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MARKET COMPETITION: COMPARATIVE ECONOMIC AND LEGAL CHARACTERISTIC

РИНКОВА КОНКУРЕНЦІЯ: ПОРІВНЯЛЬНА ЕКОНОМІКО-ПРАВОВА ХАРАКТЕРИСТИКА

Urgency of the research. The competition in a certain market have a significant impact on its operation and development, so an attempt to generalize various branches' scientific approaches to understanding of competition nature will be quite interesting.

Target setting. In economic and legal sciences there is no unity of concepts concerning understanding of the competence's nature, so the matter of carrying-out of the comparative economic and legal characteristic of competition is very topical.

Actual scientific researches and issues analysis. Issues considered in this paper have been analyzed in the economic and legal science quite well.

Uninvestigated parts of general matters defining. In economic and legal sciences there is no unity of concepts concerning understanding of competition, so the relevant issue requires complex economic and legal comparative study.

The research objective. The article meaningfully representing the comparative economic and legal characteristic of the «competition» concept.

The statement of basic materials. In the legal and economic sciences the «competition» concept is considered as a complex economic phenomenon, in particular such as a process of competitiveness among economic entities, as a market state, as particular types of economic relations, as a mechanism of market self-regulation, and so on. Upon the economic and law approaches to the understanding of the competition concept in some degree differ in content, because when economic theory is aimed at identifying and disclosing of economic essence of the competition and patterns of its existence and development, then the law is aimed at consolidation of the economic essence of this category, as well as at ensuring of her protection.

Conclusions. The proper comprehension of the «competition» requires consideration of both legal and economic aspects of its understanding, because only such a combination can provide a complex view and achievement of unity of opinion, which contribute to the further development of the theory of understanding of the «competition» concept and will ensure the improvement of its structures and mechanisms

Keywords: business struggle; competition; economics; law.

Актуальність теми дослідження. Конкуренція на певному ринку справляє вагомий вплив на стан його функціонування та розвитку, а тому виявляється досить цікавою спроба узагальнення різногалузевих наукових підходів до розуміння її сутності.

Постановка проблеми. В економічній та юридичній науках не досягнуто єдності думок щодо сутності конкуренції, а тому досить актуальним є питання проведення порівняльної економіко-правової характеристики конкуренції.

Аналіз останніх досліджень і публікацій. Аналітиці розглядуваних у цій роботі питань присвячується значна увага в економічній та юридичній науці.

Виділення недосліджених частин загальної проблеми. В економічній та юридичній науках відсутня єдність думок щодо суті конкуренції, а тому це питання потребує комплексного економіко-правового порівняльного дослідження.

Постановка завдання. В роботі змістовно відображена порівняльна економіко-правова характеристика поняття «конкуренція».

Виклад основного матеріалу. В юридичній та економічній науках «конкуренція» розглядається як складне економічне явище, зокрема як певний процес змагальності між суб'єктами господарювання, як певний стан ринку, як особливі види економічних відносин, як певний механізм саморегулювання ринку тощо. При цьому економічній та правовій підходи до розуміння поняття конкуренції дещо різняться за своїм змістом, бо якщо економічна теорія спрямована на виявлення та розкриття економічної сутності конкуренції та закономірностей її існування й розвитку, то право спрямоване на закріплення економічної сутності цієї категорії та на забезпечення її охорони.

Висновки. Належне осмислення поняття «конкуренція» вимагає врахування як юридичних, так і економічних аспектів її розуміння, адже лише таке поєднання спроможне забезпечити комплексний погляд та досягнення єдності думки, що сприятиме подальшому розвитку теорії розуміння поняття «конкуренція» та забезпечуватиме удосконалення її конструкцій та механізмів.

Ключові слова: конкуренція; змагання; економіка; право.

Urgency of the research. Taking into account that the features of competition in a certain market have a significant impact on its operation and development, and so, accordingly, are important to the society, country and economy as a whole, an attempt to generalize various branches' scientific approaches to understanding of competition nature as an economic phenomenon will be quite interesting. In this respect, as for now in economic and legal sciences there is no unity of concepts concerning understanding of the competence's nature, content, structures, mechanisms, rules, conditions and other aspects, the matter of carrying-out of the comparative economic and legal characteristic of

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competition is very topical and, as it seems, will have a beneficial effect for the improvement of scientific approaches to understanding of the basic categories of economic and legal sciences.

Target setting. It is submitted that the phenomenon of competition as a characteristic of various both natural and social phenomena of reality determines the particularities of their functioning and development. The abovementioned observation applies to the economy as well. In particular, in the current conditions of economic development of the society and of the economic systems on various levels the thesis that among other things competition has a significant impact on the particularities of a market economy's functioning and development is indisputable. Modern market economy of Ukraine constitutes no exception to this rule and formation and development of competition belongs to conditions of this economy genesis.

As for now in economic and legal sciences there is no unity of concepts concerning understanding of the competence's nature, the matter of carrying-out of the comparative economic and legal characteristic of competition is very topical and, as it seems, will have a beneficial effect for the improvement of scientific approaches to understanding of the basic categories of economic and legal sciences.

Actual scientific researches and issues analysis. Issues considered in this paper have been analyzed in the economic and legal science quite well.

Uninvestigated parts of general matters defining. In economic and legal sciences there is no unity of concepts concerning understanding of competition, so the relevant issue requires further complex economic and legal comparative study.

The research objective. The article meaningfully representing the comparative economic and legal characteristic of the «competition» concept.

The statement of basic materials. So, it should be started from that making a significant impact on the state and particularities of functioning of a market economy, competition is quite complicated concept, wherefore the economic, business, law and other sciences have developed various approaches to the definition of this economic phenomenon, in particular as a process of competitiveness between economic entities, as a certain market condition, as particular types of economic relations, as a self-regulating market mechanism (law, regularity) and so on.

In this way, in one of its definitions competition is seen as a key mechanism (law) of market self-regulation. In this regard remarks of law expert O. D. Krupchan that competition is a mode of existence of economical market system which is being created in Ukraine, as well as of business, and is a force of the occurrence of horizontal and vertical relations, are appropriate. As noted, all business activity is subject to the laws of competition [1, p. 387].

Such view, according to which competition is seen in a broad sense as a specific mechanism of market self-regulation, is presented in economic theory as well. For example, according to V. M. Popov, competition is a powerful tool of market economy, the driving force that pushes manufacturers to improve the production efficiency, to reduce production costs, to improve products (goods and services) quality, to speed up the implementation of new scientific and technical achievements, to carry out organizational and structural changes in the business activity course. According to this approach, competition is seen as an economic phenomenon without subjective flaws (it is not subjective and not random phenomenon), and it is an objective economic force that takes the form of economic law of competition. In this context, as the content of the addressed approach implies, this law and every form of its appearance have internal contradictions, the development process of which objectively leads to a conflict between the terms of the goods production and possibilities for their sale, and obtaining of intended profit. As it summarized, this contradiction is solved by the competition law; the very competition is affecting the cost of goods production and their price, and, by extension, the amount of profit [2, p. 233-235].

The outlined approach of the understanding of competition in the broad sense, that is one of economic phenomena providing the market self-regulation, is indisputable and popular in economic theory, and its content is quite extensively developed in the sources of economic literature, although it was made in the context of various terminology interpretations, in particular it is seen as an element of the market mechanism, which provides interaction of market agents in the manufacturing and

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marketing of products, and in the sphere of capital use [3, p. 141]; as a separate element of the mechanism of market economy self-regulation [4, p. 180]; as an economic pattern that regulates relations between manufacturers and consumers [5, p. 110] and so on.

Along with that in the corresponding economic sources competition is seen in the narrow sense as well, which is related to its understanding as a kind of “external form”, which market economic relations and/or behavior of its participants take due to the inevitable and objective operation of law (economic force) of competition, that is competition in the broad sense as an objective economic phenomenon. From this point of view competition appears as a certain process of vigorous activity of economic entities (entrepreneurs, etc.), the content of which is narrowed down to the competitiveness/rivalry between them with the aim to achieve better results of their economic activities (to sell as many products as possible and, accordingly, to make as a result the highest profits on it, etc.) and/or better conditions of this activities implementation (elimination of the competition within market borders and obtainment in this way the monopoly position on market, etc.).

In the framework of outlined approach of economics understanding of the “competition” concept it is also assumed that competition reflects (express) internally required, stable essential material cause-and-effect relations between the economic entities in the efforts for the most favorable conditions of goods manufacturing and sale in order to make the greatest profit on it [2, p. 235]. It is obvious that the corresponding relations between the economic entities in the process of competitive rivalry in content are special types of economic relations, that is the competitive relations that enables to consider competition as a separate type of economic relations in society. Moreover, we can speak of a special state of the market in which economic relations between economic entities during the competitive rivalry take the particular form of orderliness. In this regard it is worth to mention economists’ statements about the so-called structural concept of the competition definition. In particular, in the context of this approach the basic content of competition is related not with the efforts, but with the analysis of market structure, that is the conditions which prevail in it. In this case competition is not defined directly as efforts, and the most significant value belongs to the determination of market’s model or structure within which the specific competitive behavior of economic agents is manifested [5, p. 110-112].

Now we are logically going to the review of law (legal) approaches in the understanding of competition concept. In the first place, it should be noted that in the legal science the competition concept is also seen from different points of view, in particular in the narrow or broad sense, as a process of rivalry and struggle between economic entities, as a market condition, as specific types of economic relations, as a self-regulating market mechanism and so on. In the same time, as against the economic theories of understanding of competition, law (legal) approaches place greater focus on the study of competition in the narrow sense, namely as a process of competition between economic entities and/or as a condition of the market and/or condition of economic relations. Upon this law science usually do not focus at all on determining the nature, characteristics, patterns and signs of competition in the broad sense (as a self-regulating mechanism of a market), which is fully justified from the point of view that competition is purely an economic phenomenon that develops under economic rules, and so is the subject of study in economic science. In this regard functions of law mainly narrowed down to normative consolidation in the legal provisions and statutory regulations the economic understanding of the competition concept in the narrow sense that is as a process of competitiveness between economic entities. Upon this, considering as well competition as a proper and necessary market condition and/or as a special state of economic relations, the law necessarily provides by its regulations mechanisms to ensure their stability, development, protection and security. It should also be emphasized that in the context of law the competition concept is seen as referring only to economic entities, namely products sellers, contractors and service providers, as opposed to the economic theory, where the corresponding category is seen in much broader sense, including the competitiveness between buyers (consumers).

In this context it should be noted that among other things in the Art. 10 of the Commercial Code of Ukraine [6] the state has recognized and codified as one of the main directions of its policy the antimonopoly and competition policy, which is aimed to create the optimal competitive environment of economic entities’ activities, to ensure their interaction in terms of preventing discrimination from one

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entities towards another, uppermost in the sphere of monopoly pricing and with sacrifice in quality of products and services, to facilitate the growth of effective socially oriented economy. The regulatory consolidation of the mentioned strategy legal framework, which provides the possibility of intervention in the sphere of competitive relations to organize and protect them is completely objective, because, as it appears, competition is not always developing in the limits, acceptable for it, and so it needs the implementation of certain state measures of control and prevention of commission of an offences in this sphere.

The definition of economic competition is contained in the provisions of the current legislation of Ukraine – in the Art. 1 of the “On Protection of Economic Competition” Law of Ukraine of January 11, 2001, № 2210-III [7]. In particular, the economic competition (competition) – it is a competition between economic entities aimed to obtain, by virtue of their own achievement, advantages over other economic entities, so that consumers, economic entities have a possibility to choose between several sellers, buyers, and a certain economic entity can not determine the conditions of goods circulation on the market.

Along with that, the legal science similarly pays great attention to coverage and disclosure of competition and competitive relations concepts’ scope, as well as to other related issues. In particular, in the legal literature competition is considered as the competitiveness of economic entities, when their independent actions limit the possibilities of each of them to influence the general conditions of goods sale in the market and stimulate the manufacturing of the products that a consumer requires [8, p. 61]; as a mandatory element of a market, its main regulator that provides the improvement of products quality, increasing of its assortments, reducing of a price to increase the circle of consumers and, therefore, to raise an income from goods sales [9, p. 415]; relations into which participants of economic turnover in the market enter on the base of competition for obtaining maximum profits on the ground of a reasonable risk and entrepreneurship [10, p. 24-25]; as economic relations between economic entities in the market that result in a certain market state in which for consumers and economic entities the freedom of choice is possible, and decisive influence of certain entity on the market is eliminated [11, p. 6]; as a process in which legal relations of economic entities and consumers are implemented, which results in such a state of the product market, in which economic entities have free access to resources, to the possibility to manufacture a product of certain quality, to freely set a fair price for it, and consumers have a possibility to choose the product consciously among goods of several sellers [12, p. 6-11].

At the same time, the legal science, though considering competition based on various aspects of its nature, yet sets the major focus on the study of the theory of its narrow sense, namely as a process of competition between the economic entities and/or as a specific market condition and/or as a special state of economic relations. So legislation is aimed at the fixation of the interpreted economic understanding of the competition concept in the narrow sense, in particular as some proper and necessary condition of market economy manifesting in the economic competitiveness (efforts, rivalry) in admissible limits among economic entities. Upon this both law and legislation aimed primarily at ensuring of stability, development, protection and security of competition as a certain and proper state of market and market relations. For this purpose the law has a number of legal measures, including prevention of monopoly, as well as measures of legal liability for the competition rules’ violation, in particular for unfair competition and offenses of monopolistic nature.

Conclusions. Summarizing the results of the conducted research we will note the following.

Analysis of the sources of legal and economic literature shows that in the legal and economic sciences the “competition” concept is considered as a complex economic phenomenon, in particular in the narrow or broad sense, such as a process of competitiveness among economic entities, as a market state, as particular types of economic relations, as a mechanism of market self-regulation, and so on. Upon this it is quite clear that the economic and law (legal) approaches to the understanding of the competition concept in some degree differ in content, because when economic theory is aimed at identifying and disclosing of economic essence of the competition concept and patterns of its existence and development, which is fully conform to its function and purpose, namely to clarifying the nature of economic phenomena and to development and improvement of economic tools and methods

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for creation of benefits needed for the existence and development of society, then the law, in this case, is aimed at consolidation of the economic essence of the corresponding category, as well as at ensuring of security and protection of competitive relations as such, that is imperative and necessary for market economy and its successful development.

At the same time, the proper comprehension of the “competition” concept’s essence requires consideration of both legal and economic aspects of its understanding, because, as it seems, only such a combination can provide a complex view and achievement of unity of opinion, which, respectively, will contribute to the further development of the theory of understanding of the “competition” concept and will ensure the improvement of its structures and mechanisms, including mechanisms of protection and security.

Accordingly, such approach seems as promising and necessary. Upon this the topicality of the researched issue is especially increased by the fact that competition is a very important economic phenomenon that makes a decisive influence on the functioning and development of market economy, because in conditions of market economy only competition in close conjunction with some other structures and mechanisms of the market economy can provide the proper quantitative and qualitative development of the economic sphere, and ensure the improvement of customer satisfaction and some other public interests in the economy. As economists aptly noted, “the degree of economic competition’s development is one of the decisive criteria of maturity and civilization of market relations” [2, p. 233-235].

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