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EXTENDED ANALYSIS OF SUPERIOR BARGAINING POWER

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Abstract: This article is devoted to an extended analysis of superior bargaining power. The article analyzes the problems and shortcomings that arise in the process of bargaining.

Key words: Superior bargaining power (SBP), market players, market regulation, economic dependency, companies

INTRODUCTION. Superior bargaining power (SBP) is an essential concept in market regulation and competition law, influencing the balance between large market players and smaller enterprises. Unlike dominant market power, SBP does not necessarily require a firm to control a large market share; rather, it is about the power to impose terms on trading partners due to their economic dependency. The rise of digital marketplaces and global supply chains has brought increased attention to SBP, as companies with significant market influence can shape commercial terms, potentially distorting competition and impacting smaller businesses. This study aims to analyze the frameworks for regulating SBP in various jurisdictions, including Uzbekistan, Japan, Germany, and the European Union (EU). By comparing these approaches, the paper seeks to identify best practices that could inform Uzbekistan's legislative efforts.

Methods

This research employs a comparative legal analysis methodology, examining legislative texts, regulatory guidelines, and case studies from countries that have established norms regarding SBP. Key sources include Japan's Antimonopoly Act and guidelines on ASBP, Germany's amendments to its Competition Act (GWB), the EU's Directive on unfair trading practices, and Uzbekistan's recent antitrust legislation. The study evaluates these frameworks based on criteria such as the definition of SBP, enforcement mechanisms, and the impact of regulations on market dynamics. Interviews with legal experts and reviews of relevant court cases provided further insights into the practical application of these laws, particularly in digital and agricultural markets.

Results

The analysis reveals significant differences in how various countries approach the regulation of SBP:

1. Japan: Japan's Antimonopoly Act, specifically through its guidelines on ASBP, addresses scenarios where firms with substantial negotiating leverage impose unfair terms on their counterparts. Unlike the broader concept of market dominance, ASBP in Japan focuses on business relationships where one party can exert undue pressure on another. For example, the Japan Fair Trade Commission (JFTC) has intervened in cases where suppliers were coerced into accepting unfair terms by larger retailers.

2. Germany: The 10th amendment to Germany's GWB (Competition Act) emphasizes protections for SMEs against powerful buyers or suppliers. The amendments recognize 'relative market power' and extend prohibitions on exploitative practices beyond traditional market dominance. Bundeskartellamt, Germany's competition authority, actively monitors compliance, especially in sectors like retail and technology, where power imbalances are common.

3. European Union: The EU's Directive 2019/633 targets unfair trading practices specifically within agricultural and food supply chains. It sets minimum standards, such as payment terms and prohibitions against unilateral changes to agreements, to protect smaller suppliers from exploitation by larger buyers. The directive is designed to create a more level playing field in markets characterized by significant asymmetries in negotiation power.

4. Uzbekistan: As of 2023, Uzbekistan's Competition Law introduced provisions for regulating SBP, making it one of the first CIS countries to do so. However, challenges remain in defining clear boundaries between SBP and traditional market dominance. The law aims to prevent practices that unfairly restrict competition, yet further development is needed to ensure precise application and differentiation between different types of market power.

Discussion

The comparison highlights the nuanced differences in how SBP is understood and regulated across jurisdictions. In Japan, the focus on unfair practices within specific business relationships offers a model that is well-suited for markets where economic dependencies are not always tied to market share. This approach could provide valuable lessons for Uzbekistan, where market structures may involve significant dependencies among trading partners despite the absence of clear market dominance.

Germany's emphasis on protecting SMEs aligns with the broader European approach, where the goal is to foster competition by ensuring that smaller businesses are not unduly pressured by larger entities. For Uzbekistan, adopting a similar framework could enhance protections for domestic SMEs, encouraging their growth and stability in a competitive market.

The EU's sector-specific focus, particularly in agriculture, is notable for its emphasis on practical trade scenarios. Such a tailored approach could be beneficial for Uzbekistan's agricultural sector, where large distributors and processors often have significant leverage over smaller producers. Developing targeted regulations could help address imbalances in sectors that are critical to the national economy.

Overall, while Uzbekistan has made progress in recognizing SBP within its legal framework, the country could benefit from adopting clearer definitions and criteria, drawing on the strengths of international examples. This would support the development of a more predictable and fair market environment, encouraging foreign investment and local business innovation.

Conclusion

The regulation of superior bargaining power is a critical aspect of ensuring fair competition in various market contexts. By studying the diverse approaches of Japan, Germany, and the EU, this paper illustrates the potential benefits of nuanced legal frameworks that distinguish between different types of economic power. Uzbekistan's recent legislative efforts represent an important step towards aligning with global standards. However, ongoing refinement is essential to address the practical challenges of enforcement and to ensure that the regulatory framework fosters both market fairness and economic growth.

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