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THE REGULATION OF ANTI-COMPETETIVE BEHAVIOUR IN THE COMPETITION POLICY OF UZBEKISTAN: PROSPECTIVE

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Abstract:

This article discusses the competitive environment in the Republic of Uzbekistan and some problems related to its legal regulation. The author's opinions are within the framework of national legislation, the identified shortcomings were compared with foreign experience, and an attempt was made to apply positive experiences to science. Certainly, opinions of a number of scientists, legal literature, legal documents and opinions of world organizations and they were studied and taken into account.

Keywords: ACRU, OECD, competition, monopoly, dominant position, merger control, pro-competitive reform, competitive neutrality

Uzbekistan is well on its way to implementing an effective competition law and policy. The elementary conditions for the Anti-monopoly Committee (ACRU) are largely in place to thrive and to make a significant contribution to achieving businesses, and leading to increased productivity, innovation, growth and employment. Moreover, ACRU management is competent, demonstrating strong knowledge of, and experience with competition law and policy in Uzbekistan and beyond. Since the adoption of its first competition legislation in 1992, Uzbekistan has aimed at developing its market-based economy, investing in creating competitive markets. Multiple reforms of the competition regime have taken place over the past 30 years, intended to improve both the institutional framework and the substantive law and enforcement procedures. Uzbekistan's National Development Strategy 2017 (NSD 2017) is the last in this series of reforms, and major changes include: (1) the establishment of an independent national competition regulator – the State Anti-monopoly Committee of the Republic of Uzbekistan (ACRU) – in 2019; and (2) the development of a new (draft) law on competition to improve the existing legislation. Both changes mark an important step in the right direction of improving the effectiveness and functioning of the competition regime in Uzbekistan By submitting to this OECD review of its competition law and policy, Uzbekistan takes another step and demonstrates its dedication to implementing a modern and effective competition law and policy framework. This review applies a rigorous analysis and benchmarking of the legal framework and enforcement practice, comparing the situation in Uzbekistan with observed international enforcement practice and best practice policies, as established by OECD instruments and work by the Competition Committee. Such a review is inevitably challenging for an economy in transition, and it is not surprising that it concludes that there remains substantial room for improvement. [1]

Nevertheless, there are still some shortcomings in the legislation. In particular, anti-competitive behavior: that is, abuse of a dominant position and cartel agreements.[2]

We can see shortcomings in the criteria for identifying and exposing this type of behavior in the legislation. In particular, Article 6 of the Law of the Republic of Uzbekistan "On Competition" specifies the criteria for determining a dominant position. According to this

Article 6. Dominant position

The dominant position is the position of an economic entity or a group of persons in the commodity or financial market, giving him (her) the opportunity to carry out its activities independently of competing economic entities and have a decisive influence on the state of competition, impede access to the relevant market to other business entities or otherwise restrict freedom their economic activities.

[1]Source: (SCDCEE, 2009[9]); https://antimon.gov.uz/en/about-the-committee/committee-history/; http://tashkenttimes.uz/national/541- uzbekistan-s-development-strategy-for-2017-2021-has-been-adopted-following-discussion be; https://lex.uz/docs/4887659

[2] Cyman D., Akhrorova S., Kalandarov A. INTRODUCTION TO COMPETITION LAW OF SOME FOREIGN COUNTRIES (CANADA AND AUSTRALIA): OVERVIEW //Herald pedagogiki. Nauka i Praktyka. – 2022. – Т. 2. – №. 1.

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The dominant position in the product market is the position of an economic entity or group of persons whose share of goods (which) is:

1) fifty percent or more;

2) in the range from thirty-five to fifty percent when the following conditions are established:

the stability of the share of the business entity in the product market for at least one year;

the relative size of shares in the goods market belonging to other business entities (competitors);

the possibility of entry into this market of new business entities (competitors).

An economic entity with a market share of 35% to 50% will not have a dominant position. However, this situation may be recognized as a superior position by the anti-monopoly state body. The stability of the economic entity's share in the market, the amount of shares belonging to competitors in the market, the entry of new competitors into this market and other criteria are taken into account. The existence of a single share does not create a dominant position.

Today, we can say that the criteria for creating a superior position defined in the legislation are, in some sense, simplifying the national economic system.

The establishment of a dominant position in accordance with the procedure established by the law, provides the situation of dominance by some subjects and creates the situation of its abuse. In this case, proving the existence of a dominant position is provided first of all by being able to correctly measure the market and give a correct assessment of economic power.

The clear determination of the market share, which is an indicator of the dominant position of an economic entity, creates a violation of competition laws through certain "opportunities" provided by the current "Competition Law". Today, the expansion of giant macrosystems such as "Korzinka" and "Macro",[3] which have their place in the commodity markets, has a negative impact on the market place of other competitors. is conducting, we will take a deeper approach to the issue:

It is worth noting that the number of legal entities of this type has tripled in the last 2 years, of course, this is not considered a bad situation, on the contrary, a new shopping center, a new workplace, etc. But their increase in itself increases their influence and position in the market, the total market share of "Korzinka" or "Makro" does not exceed 35% or even 50% ("Havas", "Sardoba" and the same due to the share of others) but has a higher indicator than other outlets.

The fact that the criteria of market share determined by Article 6 of the Law "On Competition" is the main solution for recognizing a dominant position, in turn, has a double negative effect on the uniform operation of the competition policy, we can say that it is showing:

First, in relation to the product supplier: at a time when the market share of this type of entities is not considered a dominant position, their control of the main lever in the market is the reason for concluding a bilateral contract with the product supplier on the basis of discriminatory conditions, that is, in fact, they have a dominant position, the giant market that owns the product supplier signs the contract at the desired price and in terms convenient for itself, in which the product supplier also agrees to the conditions of the large trading system in a dominant position, this situation, only in January 2019 "Bio-Sut" we can justify it by the disagreement between LLC and Korzinka.[4]

Secondly, in relation to other legal subjects of the market: it limits their free access to the market, they cannot enter the market as much as they want and cannot leave it freely when they want (a clear example of this is the increasing demand of consumers for "Korzinka" and "Makro" today).

In addition, the criteria determining the dominant position can create cases of cartel agreements on the basis of the "privilege" provided by Article 11 of the Law "On Competition", that is, according to it, the general economic entities if the market share does not exceed 35%, they can set aside the competition and enter into cartel agreements such as mutually agreeing unjustified price increases, mutual sharing of market areas. It is no secret to any of us that cartel agreements are the most dangerous violation of the market economy system.

In addition, the legislation needs to review and change the mechanisms for exposing cartel agreements and their legal regulation.

We know that in cartel agreements, the main feature is the existence of an agreement. Both parties who want to enter into an agreement will be interested in concluding a contract, there will be no coercion. However, according to Article 11 of the Law of the Republic of Uzbekistan "On Competition":

[3] Qizi A. S. A. RAQOBAT HUQUQI: USTUN MAVQE TUSHUNCHASI VA UNI TARTIBGA SOLISHNING AHAMIYATI //Ta'lim fidoyilari. – 2022. – Т. 14. – №. 1. – С. 19-27.

[4] Раджапов Хусаин "Поставщиков товаров планируют защитить от дискриминации торговыми сетями" https://www.gazeta.uz/ru/2019/07/01/pain-of-entrepreneurs/

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the imposition of conditions that are not related to the subject of the contract, including unreasonable requirements for the transfer of financial assets, other property, property rights, as well as requirements for other actions restricting competition.

The above situation is similar to the abuse of a dominant position, which creates confusion in the legislation. Therefore, we believe that it is necessary to make changes to this clause, not to force, but to include the contents of the agreement.[5]

CONCLUSION:

Improve substantive provisions on cartels and abuse of dominance:

- The list of anti-competitive agreements under UzLC (Law on Competition of the Republic of Uzbekistan) 2012 and the draft law may not cover all potentially harmful agreements. Hard core cartels should be prosecuted without exemptions, and it should not be necessary to show their anti-competitive effects. Agreements causing consumer harm without restricting competition should be treated under consumer protection legislation instead of competition law.
- Exemptions from anti-competitive agreements should be defined narrowly and should not violate principles of competition neutrality.
- Move to a case by case and effects based approach to abuse of dominance cases, instead of establishing dominance mainly based on market shares, and focusing on excessive or predatory pricing cases. International best practices suggest that the focus of enforcement should be on exclusionary abuses instead of pricing abuses.
- Reconsider the use and utility of the register of (legally determined) dominant undertakings. It supports a mechanistic approach to abuse cases, can chill legitimate business activity, and binds valuable human resources that could be put to better use.

Increase ACRU's operational independence to allow for more effective enforcement :

- ACRU is often restricted in exercising its mandate by the large number of detailed, and often technical, Presidential Orders and Cabinet Decrees. The responsibility for designing appropriate procedures and assessment frameworks within the given competition legislation – both via by-laws and soft law measures – should be conferred on ACRU. Optimal usage of soft law powers by ACRU would increase the effectiveness of the latter as well as provide better transparency and legal certainty to businesses.
- Empower ACRU to co-operate more pro-actively and effectively with other public bodies to ensure that outcomes most favourable to competition and competitive neutrality can be achieved when implementing a public policy.
- Legislative impact assessment by ACRU should focus on most relevant and high-impact legislation, and governmental bodies should show a minimum required degree of responsiveness to ACRU's recommendations (including at the stage of assessing draft legislation).

[5] Thomas K. Cheng. Competition law in developing countries. (Oxford Competition Law [OCL] 2020 p.55).