Approximation of the Ukraine Competition Law with the EU Law

Iuliana Kikhaia*

Abstract: The author of this paper focuses on the issues of approximation of the Ukrainian competition law with the EU law. She also compares the main existing forms of adaptation of the legislation (approximation, harmonization, unification). In the paper further are described the historical background of the competition law development; the main categories of the competition law of the EU and Ukraine are compared.

Keywords: Approximation, harmonization, unification, competition, competition law, horizontal and vertical agreements, anticompetitive agreements, abuse of a dominant position, concentration.

1. Introduction

In the last decade of the XX century (after Declaration of Independence) Ukraine embarked on the building of a democratic state, transition to the market economy with effectively functioning mechanism of competition. Ukraine elected integration into European economic and political legal space as its geopolitical strategic direction. Today, this line defines the priority principles of domestic and foreign policy of Ukraine. For the first time one of the priorities of Ukraine's foreign policy to enhance the participation in the European cooperation was enshrined in the Resolution of the Verkhovna Rada of Ukraine № 3360–12 from 02.07.1993 «About main directions of foreign policy of Ukraine».[1] The first practical step towards realization of the European integration strategy, which initiated a partnership between the European Communities and their Member States and Ukraine was signing in 1994 the Partnership and cooperation agreement.[2] In the Strategy of Ukraine's integration into the

* Ph.D. candidate at Faculty of Economic and Management of Production, Odessa National Economic University, Ukraine. Contact: uliana_kih@ukr.net.

[1] About main directions of foreign policy of Ukraine, Resolution of the VRU 1993, № 3360–12, the Official Journal of the Verkhovna Rada (hereinafter to as «OJVR»), 1993, № 37, p. 379.

[2] Partnership and cooperation agreement between the Ukraine, of the one part, and the European Communities and their Member States, of the other part, OJVR 1994, № 46, p. 415.

European Union, approved by the Decree of the President of Ukraine from 11.06.1998 p. № 615/98[3], which was aimed at ensuring Ukraine's accession to the European political, information, economic and legal space, adaptation of Ukrainian law to the EU law was identified as one of the main directions of the integration process.

The current stage of Ukraine's European integration development characterized by signing the political chapters of the EU-Ukraine Association Agreement on the EU Summit on 21 March 2014, and signing the remaining sections of the Association Agreement on 27 June 2014 (which will enter into force once all EU Member States have ratified it).[4] Today as previously one of the main preconditions for the success of these processes is achieving an appropriate level of consistency of the Ukrainian legislation with the European Union legislation.

Art. 1 of the Strategy of Ukraine's integration into the European Union determines adaptation of Ukrainian law to the EU law as «convergence with contemporary European legal system, that will ensure development of political, business, social and cultural activity of Ukrainian citizens, economic development of the state within the EU framework and will facilitate the gradual growth of citizens welfare, bringing it to the level existing in the EU Member States. Adaptation of Ukrainian law envisages reforming of its legal system and gradually brought it in line with European standards». Thus, one of these paper goals will be a brief overview of definitions that define the category of "law adaptation" (approximation, harmonization, unification) to identify the most optimal for Ukraine in its current development of European integration strategy.

In the Art. 10 of one of the EU's most ambitious bilateral agreements, The Deep and Comprehensive Free Trade Area (DCFTA)[5] – part of the Association Agreement between the EU and the Republic Ukraine, focused on protection of competition, prohibition and punishment for acts that distort competition and trade.[6]

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[3] Strategy of Ukraine's integration into the European Union, available at: http://zakon1.rada.gov.ua/laws/show/615/98 [28.06.2015].

[4] A look at the EU-Ukraine Association Agreement, available at: http://eeas.europa.eu/top_stoеries/2012/140912_ukraine_en.htm [28.06.2015].

[5] The Deep and Comprehensive Free Trade Area (DCFTA), available at: http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_150981.pdf [28.06.2015].

[6] Chapter 10 of DCFTA established the following provisions: «the Parties prohibit and sanction certain practices and transactions which could distort competition and trade. Anti-competitive practices such as cartels, abuse of a dominant position and anti-competitive mergers will be subject to effective enforcement action. The parties agree to maintain effective laws and an appropriately equipped competition authority. Both Parties agree to respect procedural fairness

Thus, in these paper, taking into account the belonging of protection the economic competition relations to the important issues of the Ukrainian integration process, will be considered the role and importance of competition at ensuring industrial competitiveness, will be given a brief characteristic of the historical background of the competition law development and also will be conducted the comparative analysis of general categories of the EU and Ukrainian competition law in order to identify the extent of their compliance and recommendations for final approximation.

2. Forms of the law adaptation (approximation, harmonization and unification): comparative review

As noted above, an important prerequisite for successful realization of EU-Ukraine integration is the adaptation of Ukrainian legislation to the EU law. In Ukrainian legislation (The concept of Ukraine's legislation adaptation to the European Union legislation, approved by the Resolution of the Cabinet of Ministers of Ukraine from 16.08.1999 № 1496) adaptation of the legislation is defined as the process of convergence and gradually bringing into conformity with EU law.[7] Ukrainian Act about the national program of Ukraine's legislation adaptation to the EU law[8] from 18.03.2004 sets the purpose of Ukrainian law adaptation – achieving compliance with acquis communautaire.

It should be noted, that in the European communities till 1990s issues of harmonization and approximation of law belonged only to the competence of the Member States, Associated States should not have deal with such matters. And only from 1990s approximation of law started to be the obligation of Associate States. It is also important to note that European law by itself does not define these categories. But they are quite substantially discussed in the juridical scientific literature.

In current legal scientific thought under «approximation» is understood: «the process of adoption, amendment or repeal of law to align the provisions of national law with the provisions of the EU law to create appropriate conditions

and firms' rights of defense. Ukraine will align its competition law and enforcement practice to that of the EU *acquis* in a number of fields. Competition law will apply to state-controlled enterprises. This ensures that companies of both Parties have equal access to each other markets and there is no discrimination by monopolies…».

[7] The concept of Ukraine's legislation adaptation to the European Union legislation, available at: http://zakon4.rada.gov.ua/laws/show/1496–99-п [28.06.2015].

[8] Ukrainian Act about the national program of Ukraine's legislation adaptation to the European Union legislation, OJVR, 2004, № 29, p. 367.

for the implementation of the EU legal order».[9] In other words, approximation is a one-direction adaptation of Associated State law to the EU law.

In contradistinction to «approximation» the term «harmonization» involves «bringing into conformity» and is used to characterize «the process of adaptation of legal norms of the Member States only, i.e. exclusively within the EU».[10]

In comparison with harmonization «unification» is «the process of implementation uniform legal norms in national legal systems to the convergence of legal systems or creating the basis for a common international legal system. A common way for law unification is international legal conventions, which formed regulatory requirements that are subject to implement in national legal systems unchanged».[11] In other worlds, the result of unification is a complete changing of individual features of Member States national legal orders and the adoption at EU level the new legal order.

Thus, terms «harmonization» and «unification» define the processes occurring within the EU itself (with the participation of Member States on establishing the EU legal order). In turn, Associated States aims its activity at approximation of national legislation to EU law. So, Ukraine at the present stage of its European Union integration (it also directly defined in the Association Agreement) should approximate its national legislation to the European Union law.

The process of approximation, as noted by doc. *Šišková N.*[12] involves the necessity to carry out the following actions:

1) previously adopted rules of law must be brought into compliance with EU law and newly adopted legal rules already must comply with EU law;
2) also the State, which approximate its legislation, must take into account the projects of the European Union law published in the EU Official Journal and important laws of Member States as well.

Later (after acquisition of full membership in European Union) the State, which approximates its legislation, will receive the right to develop the European Union legal order together with over Member States.

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[9] Zabigajlo, V.K. (2000). Ukrainian Law in the context of the approximation to EU Law. *Ukrayino-yevropejs`ky`j zhurnal mizhnarodnogo ta porivnyal`nogo prava [Ukraine, European Journal of International and Comparative Law]* ,vol. 1, pp. 7–13 (in Ukr.).

[10] *Šišková, N.* (ed.). From Eastern Partnership to the Association. A legal and political analysis, 1st edition, Cambridge Scholars Publishing, – Newcastle upon Tyne, NE6 2XX, UK, 305 p. – p. 116.

[11] Gomonaj V.V. (2009). Approximation of the Ukrainian Law to the legal system of the European Union. Derzhava i pravo [State and Law], vol. 44, pp. 204–212 (in Ukr.).

[12] *Šišková, N.* (ed.)., ibid, p. 118.

3. EU and Ukraine competition law: importance, overview, comparison

3.1 Definition of the competition, its role and importance

In general under the competition is understood the rivalry between the companies for the most favorable conditions for the production and marketing with the purpose to gain an advantage over competitors.

From the economic point of view competition is the resistant mechanism of regulation of the production in the conditions of a free market.

The role and importance of competition as the basic element of the market mechanism can be shown in next provisions:

1) it affects the production with the purpose of its optimal conformity with consumption;
2) it is a comparison tool of the enterprises efficiency and stimulation the most effective ones;
3) it «discarde» inefficient enterprises from the market – those that are not able to offer goods at a price and quality no worse than the competitor's;
4) it stimulates development of innovations.

Competition serves the strategic precondition for the competitiveness of national enterprises. In the conditions the EU-Ukraine integration Ukrainian participation in this process as a country with competitive economy is very important. In turn, the competitiveness of a number of Ukrainian companies is questionable, and European companies included in the Ukrainian market is more technologically advanced. Therefore, one of the Ukrainian strategic objectives at the present stage is development of an effective competitive environment.

However, the effective functioning of a competitive mechanism might be broken, for example, by the abuse of dominance or concerted actions of the enterprises themselves that adversely affect the industrial competitiveness. Thus, an important prerequisite for the formation of a competitive economy is a well functioning mechanism of competition that is properly regulated by the state. And in the conditions of EU-Ukraine integration – those, that corresponds with the EU competition rules.

And last interpretation – (juridical) – of the competition law – it is a set of legal rules which regulate and protect the economic competition (ensure the functioning of the market economy in order to competition has not be distort).

And, summing up the competition role in the formation of industrial competitiveness and the need of its legal regulation, it should stay on a comparison of the main objectives of competition law in the EU and Ukraine.

In the EU according to Protocol (No 27) of the Treaty on European Union[13] amended by the Lisbon Treaty – *«the internal market as set out in Article 3 of the Treaty on European Union includes a system ensuring that competition is not distorted».*

Constitution of Ukraine[14] generally establishes the right to entrepreneurial activity and sets up the rule that *«State shall ensure the protection of competition in pursuit of entrepreneurial activities»* and also clarifies that abuse of a monopoly position, unlawful restriction of competition and unfair competition shall be prohibited.

The law on economic competition protection[15] which defines legal bases of support and protection of the economic competition and restriction of monopoly in business activities is aimed at *«ensuring the effective functioning of the Ukraine's economy on the basis of competitive relations development».*

Thus, the aims of competition law in EU and Ukraine in general are essentially similar, but if in EU the emphasis is directed at forming the system of undistorted competition, in Ukraine – this aim is focused on economic competition protection and also the main specific instruments of such protection are mentioned (for example, restriction of monopoly). The main core of Ukrainian competition policy is focused on abuse of monopoly position that was caused by the historical background of competition law formation. Ukrainian competition law started to develop after Declaration of Independence of Ukraine in 1991 (the complete lack of market mechanism and economic competition was inherited from an administrative command economy, also the existence of a state monopoly for the means of production and excessive concentration of production), unlike EU competition law, which began to develop with the European integration itself since 1951.

3.2 Basic stages of EU competition law development

The formation of EU competition law started after the adoption of Treaty establishing the European Coal and Steel Community (1951). The main contribution of the Treaty establishing the European Coal and Steel Community in the regulation of competition relations was the prohibition of cartel collusion and abuse of dominant position. In 1957 in Rome the Treaty establishing the European Economic Community and the Treaty establishing the European Atomic Energy Community were signed. In the Treaty establishing the European Economic Community the similar concept of the prohibition of cartel collusion and

[13] Protocol (No 27) on the internal market and competition of the TEU.
[14] Art. 42 of the Constitution of Ukraine, OJVR 1996, № 30, p. 141.
[15] The law on economic competition protection, OJVR 2001, № 12, p. 64.

abuse of dominant position was enshrined. In the early stages of the EEC competition law development it was only the tool for creating a common market.

In the 1990s EU competition law changed significantly. In practice of the European Commission and the European Court of Justice increased the importance of economic analysis and identification of direct benefits of functioning competition also European Commission's attention has been directed to horizontal cartels control and control of concentration.[16]

At the beginning of the millennium, in the conditions of EU enlargement the process of modernization of EU competition law started (envisaged for changing procedural rules, particularly decentralization in the exceptions of prohibited agreements – together with the European Commission this rules began to apply and the EU Member States). Also, considerable attention was paid to such process as "more economical approach", which involves assessment of violations of EU competition law on the basis of their direct impact on competition and consumers and not just on the formal signs of competition law violation.

And the last significant milestone in the EU history is the adoption the Treaty of Lisbon (entered into force in 2009) – is an amending treaty to the existing framework governing the functioning of the EU. Specific changes to the competition rules the Treaty of Lisbon has not brought. The wording of the internal market has changed a little: «the internal market … includes a system ensuring that competition is not distorted».[17]

Thus, the differences in historical background of EU competition law development and the Ukraine's one lies in the fact that in the 1990s, the EU has already been formed the basis of competition law, in Ukraine at that time only began the transition to a market economy and the development of the Ukrainian law in the competition governing. Further in the paper the basic stages of Ukrainian competition law development will be discussed.

3.3 The formation of Ukrainian competition law

Adoption of the competition rules of law (in 1990s) took place under conditions of high monopolization of national economy, state regulation of production and pricing, significant loss of economic links after the collapse of the USSR, the inflationary crisis and recession.

Stages of competition law formation and the process of demonopolization of Ukraine's economy is conventionally divided into two phases[18] (see Tab. 1):

[16] *Šišková, N. a kol.* Evropské právo 2 – Jednotný vnitřní trh. Praha: Wolters Kluwer ČR, 2012, p. 97–98.

[17] Ibid, p.99.

[18] Rosetska, Yu.B. (2008). Institutsyni zasadi rozvitku konkurentnih vidnosin v ekonomitsi Ukrayini [The institutional foundations of development of competitive relations in economy of Ukraine]. Palmira, Odessa, 252 p. **(**in Ukr.).

Table 1: Stages of competition law development and demonopolization of Ukraine's economy

Depressive phase (from 1991–1998): overcoming the crisis (hyperinflation and recession) in Ukraine's economy, the adoption of the first laws in the field of economy demonopolization	Stabilization phase (from 1999): competition policy orientation on improving the competitive relationship
Ukraine initiated the antimonopoly legislation: in 18.02.1992 The act on the limitation of monopolism and the prevention of unfair competition in entrepreneurial activities was adopted. This law established the initial assumptions of economy demonopolization: definition of a monopoly position on the market (market share > 35% is considered as a monopolistic position in the market). It also established the prohibition of anticompetitive agreements and merger control. Although this law was aimed at regulating competition relations and corresponded with Ukrainian realities of those time, it differed from the European Union competition law.	Antimonopoly legislation was transformed into the legislation of economic competition protection. In 11.01.2001 The law on economic competition protection № 2210-III[19] was adopted. This «new law moves Ukrainian competition regulation significantly towards the EU model; noteworthy national specifics however remain in force».[20] This law defines the main categories of competition law: abuse of monopoly position, anticompetitive concerted actions of undertakings, concentration and others, on which further in the paper will be given a comparative analysis from the perspective of compliance with EU competition law.
By the adoption of The law on the Antimonopoly Committee of Ukraine in 1993[21] was created the Antimonopoly Committee of Ukraine (AMCU) and was determined its competence, organization and accountability. Formation of Ukrainian AMCU regional branches was completed in early 1995 after the creation of regional departments throughout the country.	The legal status and competence of AMCU, its mission and objectives in the system of Ukrainian government were specified.
One of the most important steps in the formation of Ukrainian competition law was the adoption in 28.06.1996 the Constitution of Ukraine, in Art. 42 of which have been installed the foundations of competition protection[22]	Ensuring the coexistence of large, medium and small enterprises as well as enterprises different forms of ownership, and so on. contributed the increasing of competitive pressures in the national economy of Ukraine.
These measures facilitated restriction of manifestations of monopolies, the appearance of tens of thousands independent enterprises and certainly contributed the implementation of the Constitution of Ukraine in the field of protection of competition.	These measures were designed to overcome the structural crisis and gain a competitive activity in a transitional type of Ukrainian economy as well as the approximation of the legal regulation of competition in Ukraine with the rules of EU competition law.

[19] The law on economic competition protection, OJVR 2001, № 12, p. 64.
[20] Šišková, N. (ed.): From Eastern Partnership to the Association. A legal and political analysis, ibid, p. 260.
[21] The law on the Antimonopoly Committee of Ukraine, OJVR 1993, № 50, p. 472.
[22] Art. 42 of the Constitution of Ukraine, ibid.

3.4 The main categories of EU and Ukraine competition law: comparative aspect

First of all it is important to start with characteristic of the basic principles and main categories of EU competition law with the aim to make a comparison with the Ukrainian competition regulation. EU competition law prohibits both: unilateral practices (the abuse of dominant position) and multilateral practices (the anti-competitive agreements), it also deals with concentration (rules of competition law prohibit such mergers and acquisitions which could essential prevent competition in the market).

The basis of EU competition law is the Treaty on the Functioning of the European Union (art. 101 of which concerned on agreements between undertakings, decisions by associations of undertakings and other concerted practices; art. 102 – abuse of a dominant position within the internal market). Control of market structural changes (mergers and acquisitions) is not regulated by the founding Treaties, but it is based on a Council Regulation (EC) № 139/2004[23]. Also regulation of competitive relations in the EU is carried out by the decisions of the Court of Justice.

The largest success Ukrainian competition law in approximation to EU competition law has in the regulation of *horizontal and vertical agreements* (as defined by Ukrainian law – anticompetitive concerted actions of economic entities). Art. 101 of Treaty of the Functioning of the European Union in general defines the concept of vertical and horizontal agreements as follows: «agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and have as their object the prevention, restriction or distortion of competition within the internal market shall be prohibited»[24]. Examples of agreements that may lead to the prevention, restriction or distortion of competition within the internal market include agreements which directly or indirectly fix purchase or selling prices or other trading conditions, limit or control production, markets, technical development, apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, etc.[25]

Ukrainian competition law deals with the notion «anticompetitive concerted actions of economic entities», that provides a standard approach to this definition, and constitutes «the conclusion of agreements in any form, decisions by

[23] Council Regulation (EC) № 139/2004 on the control of concentrations between undertakings (the EC Mergers Regulation), OJ L 24, 29. 1. 2004, p. 1.

[24] Art. 101 (1) of the TFEU.

[25] Ibid.

associations in any form, as well as any other concerted competitive behavior (activity, inactivity) of economic entities… Anticompetitive concerted actions are concerted actions that resulted or may result in prevention, elimination or restriction competition»[26].

EU competition law allows certain exceptions from the prohibited agreements. According to Art. 101 (3) TFEU any agreement in case of «improving the production or distribution of goods or to promoting technical or economic progress while allowing consumers a fair share of the resulting benefit»,[27] and do not conflict with other requirements defined in this article, is valid from the date of its conclusion without the need for its notification to the European Commission. Another circumstance under which an agreement may be allowed is it minor importance (the de minimis rule). Agreement between undertakings even if they affect trade between Member States doesn't restrict competition if market shares of undertakings involved in it are small.[28] And the last group of exceptions – the so-called block exemptions, which constitute the general exemptions in a business line or industry with the purpose to increase competitiveness. The Block Exemptions on Horizontal cooperation agreements, for example, is directed «to encourage undertakings, including small and medium-sized undertakings in their research and technological development of products, technologies or processes…»[29].

Compared with the regulation of exceptions to the horizontal and vertical agreements in the EU, Ukraine also comply with certain exceptions. In particular, there are exceptions that allow small and medium enterprises to conclude agreements of the joint purchase of products that won't lead to substantial restriction of competition and enhance competitiveness of small and medium enterprises.[30] Some block exemptions in the area of delivery and usage of goods if they don't lead to a significant restriction of competition also provides by the Ukrainian competition law.[31] However, there are differences in the regulation of exceptions between the EU and Ukraine competition law. In Ukraine, still remains in force a system of individual exemptions from prohibited agreements, which may be permitted by the AMCU, and such exclusion

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[26] The law on economic competition protection 2001, Art. 5–6.

[27] Art. 101 (3) of the TFEU.

[28] Commission Notice on agreements of minor importance which do not appreciably restrict competition under Art. 101 (1) of the Treaty on the Functioning of the European Union (De Minimis Notice), OJ C 291, 30. 08. 2014, p. 1.

[29] Commission Regulation 1217/2010/EU of 14 December on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements, OJ L 335, 18. 12. 2010, p. 36.

[30] The law on economic competition protection 2001, Art. 7.

[31] The law on economic competition protection, 2001, Art. 8.

covering a wider than in the EU list (for example, agreements which contribute to improving the production or purchase of goods, technical, technological and economic development, rationalization of production and so on).[32] Another important difference is that in Ukraine the Cabinet of Ministers of Ukraine may allow concerted action, which was not authorized by the AMCU if their participants will prove that the positive effect for the public interest prevails negative effects of the restriction of competition.[33]

Art. 102 TFEU prohibits *abuse of a dominant position*. From the text of Art. 102 TFEU arising next essential elements that characterize the concept of abuse of a dominant position:

- action that is considered as abuse of a dominant position, *must be done by one entity;*
- *such entity should have a dominant position in the relevant market;*
- *there must be a dominant position within the Internal market or its substantial part;*
- *entity's actions which are considered as a possible violation of Art. 102 TFEU should be qualified as abuse of a dominant position;*
- *such abusing should affect trade between Member States.*[34][35]

The concept of a dominant position of undertaking was formulated in the judgment of the case United Brands. «The dominant position … relates to a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers».[36]

In contrast to this Ukraine competition law in determining the entity's monopoly position in the market comes from the size of its market share (see Tab. 2).

The dependence of the definition of monopoly (dominant) position on a market in the Ukraine competition law only from the size of its market share makes it different from an European concept of a dominant position. Common in the EU and Ukraine competition law is that it is forbidden not dominant (in Ukraine – monopolistic) position at all, but its abuse.

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[32] The law on economic competition protection, 2001, Art. 10.

[33] Ibid.

[34] Vovk, T.V. (2006). *Sy`stema konkurentnogo zakonodavstva Yevropejs`kogo Soyuzu. Pravove regulyuvannya pravy`l konkurenciyi v Ukrayini. Shlyaxy` adaptaciyi zakonodavstva Ukrayiny`* [System of competition laws of the European Union. Legal regulations of competition in Ukraine. Ways adaptation of Ukraine law]. RVA "Triumf", Kyiv, 416 p. (in Ukr.) – p. 86.

[35] Formulated by the authors classification of elements that characterize the concept of abuse of dominant position is based on the interpretation of Alison Jones and Brenda Sufrin, *EC Competition Law : Text, Cases and Materials* (Oxford Univercity Press 2001), p. 226.

[36] ECJ judgment 27/76 United Brands, [1978] ECR 207.

Table 2: Monopoly position of economic entities in the market[37]

Number of economic entities on the market	Market share which they occupy	Additional conditions to determine the monopoly position
1	≤ 35 %	the entity does not feel significant competition, in particular as a result of the relatively small size of the market shares belonging to competitors
	> 35 %	the entity does not feel significant competition
≤ 3	> 50 %	this group of economic entities does not feel significant competition
≤ 5	> 70 %	

The list of abuses of a dominant position in EU legislation covering such types of undertaking's activities as: directly or indirectly imposing unfair purchase or selling prices, limiting production, markets or technical development to the prejudice of consumers, applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, etc.[38] Although the list of abuse of entity's monopoly position in the market under the Ukraine law[39] is slightly larger than the list of abuses of a dominant position in EU, as a whole they form the standard list.

And last important issue is connected with the *control of concentration*. In the EU this area is regulated by the Council Regulation № 139/2004[40]. In Ukraine – by the Chapter V of the Ukrainian law on economic competition protection. The definition of concentration in Ukrainian competition law is approximated to the EU's definition and covers mergers and acquisitions, but «Ukrainian law doesn't distinguish between sole and joint control and it is not clear whether a change in the quality of control would constitute a concentration»[41]. The European Commission is empowered to examine all concentrations that are carried out on the scale of the EU and (aggregate worldwide turnover of all the undertakings concerned exceeds 5 billion euro; and the aggregate Community-wide turnover of each of at least 2 of the undertakings concerned exceeds 250 million euro). In Ukraine the notification is based on more less turnovers (worldwide turnover exceeds 12 million euro and turnover in Ukraine exceeds 1 million euro) and on market share (if market share of

[37] The law on economic competition protection 2001, Art. 12.
[38] Art. 102 of the TFEU.
[39] The law on economic competition protection 2001, Art. 13.
[40] Council Regulation (EC) № 139/2004 on the control of concentrations between undertakings (the EC Mergers Regulation), OJ L 24, 29. 1. 2004, p. 1.
[41] *Šišková, N.* (ed.): From Eastern Partnership to the Association. A legal and political analysis, ibid, p. 261–262.

combined entities exceed 35 %). The competent authorities both in EU (the European Commission) and in Ukraine (AMCU) evaluate if the concentration will restrict or distort the competition. It can be allowed by the competent authorities after such evaluation if the competition will not be disrupted. The most important difference from the EU competition law in this area is that in Ukraine the Cabinet of Ministers can allow concentration not cleared by AMCU if the positive effect for public interests prevail the negative of competition restriction.

4. Conclusions

Genesis of Ukrainian competition law after the Declaration of Independence indicates the progress in matters of approximation to EU competition law. However, Ukraine still remains in the transition to a market economy with a well-functioning competition mechanism that will be adapted to EU competition law. Most of all legal regulation of competition relations in Ukraine approximated to the EU model in the area of prohibited agreements, but some changes are needed (for example, fully introduction of the de minimus standart); in the area of abuse of dominance – rule of law that defines a monopoly position of an entity depending on its market share have to be changed.

AMCU has developed a Plan of implementation of some legislative acts of EU competition law[42] (which includes, for example, measures to bring the control of concentration in accordance with requirements of Art. 1, 5(1) and 5 of Council Regulation (EC) № 139/2004, also definition of requirements to vertical agreements between entities concerning the delivery of goods in accordance with which these agreements are allowed and do not require the permission of AMCU and some others). According to this Plan all differences between EU and Ukraine competition law should be eliminated till the end of 2017.

Nowadays Ukraine also has to continue the development of the competitive environment without any barriers to competition in order to achieve the competitiveness of the national economy and creating DCFTA with the EU with the intention to become a Member State.

[42] Plan of implementation of some legislative acts of EU competition law approved by the Resoөlution of Cabinet of Ministers of Ukraine № 167 from 04.03.2015, available at: http://zakon4.rada.gov.ua/laws/show/167–2015-p [30.06.2015].