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EU External Relations Law

Shared Competences and Shared Values
in Agreements Between the EU and Its
Eastern Neighbourhood

 Springer

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Europeanization of Competition Law: Principles and Values of Fair Competition in Free Market Economy in the EU and Association Agreements with Ukraine, Moldova, and Georgia



Ksenia Smyrnova

1 Introduction

We can look at the politics of competition enforcement from three angles, starting from whether competition policy is based on political values and principles. Keeping markets fair, level, and open is good for our economies and societies. It establishes a good environment for business in Europe where companies can generate wealth, create jobs, and invest in the future. Here we can focus on the principles of fairness, good administration, transparency, and due process.

As *Johannes Laitenberger*, Director-General for Competition, European Commission, stressed, it is very important that market players see competition enforcers as independent, even-handed, and predictable public authorities. When our action is consistent and our priorities clear, companies find it easier to comply with the law.¹ A level, open, and well-functioning single market is hugely important in sustaining Europe's current recovery, also because it can attract businesses from outside Europe.

Competition agreements may have a significant effect on the particular application of national competition rules. On the other hand, due to the economic globalization the number of multinational undertakings has increased, and this in turn has increased the number of anticompetitive practices and the need for various agreements on competition. Hence, it is impossible to create a united agreement because of different legislations in states. So, the main purpose is to cooperate

¹ Press release 'Enforcing EU competition law: Principles, strategy and objectives' dated 15 September 2017 http://ec.europa.eu/competition/speeches/text/sp2017_11_en.pdf.

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authorities. Moreover, only Ukraine must approximate to a limited number of provisions of the EU competition legislation (Article 256). Also on state aid, only the Ukraine DCFTA has almost copy-pasted the relevant TFEU provisions, including the types of state aid that shall or may be considered to be compatible with the EU law (Art. 107 TFEU). The Ukraine and Moldova DCFTAs (but not the Georgian) mention that its state aid rules must be interpreted in conformity with the case law of the CJEU and relevant EU acquis. The Ukraine DCFTA also includes specific provisions on a domestic system of state aid control. Such provisions are less detailed in the Moldova DCFTA or are, in the case of the Georgia DCFTA, absent. The Georgia DCFTA refers instead just to the WTO SCM Agreement.

From the point of view of public (legislative) enforcement, the example of Ukrainian competition authority (AMCU) is rather unique in sharing the “EU spirit” especially in the sphere of state aid. National decisions on compatibility of state aid are based not only on national acts but consisted direct references to the EU regulations and CJEU practice.

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