associations and their goal is not only to defend their interests in government bodies, but also to sell in the domestic and international market. Although this activity is formally a concerted action, within certain limits it is permissible under the provisions of this document. On the other hand, in accordance with its provisions, control of vertical restrictions between suppliers of raw food products and the sector of processing of agricultural raw materials is increasing.

Also, the Commission of the European Union adopted a number of normative documents that determine the functioning of certain socially and economically important markets, such as the olive oil market, the share of which is 58% in world trade of the EU countries [Guidelines on specific rules ..., 2015, www]. However, such details can lead to conflicts of law enforcement in the context of rapid transformation of world food markets, strengthening the role of developing countries, increasing the role of agroholdings and high price volatility in the world market.

7. Conclusion

Despite the fact that the current version of Art. 101, 102 of the Treaty on the European Union, in fact, lists all prohibited types of market behavior, the system of antimonopoly regulation can not always respond effectively to the challenges of the world food market. Under the influence of the food crisis in 2007 and 2010, there is a transformation of modern anti-monopoly legislation in the EU countries. At present, it is focused on taking into account the impact of world food prices, and more and more detailed regulations are aimed at the most effective regulation of the most typical for the food market violations of antimonopoly legislation. In addition, this detailing now includes, among other things, individual markets for food - olive oil, meat and cereals. However, the norms of these normative acts come into conflict with the provisions of antimonopoly regulation, while at the same time there is a conflict of the provisions of Art. 39 of the Treaty on the European Union, which defines the general directions of the EU agricultural policy, and the norms of Art. 101, 102, establishing unacceptable types of market behavior of producers of goods and services. Thus, when forming a legal model of antimonopoly regulation of food markets, it is necessary to determine cases of admissibility of anti-competitive market behavior of participants in agro-food markets and to detail only certain issues of determining market power and individual, most characteristic types of violations of antimonopoly legislation.

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