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FOREIGN CRIMINAL LEGISLATION ABOUT VIOLATION OF THE COMPETITION ORDER

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This theses analyzes the provisions of domestic legislation on violations of the competition order of such countries as the United States of America (hereinafter – the USA), Germany and France. The antimonopoly legislation of these countries was the basis for the adoption of laws in the field of antimonopoly regulation in Ukraine and in a number of other states.

In above-mentioned countries, competition protection activity is a separate sphere, an independent function of the state, which is regulated by separate normative legal acts and authorities called to implement measures to protect competition.

In the US antitrust legislation, criminal law measures prevail. The first US antitrust law is the Sherman Act, passed by Congress in 1890. The adoption of this kind of Act was associated with the accelerated development of industry after the civil war between the North and South of the United States. Its basic principles are outlined in the first articles [1]. In particular, in accordance with art. 1, agreements and associations in the form of a trust or other form, as well as conspiracy to restrict the development of trade or industry between different US states or foreign states are illegal. This article provides for this type of alternative sanction such as a fine or imprisonment for no more than 10 years.

Art. 2 of the mentioned Act establishes the prohibition of monopolization. This provision is enshrined in order to discover the economic power of one firm or enterprise. If a legal entity controlled more than 65 % of the economic market, it could be accused of trying to monopolize the market. The preventive measure for such a crime is similar to Art. 1 – fine or imprisonment. Since the inception of the Sherman Act, the judicial practice in antitrust cases has begun to develop actively, precedents have appeared. However, because the Sherman Act contained very "vague" formulations, in particular, "trust", "monopolistic association", "monopolization", thereby leaving numerous loopholes for trusts. Based on this law, it was possible to break down only two powerful trusts – Standart Oil, which controlled 90% of the capacity of oil refineries, and American tobacco, which accounted for 3/4 of the tobacco market. Such a low performance of the described Act was also due to the fact that its norms were directed not against large industries and large companies, but against companies that monopolized the market by means of restrictive practices. Such means were the seizure of resources and sales channels, mergers and acquisitions of companies, agreements between companies for dividing the market. Using such means, a company can isolate its area of activity from competitors, and only in this case it will be considered as a monopoly.

The Sherman Act triggered a wave of mergers in the United States, as businesses realized that instead of creating a trust, they could simply merge into a single corporation without breaking the law and have all the advantages of market power. The result of numerous trials was the adoption of the Clayton Act in 1914 [2]. The Clayton Act consolidated the following significant changes to existing the US antitrust laws:

1. prohibition of almost all forms of discrimination in pricing policy;
2. restriction on the sale and sale of goods of a limited range;
3. prohibition of the merger of firms by acquiring shares of competitors in the event that such actions have limited competition in the market;
4. prohibition of combining positions on the boards of directors of various firms and corporations.

Concurrently with the passage of the Clayton Act, the US Congress passed the Federal Trade Commission Act, which task was to monitor and suppress antitrust violations. An analysis of the development of state policy on the protection of competition in the United States of the 20-th century leads to the conclusion about the alternation of periods of strengthening and weakening of state regulation of competition relations. The political situation in the country had a direct impact on this feature. As noted in his research Z.M. Kazachkova, «each new composition of the presidential administration, especially when the «party of power» changed, made certain changes to the

mechanism of antimonopoly regulation, to the composition of the antimonopoly authorities and the specific direction of their actions." [3, p. 46]

One of the most important sources of regulation of the sphere of competitive relations in the Federal Republic of Germany was the law "On Combating Unfair Competition" of 1896. This law was not perfect as it covered rather narrow cases of unfair competition. Therefore, in 1909, the «Law against Unfair Competition» was adopted – a perfect regulatory legal act, in force until 2004. The provisions of this law defines the concept of "unfair competition" as an action contrary to "good practices", contains provisions regarding unfair advertising and the origin of goods. Such acts provides a fine or imprisonment [4].

On July 8, 2004, the Law Against Unfair Competition came into force, which prohibited horizontal agreements between economic entities and the maintenance of resale prices. In view of this, when large companies are merged, it is necessary to inform the relevant administrative authorities. Competition policy in Germany now recognizes that there is a threat to competitive market relations in case of a significant increase in the degree of concentration of economic power. In this case, the main thing is to prevent an excessive increase in the economic power of enterprises, when this leads to the establishment of a dominant position in the market is not a reason for taking any measures, if this position is not used for various kinds of abuse in relation to competitors.

In France, the state policy for the protection of competition traditionnally follows the policy of «dirigisme» – state intervention in economic activity and clear regulation of economic processes. The first Act regulating competitive relations in France was the French Constitution of March 17, 1791, which proclaimed the principle of freedom of trade and business. In addition, the French Criminal Code prohibited associations aimed at undermining the normal operation of the law of supply and demand. In 1986, Ordinance N86–1243 "On the freedom of setting prices and free competition" came into force. This Act provided for specific violations of competition, a mechanism for regulating market relations through a specially created body – the Competition Council, regulated prices for certain sectors of the economy, established that the Government could establish measures against excessive price increases, temporary measures introduced in connection with a crisis situation, emergency circumstances or any unnatural market situation in a particular industry.

In 2000, France adopted the Commercial Code, in particular, the fourth book of this law "On Freedom of Prices and Competition" regulates the issues of pricing and the relationship between entrepreneurs engaged in

economic activities in the same, or in related areas, rules on anti-competitive actions, on the economic concentration of enterprises [5].

The main directions of antimonopoly regulation under French law are control over the abuse of a dominant position by economic entities, over anticompetitive agreements, as well as economic concentration transactions. The main role in the Government's decision-making process in the field of competition protection is assigned to the Antimonopoly Authority, which is empowered, on its own initiative, to research and analyze the economic activity of individual market sectors.

Analysis of the legislation on competition and restriction of monopolistic activities of foreign countries allows us to conclude that traditionally two models of competition law can be distinguished: American and European. In the American model, antitrust legislation is aimed at prohibiting monopolies and includes a number of rules on unfair competition, the prevailing measures of a criminal law nature. In the European model, legislation aimed at combating abuses of a monopoly nature and ensuring control over monopolies coexists with legislation on unfair competition. The forms and methods of legal support and protection of competitive relations in foreign countries are diverse, since the degree of government intervention in economic relations is not the same. The presence of various sources that contain separate rules on ensuring competition has a negative impact on the application of these rules and the protection of economic entities from unfair competition.

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ЗОБОВ'ЯЗАННЯ ДЕРЖАВИ ЩОДО ЗАХИСТУ ІНФОРМАЦІЙНОЇ ПРИВАТНОСТІ ОСОБИ У СФЕРІ ЗДОРОВ'Я В УМОВАХ КАРАНТИННОГО РЕЖИМУ В УКРАЇНІ: СТАН ТА ПЕРСПЕКТИВИ АДАПТАЦІЇ ДО ЗАКОНОДАВСТВА ЄС

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Оцінка стану виконання положень міжнародних норм щодо правомірності втручання з боку держави в інформаційну приватність особи у сфері здоров'я знаходиться у центрі уваги дослідників у зв'язку із оголошенням пандемії. Карантинний режим вніс багато змін у життя пересічних українських громадян. Особливо це стосується запровадження на законодавчому рівні обробки персональних даних без згоди особи, пов'язаних з її здоров'ям, а також інших обмежувальних заходів примусового характеру.

Стаття 8 Конвенції про захист прав і основоположних свобод людини (далі – Конвенція) [1] гарантує кожному право на повагу до приватного життя шляхом заборони органам публічної влади втручатися у здійснення цього права. Винятки становлять випадки, коли втручання здіснюється згідно з законом і є необхідним у демократичному сусільстві. Окремий акспект проблеми дотримання