



LEGAL PROTECTION METHODS AND MEANS OF COMBATING THE OFFENSE OF UNFAIR COMPETITION

Tadjibayeva Mahsuda Rustamjonovna,
Senior Lecturer, "Business Law" department,
Tashkent State University of Law
Email address: m.tadjibayeva@tsul.uz

Abstract

Unfair competition is one of the most common types of anti-competitive behavior in most countries of the world. In practice, forms of unfair competition are very diverse. Therefore, in order to combat such violations, it is first necessary to identify the forms which are widespread in practice. In the article the author tries to answer a number of priority questions connected with improvement of norms of unfair competition, changes in some norms of the Law of the Republic of Uzbekistan "On competition" which have no practical mechanism. Proposes to include new forms of unfair competition in the legislation of the Republic of Uzbekistan "On competition".

Keywords: unfair competition, unfair trade practices, market power, market relations, economic benefit, economic damage.

In an economy with a competitive environment, business entities are free to operate, that is, entrepreneurs can operate in any commodity market and leave it at any time. Free competition occupies a special place in competition policy and serves to promote competition by establishing restrictions in state regulation of entrepreneurs' activities aimed at production and sale of products. Competition policy should encourage not only free competition, but also fair competition. Rules supporting free competition and laws against unfair competition are two key elements of competition policy.

Both are designed to protect competition and are therefore considered part of the basic competition law. Although free competition rules and unfair competition rules focus on different aspects of competitive relations, they are both designed to support competition. Because competition is effective only if it prevents or combats not only against distortion of market mechanisms, but also influences unfair competition and unfair trade practices.

The Uzbek model of combating unfair competition in the legislation of the Republic of Uzbekistan cannot be regarded as free from shortcomings. First of all, it is related to the competition policy. Firstly, while the competition policy of Uzbekistan provides for equality of participants in socially oriented market relations, such as free





competition, prohibition of illegal interference in their activities, unimpeded access to the market, the main emphasis is not placed on the combat against unfair competition or unfair trade practices.

In the countries of the world, competition is divided into fair and unfair competition according to the way competitors combat for the market. Fair competition is competition based on market rules, which are accepted in the market struggle, should be carried out in a way acceptable for all.

Unfair competition is competition that is conducted in prohibited and forbidden ways, that is, by criminal methods such as fraud, deception, dishonesty, misrepresentation, economic espionage, subversion and even physical violence.

In countries based on market economy, only fair competition is recognized. If the current legislation of Uzbekistan uses the category of fair (bona fide) competition, its exact content is not disclosed. If we refer to the history of the competition legislation of Uzbekistan, in the laws and by-laws concerning the regulation of business, such issues as implementation of the principles of fair competition, development of fair competition based on the best international practices, prevention of fair competition in the market are touched upon. However, the notion of fair (fair) competition has never received a specific definition in the history of our legislation for more than 30 years.

In fact this concept which is used in domestic legal and economic literature has a deep meaning. Competition embodied in legal conduct and the principle of good faith - fair competition - must be protected by law. There should also be a reference point for honest behavior of all participants of economic relations.

Fair competition is supported by various instruments used in competition policy and legislation. In particular, the rules reflect certain patterns of behavior of competitors, i.e. the order and content of contracts, the choice of counterparties and the exercise of rights to means of individualization. Thus, the boundaries of permissible behavior are defined and the corresponding competitive environment is formed. In this regard, it is important to reflect the concept of fair in the legislation of the Republic of Uzbekistan. It is through the formation of the concept of fairness as a norm in the law is reflected signs, attributes and relations of fair competition. It is important to clarify what is fair competition, how this concept is related to the concepts of competition and unfair competition, under what conditions competition can be fair. This helps to create conditions for fair competition, effectively protects the interests of persons affected by unfair competition and prevents violations of competition law.

One of the following important issues is to ensure constitutional guarantees of the principle of fair competition by elevating it to the constitutional level, strengthening





the legal foundations of the principle of fair competition, further improving the ability to develop competitive relations in our country.

In most modern countries the role of the constitution in the regulation of competitive relations is determined by its position as the main source of the entire national legal system. The Constitution has the highest legal force and is adopted and amended in a separate order, in contrast to the procedure for amending the existing legislation. In this regard, the support of fair competition at the constitutional level is important for stabilizing legal competition in the country, increasing the responsibility of entrepreneurs, achieving economic efficiency insofar as mutual trust in economic relations is ensured. Since the competition norms set forth in the legal and regulatory documents must be consistent with the constitution, it acts as a legal document that serves as the basis for the existing legal and regulatory documents on competition. In this regard, through the expression in the Constitution of the norms of fair competition, the functioning of entrepreneurs and public authorities in accordance with the Constitution is achieved, as well as the functioning of all legislative and other legal measures of the State in accordance with the Constitution.

Also, the prohibition of abuse of a dominant position and unfair competition as anticompetitive actions in the Constitution imposes an obligation on the state to ensure freedom of economic activity and to maintain fair competition.

Based on the above, we propose to include the following norm in the chapter "Economic Foundations of Society" of the Constitution of the Republic of Uzbekistan.

Article 53.

The state shall ensure the protection of free and fair competition in the sphere of entrepreneurship.

Abuse of a dominant position in the market, unlawful restriction of competition and unfair competition shall not be permitted.

The state shall protect the rights of consumers, ensure control of products and all types of services, and the quality and safety of labour.

As a further issue, it should not be overlooked that antitrust enforcement measures in the state competition policy were not carried out correctly and quickly.

As an example, the definition of unfair competition has remained unchanged over the years. Article 32 of Law No. 229-XII of 15.02.1991 "On Enterprises in the Republic of Uzbekistan" includes actions aimed at reducing the reputation of competitors, division of production quotas, markets and supplies, maintenance of monopolistic prices among enterprises in order to limit free competition. Although this norm essentially refers to combating unfair competition and unfair trade practices, it is





called "legal and economic conditions of entrepreneurial activity" and unfair competition is not mentioned in the law.

The Law of the Republic of Uzbekistan of 27.12.1996 No. 355-II "On Restriction of Monopolistic Activity and Competition in Commodity Markets" adopted in 1992 for the first time uses the term "unfair competition" instead of unfair competition. Although the law specifies the forms of non-competitive competition, it does not show its signs and attributes. Later the Law of the Republic of Uzbekistan No. 355-II of 27.12.1996 "On Restriction of Monopolistic Activity and Competition on Commodity Markets" sets a certain tariff for unfair competition and shows the following signs of unfair competition

including

- actions of business entities aimed at obtaining an advantage in business activities;
- actions contrary to legal documents and business practices;
- actions that exclude competition between competitors and, as a result of their implementation, allow business entities to influence general conditions of goods circulation in the relevant commodity market, are recognized as signs of unfair competition.

Later, with adoption of the current Law of the Republic of Uzbekistan "On Competition", a slight change was made in the characterization of the concept of unfair competition. That is, actions that cause or may cause harm to other business entities (competitors), cause or damage their business reputation were also evaluated as signs of unfair competition.

Analysis of theoretical literature and experience of foreign countries shows that preventing competitors from entering the market in order to obtain economic advantages in the market cannot be a form or type of unfair competition. According to our national legislation, preventing a competitor from entering the market, which is considered a sign of unfair competition, is defined as a form of unfair competition in Article 13 of the Law of the Republic of Uzbekistan "On Competition". This is a very serious mistake, and in practice it has not worked until today, and there are no cases on this issue in practice. Thanks to this there is already an opportunity to bring the definition given to the concept of unfair competition into new forms, meeting the requirements of rapidly developing economic relations. In particular, the legal concept of unfair competition includes the following features:

- Acts or omissions of a market participant in trade or commerce to circumvent fair competition by misleading, deceptive, fraudulent, coercive or dishonest conduct.
- Acts involving practices deemed to be contrary to the public interest





- actions or omissions that involve obtaining an economic advantage in the marketplace or making a profit that is detrimental to the ability to compete must be defined.

The legal definition of unfair competition can be clarified using the above attributes. We have recommended the author's definition of unfair competition in our previous chapters.

Another important issue of the Uzbek model of combating unfair competition is the issue of the expression of types of unfair trade practices in the competition legislation. Although there is no concept of unfair trade practices in the current legislation of the Republic of Uzbekistan, certain types of unfair trade practices can partially be found in certain parts of the article on unfair competition in the Law of the Republic of Uzbekistan "On Competition" or in the Regulation on Retail Trade, adopted as an Annex by the Cabinet of Ministers of the Republic of Uzbekistan in 2003, which do not actually apply to competition law.

The right questions arise here. How are trade relations regulated in the Republic of Uzbekistan? Is unfair competition in trade relations with violation of trade rules in Uzbekistan - unfair trade practices the same concept? Why is violation of trade rules not considered as an institution of competition law? Why is there no provision for unfair competition in the section "Violation of trade rules"?

Trade relations in the Republic of Uzbekistan are regulated by the Appendix 1 to the Decree of the Cabinet of Ministers of the Republic of Uzbekistan dated February 15, 2003 "On approval of rules of retail trade in the Republic of Uzbekistan and the rules of production and sale of products (services) of public catering in the Republic of Uzbekistan.

In the Republic of Uzbekistan, the regulation "Rules of Retail Trade" mainly regulates technical issues of trade rules. The rules of unfair competition are practically absent. In Uzbekistan, the above-mentioned actions are considered to be a violation of its bylaws, but not of the law on competition, although they are the object of the law on competition. Thus, the main forms of unfair competition, especially unfair trade practices, may arise from non-compliance with legal regulations. The issues of "unfairness" in the competition legislation of Uzbekistan are strengthened in the documents concerning the regulation of retail trade. This regulatory document is somewhat controversial. Because, although the issues related to unfair trade practices are recognized as actions of unfair competition, listed in Article 13 of the Law of the Republic of Uzbekistan "On Competition", they are mainly provided in the Regulation "Rules of retail trade".





Indeed, competition is not capable of self-regulation to the necessary extent. Therefore, for the rational functioning of the market, the existing relations under competitive conditions must be regulated by a special law. After all, the legal basis of competition policy is the competition law. It should be said that the experience of implementation of legislation against unfair competition in Uzbekistan is not significant in comparison with developed countries of the world.

As a problem in the competition legislation of Uzbekistan, the provision "On the rules of retail trade" is not considered as an institution of competition law. Violation of trade rules and unfair trade practices in Uzbekistan are not the same thing. On this basis, we can say that the types of unfair trade practices reflected in the Retail Trade Rules should be reflected in the Competition Law.

The rules of competition law are developed out of the need to support fair business practices. It is necessary to clarify and define the exact boundaries, signs and types of such competition in order to express the concept of unfair trade practices in the law. The Law of the Republic of Uzbekistan "On Competition" lists only some forms of unfair competition, known in the world as unfair trade practices. The volume of information contained in the law on forms of unfair competition should be significantly increased in order to solve the problems related to competition arising in practice.

Legal scholar H.V. Burkhonkhojaeva also emphasized that trade relations are regulated not by special laws related to this sphere, but by general provisions of the Civil Code and various legal documents, which causes the commonality in determining their civil legal characteristics, and some types of trade relations remain undefined, theoretical scientific definition of concepts in trade transactions suggests that it does not exist. In fact it is necessary to reflect in the legislation what is unfair trade practice, how this concept relates to the concepts of competition and unfair competition, in what forms and types unfair trade practice can manifest.

In order to consistently continue the ongoing economic reforms in our country in the interests of the people, the State Program for the implementation of the Strategy of Action on the Five Priority Areas of the Republic of Uzbekistan for 2017-2021 was adopted. Within the framework of this state program it is also planned to develop a draft law "On trade", in which the law defines as one of the necessary conditions for implementation of the trade system in accordance with the requirements of modern market economy of the state and society. In this law the interests of participants of trade market will be equally protected by creating its legal framework, creating conditions for free competition, rights and obligations.





It is the presentation of issues related to unfair trade practices in the Law "On Trade" will provide an opportunity to regulate the supply of products (works, services) in the market by individuals and legal entities engaged in trading activities - competitors. It will also be possible to cover the procedure for settling disputes between market participants in court, protection of consumer rights and issues of liability for unfair trade practices.

Currently, the legislation of many countries in order to determine the presence of unfair competition between competitors it is necessary to assess the actions of the offender in terms of legality, principles of fairness, presumption of good faith.

In the previous parts of our work, we proposed a definition of unfair trade practices, which should be given in the legislation. According to it, unfair trade practice is an unfair way to induce the sale, use or supply of any goods or services in order to obtain a market advantage or profit, which includes deception of competitors and consumers, undermining of consumer confidence or causing harm to the consumer through unethical actions. methods and misleading trade practices mean any trade practice that causes damage or losses to the consumer of goods or services.

It is through this definition that loopholes in the law and unregulated practices in practice can be referred to by the same name, and through it market participants can be regulated through clarity, compliance, reliability, and consistency.

The next issue is the expression of unfair competition in trade relations in international legal norms and its impact on national law.

The very epoch shows that in the period of fierce competition of the modern world economic development each independent country cannot develop independently. In the process of integration, the importance of authoritative international organizations and international legal documents adopted by them increases. For this reason, Uzbekistan actively participates in the processes of global integration and takes part in various international treaties, agreements, conventions, declarations within the framework of its interests.

International law on unfair competition in trade relations also includes interstate national relations, states and international organizations, basic rights and obligations of entrepreneurs on an international scale, international law and other relations related to resolution of international disputes and disagreements.

Among all other normative legal documents, the requirement to take into account generally recognized principles and norms of international law, along with the study of the state of law, determined the practice of application, the experience of foreign countries in terms of legal regulation, public opinion when drafting national normative legal document on unfair competition.





In this regard, according to the World Intellectual Property Organization Model Law "Trademarks, Trade Names and Acts of Unfair Competition", recommended for developing countries, the following forms of unfair trade practices are considered to be unfair competition:

- Acts designed to attract competitors' customers by bribing them as customers and keeping them grateful in the future;
- Boycotting another firm's trade in order to combat or prevent competition;
- dumping, that is, selling one's products at low prices in order to combat or stifle competition;
- Creating the impression that the consumer is given the opportunity to buy a product on very favorable terms (even if this is not the case);
- Encouraging the breach of contracts by competitors;
- Issuing advertisements that are comparable to competitors' products or services;
- Violation of legal rules not directly related to competition, such violation allows to obtain an advantage over competitors.

These forms are advisory in nature and appear in some forms in the competition laws of some countries. But these forms do not cover all forms which in practice can be considered as unfair trade practices.

In this regard, the World Trade Organization (WTO) has set itself the important tasks of liberalizing international trade and establishing common principles for international trade, regulating trade and political relations of member states. Although the WTO has not developed general rules on unfair trade practices, its legislation contains detailed rules on dumping and subsidized trade, which are considered to be special forms of unfair trade practices.

The World Trade Organization does not prohibit dumping policies. However, if dumping causes or threatens serious injury to the domestic industry of a Member State producing similar products, WTO law allows that Member to impose anti-dumping duties on dumped goods to offset the dumping.

Export and import-substitution subsidies are generally prohibited. Other subsidies are not prohibited, but if they adversely affect the interests of competitors in other member countries, the subsidizing member must withdraw the subsidy or take appropriate measures to remedy the adverse effects. If a prohibited subsidy causes or threatens to cause serious injury to the domestic industry of a competitor in a member country producing similar products, that competitor member has the right to impose countervailing duties on the subsidized products to offset the subsidy.

For Uzbekistan, which aims to join the WTO to liberalize its foreign trade regime and long-term economic growth, it is important to adopt legislation in accordance with





global standards. Studying the legislative experience of the WTO creates only favorable conditions for solving this strategic task.

Also, in order to improve the Uzbek model of combating unfair competition, it is necessary to reflect in the legislation the forms of unfair competition in trade relations. Because there are many types of unfair trade practices and unfair competition, which are considered as an object of competition law, but are not regulated by regulatory legal documents related to competition in our country. There is no doubt that their regulation by a single normative legal document shows the features of strengthening, unification, systematization of legal norms, as well as provision of legal complex regulation of the most important sphere of public relations.

Literature

1. Hayashi, Shuya, and Bakhshillo Khodjaev. "Regulatory Approach and Specification of Unfair Trade Practices in Uzbekistan: Comparison with Japanese Law." 同志社法學= The Doshisha Hogaku (The Doshisha law review) 68.7 (2017): 3262-3225.
2. Бурхонходжаева Хуршида Вахдатовна. Аҳолига савдо хизмати кўрсатишнинг фуқаролик ҳуқуқий масалари: 12.00.03 – Фуқаролик ҳуқуқи; оила ҳуқуқи; фуқаролик жараёни; халқаро хусусий ҳуқуқ. Юридик фанлар номзоди илмий даражасини олиш учун ёзилган диссертация. Илмий раҳбар О. Оқюлов; ТДЮУ.- Т., 2007. – 176-б.
3. Tadjibayeva, M. R. "UNFAIR TRADE PRACTICES IN E-COMMERCE." Herald pedagogiki. Nauka i Praktyka 1.5 (2021).
4. <https://adolat.uz/news/halqaro-huquq-normalari-ularning-ustuvorligini-taminlash>
5. <https://wipolex.wipo.int/ru/legislation/details/5780>
6. Jonathan Baker & Steven Salop, Antitrust, Competition Policy, and Inequality 104 GEO. L.J. 1 (2015).
7. Anthony Atkinson, Inequality: What can be done? (2015)
8. Joseph E. Stiglitz, The price of inequality: How today's divided society endangers our future 338 (2012).
9. Margrethe Vestager, How Competition Can Build Trust in Societies, TED Talk (Sep. 21, 2017)
10. Wolfgang Fikentscher, Philipp Hacker, Rupprecht Podszun. Fair economy. Crises, Culture, Competition and the Role of Law. S Economic Inequality & the Law eJournal (2013) pringer Heidelberg New York Dordrecht London.
11. Kaplow, Louis, and Steven Shavell. "Fairness versus welfare: notes on the Pareto principle, preferences, and distributive justice." The Journal of Legal Studies 32.1 (2003): 331-362.

