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THEORETICAL ASPECTS OF UNFAIR COMPETITION

Under modern market conditions competitive rivalry among different economic players is becoming increasingly significant. Given these circumstances, besides their interests the rights of the state and consumers should be observed. Modern society finds it extremely important that the competition between traders is carried out using the methods of competition and not by means of unfair, improper methods and actions summarized in the terms *unfair competition*.

Unfair competition is a competition in which legal norms and non-written rules of fair trade practice are violated[1]. Another definition specifies unfair competition as a market situation where participants violate the established or normatively formed rules and regulations of competition entering in agreement/s against other traders, aiming to discredit them, use misleading advertisements about their products and/or services and set dumping prices[2]. E. Vasilev defines 'unfair competition' as "any action of a commercial enterprise directed at a competitor and aiming to acquire market priority via non-economic means"[3]. The Paris Convention for the Protection of Industrial Property of 1883 adopted the following definition of unfair competition – an act of competition contradicting the usual rights in industrial and commercial activities, actions which are "capable of discrediting the enterprise-competitor" or "a misleading advertisement". Unfair competition according to the Law on Protection of Competition [4] can be any action or omission when carrying out economic activity which is contrary to good faith commercial practice and damages or may damage the interests of competitors (Art. 29 of the LPC).

In a broader sense, this term includes separate monopolistic actions (formal and non-formal agreements and negotiations, unions of competing traders against other traders or against consumers), methods of force impact on competitors (blackmailing, threatening, demonstrating power, etc.)[5]. In some foreign sources unfair competition refers to all unfair, deceptive, unlawful actions in public life, such as tax evasion, VAT fraud schemes, violations in the privatization process, etc., which ultimately have nothing in common with the legal definition of unfair competition[6].

Summarizing the definitions above we can conclude that *unfair competition is any action or omission of a trader (group of traders) aimed at obtaining an advantage in carrying out their activities, contrary to the legislation in force, customary commercial practice, rationality and fairness, causing or that could cause losses to other traders or harm their reputation.*

This definition contains the general forms of unfair competition. However, for an action of an economic player to be defined as/likened to unfair competition it should have all the signs that characterize it:

- The actions carried out by the trader should be active and should aim at gaining profits from the activity;
- Carrying out economic activities and interaction between traders. The additional provisions of the LPC state that the form of the enterprise does not matter and thus protection is provided to all physical, legal entities and unincorporated entities that carry out economic activities. Thus, besides traders, according to the Commercial Law all other entities that can be taken for traders are protected against unfair actions.
- The actions or omissions of the particular trader have to contradict the legislation and good faith commercial practice[7]. There is contradiction with good faith commercial practice when by the action performed or by omission the written or non-written norms of behaviour related to the respective activity are violated.
- The actions undertaken by a particular trader have to affect negatively the activities of an/other trader/s or harm their reputation. The carrying out of a competitive activity itself is not considered as harming competitors' interests. The action or omission contradicting good faith commercial practice has to harm competitors' interests or at least create an opportunity for such harm;
- Managers of enterprises, striving to survive in the competitive struggle as well as the regulating bodies should recognize fair and unfair competition. Without their definition it is impossible to regulate competition and determine violations to the legislation in force. The main difficulty for the taxonomizing of these two kinds of competition stems from the fact that certain actions/acts are considered legal or not.

Economists use the term fair competition in describing, clarifying different aspects of market relations. A basic condition of the competitive economic model is certainty[8]. In the case of unfair competition, on the contrary, there is uncertainty in the sense that the information on the particular commodity/service for the respective market is significantly distorted. In order to implement effectively the famous Pareto principle, motivation is essential in choosing different alternatives[9]. In the case of unfair competition, motivation decreases and this hinders the proper choice of options by both competitors and consumers. Fair competition is a condition ensuring economic efficiency, respectively unfair competition does not allow the trader/s to reach the potential economic efficiency[10]. Representatives of economic neo-liberalism consider that under the conditions of free competition, "parallel efforts contribute to the growth of the achievements, and in the end consumers have a decisive say"[11]. The rivalry between economic agents should be within the framework of free competition. In unfair competition, rivalry is hampered and the results achieved in most cases are obtained through unfair, improper methods.

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[1] http://bg.wikipedia.org/wiki/
[2] http://tolkslovar.ru/k7841.html
[3] Vasilev, E. Firmena sigurnost. Sofia, IK Trud, 2000, p. 29.
[4] Law on Protection of Competition. SG 102/28 November 2008, last amended SG, 56/24 July 2015.
[5] Galkin, V. Metody nedobrosovestnoy konkurentsii: ekonomicheskoye sodorzhaniye i pravovoye regulirovaniye. Voronezh, Tsentr, 1996, pp.18-19.
[6] Malkov, L. Unlanteru Wettbewerb in Ruland-Paradoxe wirkungen der Uruwllzunsprozesse. // GRUR Int, 1994, N 8-9, pp. 692-700.
[7] According to § 1, Art. 6, of the additional provisions of LPC good faith commercial practice refers to the rules determining market behaviour, which stem from the laws and normal trade relations and do not violate good morals.
[8] Arrow, K. Neopredelenost' i ekonomika blagosostoyaniya i zdravookhraneniya (Uncertainty and the Welfare Economics of Medical Care). // Vekhi ekonomicheskoy misli, Vol. 4, Moscow, 2004, pp. 293-338.
[9] Sen, A. Svoboda, edinoglasie i prava (Liberty, unanimity and rights). // Vekhi ekonomicheskoy misli, Vol. 4, Moscow, 2004, pp. 196-247.
[10] Stevens, S. Unfair Competition. // Political Science Quarterly, 1914, Vol. 29, N 2, pp. 282-283.
[11] Eucken, W. Osnovnyye printsipy ekonomicheskoy politiki (Grundsätze der Wirtschaftspolitik). M, Progress, 1995, pp. 323.

To sum up, fair competition is seen as: certain ideal conditions contributing to achieving economic efficiency; an implicit prerequisite for different economic theories.

There is a sharp differentiation between fair and unfair competition depending on the objectives and methods of competitive struggle. As regards solvency demand, the bona fide, honest trader satisfies demand while respecting the effectiveness of the activity. In doing so, they use such competition methods as keeping prices competitive, production/services quality, sustainable level of warranty and post-warranty service, etc. Whereas in unfair competition, the trader's goal is to manipulate demand and redistribute it to their advantage. To the methods of unfair competition used, we can refer barriers and restrictions to market penetration and the conclusion of transactions, the abuse of dominant position.

Modern market practice is characterized by forms of unfair competition that are increasingly diverse and complex to identify and define. This determines the need for knowing them and the opportunities for counteraction. At the same time, more and more entities consider themselves stakeholders, including the state, society, competitors, consumers, separate social groups, and they must be protected from unfair practices.