UDC: 346.546.4
Nataliia D. Moroz –
5th year student, group 4
Economic Law Faculty
Yaroslav Mudryi National Law University
(77 Pushkinska St., Kharkiv, 61024, Ukraine)

The Phenomenon of Cartels in the European Union

У статті описуються основні підходи до розуміння питання виникнення явища картелей, їх існуючих форм, впливу на економіку та законодавче закріплення в Європейському Союзі. Антимонопольна політика цієї міжнародної організації є досить розвинутою та дієвою. Перш за все, вона являє собою цілісну систему регулюючих норм. Основні принципи, гарантуючі та захищаючі конкурентне середовище, закріплені в Договорі про функціонування Європейського Союзу (ДФЄС), що містить навіть окремий розділ під назвою «Спільні правила щодо конкуренції, оподаткування та зближення законодавств». Генеральний директорат з конкуренції, як профільний інститут Європейської Комісії ЄС, грає вирішальну роль у досягненні позитивних результатів у провадженні антикартельної політики. Звісно, домінуюче становище має Суд справедливості Європейського Союзу. Слід пам'ятати, що у європейському середовище має місце існування прецедентного права. Рішення Суду ЄС як різновид первинних норм права показують приклад прямого впливу на негативну монополістичну діяльність картелів. Окремо слід зазначити, що в Європейському Союзі існує ефективна система покарань за правопорушення у сфері антимонопольного законодавства. Модель європейської антимонопольної політики вирізняється тим, що має саме регулівну природу і покликана насамперед стати на захист вільної ринкової економіки. Картелі є провідною частиною сучасної економіки. Як тип монополії, картелі, звісно мають негативний вплив на ринкову економіку і перешкоджають конкуренції. До дії негативного впливу можна віднести: протидію конкуренції, зниження обсягів вироблення продукції та послуг і, як наслідок, збільшення цін на них, уповільнення науково-технічного та інших видів прогресу тощо. Підсумовуючи ці провідні положення, автор пропонує розглянути феномен появи картелів, дослідити їхнє законодавче регулювання та практичні підходи методики контролю.

Ключові слова: *картельна угода, картельна змова, антимономольне (антикартельне) право, учасник картелю, антимонопольна політика, ринкова свобода, конкуренція, монополізація.*

В статье описаны основные подходы к пониманию вопроса появления картелей, как отдельного явления, их существующих форм, влияния на экономику и законодательное закрепление в Европейском союзе. Картели – существенная часть современной экономики. Как тип монополии, картели, конечно, имеют отрицательное влияние на рыночную экономику и препятствуют конкуренции. Суммируя эти основные положения, автор предлагает рассмотреть феномен появления картелей, исследовать их законодательное регулирование и практические подходы методики контроля.

Ключевые слова: *картельное соглашение, картельный сговор, антимонопольное (антикартельное) право, участник картеля, антимонопольная политика, свобода рынка, конкуренция, монополизация.*

The article describes basic and general understandings of the question of cartels' existence. Advisement of their present forms sets detached place. The author emphasizes on the cartels' influence to the economy and legislative regulation in the European Union. Antimonopoly policy is quite developed and working in this organization. First of all, it includes a system of the regulatory norms. Basic principles are gathered in the Treaty on the Functioning of the EU (TFEU) that contains specific title with a name "Common rules on competition, taxation and approximation of laws". The Directorate-General for Competition (DG COMP) plays the leading role in successful result of anti-cartel policy as a profile institution in the European Commission (EC) in the European Union. Dominant position, of course, has the Court of Justice of the European Union. The decisions of the ECJ as a type of primary legislation show an example of a direct effect on the negative monopolistic activity of the cartels. Moreover, there is an efficient system of sanctions against violation antimonopoly legislation in

the union. Participants of the cartel agreements endeavor to assign market and economic direction to their own side for own profit. That is why their activity is supposed as dangerous one. Summarizing all these following statements, the author proposes to view the phenomenon of cartels in the article deeply. The article includes theoretical description of the cartels' appearance, to research its legislative regulation and the practical approaches to the control methods.

Keywords: cartel agreement, cartel collusion, antimonopoly (anti-cartel) legislation, cartel participant, antimonopoly policy, market freedoms, competition, monopolization.

Issue. The cartels are an integral and important part of the modern economy. The cartel agreements (which are understood as the agreements between two or more organizations in order to keep fighting with the larger organizations) help the development of both: small and large organizations. As a type of monopoly, a cartel, of course, has a negative impact on the market economy. Also, the cartel agreements impede competition. As we know, cartels are the most dangerous form of restricting competition. It is able to have full control over a market including all its spheres.

Analysis of the recent researches and publications. The theme of cartels' existence and functioning represents as wide and topical for the scientists in the antimonopoly sphere. The problem was researched by I. Kokkoris, R. Nazzini, A.R. Boner, R. Krueger, T. Shvydka and other explorers.

Unsolved problems. Cartels' presence on a market makes a danger for economic situation. The market processes are regulating by certain group of participants and do not allow society to develop competition policy. Actually, the problem is that a cartel has a secret, latent nature. Sometimes, it is found difficult for government to discover the cartels' activity.

Purposes:

The article is called to achieve a goal of asking the next questions:

- Definition of cartels in the European Union society
- The main characteristics of the phenomenon
- The main risks that the cartels leads
- Antimonopoly policy and regulation in the European Union
- Example of the control over cartel collusion.

The main body. Definition of cartel and its main characteristics. It is known that a cartel is a union of entrepreneurs on the basis of a cartel agreement, which establishes mandatory conditions for all participants: in terms of production, prices, market share, etc. Cartel members retain their legal and economic independence and operate on the basis of a cartel agreement.

As a rule, a cartel union includes firms of the same industry. They enter into an agreement among themselves concerning various aspects of a company's business, an agreement on prices, sales markets, production and sales, assortment, exchange of patents, employment conditions, and other points.

Talking about organizational structure, the cartels never have a pronounced dominant link. Agreements are reached as a result of meetings and agreements of the management of production structures that retain their independence. Macrostructures of the cartel type are available in all countries of the world. However, due to the development of antimonopoly (anti-cartel) legislation, there are not any cartels that were formed at the beginning of the 20th century more. Now the agreement on the formation of a cartel is practically not formalized in writing form as a contract. A cartel agreement often exists "behind the scenes", in the form of secret articles that supplement any official text, or in oral form as the "gentlemen's agreements". Firms entering into a cartel agreement retain their legal, financial, production and commercial independence.

It is marked up some distinctive features of cartels.

First of all, we can call the contractual nature of the association (collusion of a group of producers for the purpose of completely or partially destroying the competition between them and obtaining monopoly profits). That causes to the basic goals of a union.

Secondly, it is allowed to talk about the preservation of the ownership rights of the cartel participants to their enterprises and the economic, financial and legal independence that this ensures merger of a number of companies, as a rule, of the same industry. It differs a cartel from the other forms of monopoly union. For example, owners of syndicate keep only production independence. At the

same time in a case with trusts any independence is lost.

The third one is a joint activity for the sale of products, which may extend to a certain extent to its production. It represents the actions directed to the assigned goals attainment.

Also, I would like to notice the presence of a system of coercion. It is meant the identification of violations and the use of sanctions against violators.

The main risks that the cartels leads. The monopolization of production entails significant social losses. Compared to a competitive market, a monopoly usually sets higher prices with limited production. Monopoly is capable of extracting superprofit, appropriating a significant portion of consumer surplus.

Monopoly impedes market competition by fixing prices, erecting artificial barriers to entering the market, concluding contracts on harsh conditions, driving competitors out of business.

By the way, cartels are the most dangerous form of restricting competition. Historically, cartels (along with restriction of competition from large firms) were the main object of opposition from state structures. Very strict sanctions are applied to the participants of the cartel. The priority of the fight against cartels in comparison with other forms of illegal practice is due to the fact that consumers suffer very large losses because of the activities of cartels.

According to the cartel principle, banking systems of most countries of the world are arranged. At the same time, the “head” of such cartels are the central banks, which determine the “rules of the game” for private commercial banks and monitor their observance of these rules. Still, these are predominantly national banking cartels. But in the period between the two wars, the building of a truly global banking cartel began. We are talking about the Bank for International Settlements (BIS) in Basel, which was established in 1930. Initially, it was intended for the organization of reparation payments by Germany in favor of the winning countries. However, after some time, its main function was to coordinate the activities of the largest Western banks. After The Second World War, the BIS officially began to coordinate the activities of central banks. Often, the BIS is called the "central bank of central banks" or the "club of central banks." In fact, this is the "head" of the world banking cartel. It is known that this international banking supercartel played an important role in the preparation and unleashing of the Second World War, and during the war years coordinated the actions of the bankers of the opposing countries. At the conference in Bretton Woods, the question was raised about the criminal activity of the BIS. It was (although with the big difficulties) decided to liquidate this banking supercartel. However, the conference decision was never implemented. The international cartel of usurers with the "head" in Basel still continues to manage the global money market (and through the money market - the entire world economy). Of course, the two world cartels - the Federal Reserve and the Bank for International Settlements closely interact with each other. They can be compared with two heads of one world hydra. [7, 110]

The damage that cartels cause to the economy is not only measured by rising prices for essential goods. What is more? "Excessive" money spent on the purchase of apartments, expensive air tickets, cars, etc., is deposited in cartels and monopolies. This is how “thrombus” is created on the way of redistributing funds in the economy.

Obtaining superprofit, monopolies lose their incentive to increase production efficiency, reduce costs and improve quality. The improving of the efficiency of the economy is kept back at all. Inflation, provoked by rising prices for industrial products, reduces the attractiveness of the economy for investment.

Antimonopoly policy and regulation in the EU. The antimonopoly policy is aimed at creating conditions for fair competition and preventing monopolization of the market. It performs the most important functions in the development of the national economy, as it creates conditions for increasing the competitiveness of the domestic producer and the economy as a whole.

In accordance with the antimonopoly laws in the most of countries, cartel agreements, with the exception of certain sectors (primarily agriculture), are prohibited. Instead, a permissive procedure was established for their activities under special conditions. As a rule, the law prohibits the cartels connected with fixing prices, dividing the market, restricting output and production capacity. In other words, whose agreed measures are aimed at distorting or restricting competition.

In some cases the ban on the creation of cartels can be removed.

It can happen, for instance, when cartels that account for a small market share. The good example of such a case could serve within the European Union: if the market share covered by the agreement does not exceed 5% of the production of a certain product and the average annual turnover of the participating companies does not exceed 200 million ECU. [5]

By the way, this situation is possible when the activities of cartels are based on the development of a new market or if there are benefits for the economy of the whole country, for example contributing to technical progress.

In Western European countries, where are special legislation, dividing cartels into “desirable” and “harmful”, there are hundreds of officially registered cartel agreements, not counting those that exist without registration.

In the European Union, the antimonopoly policy is not only a guarantee functioning space without internal boundaries, but also mandatory the existence of a free market an economy that is protected from interference state and monopolistic actions of enterprises that violate free competition. Legal norms of the Treaty on the Functioning of European Union, on the one hand, decided are the traditional antitrust task legislation, on the other hand, integration function and eliminate “transboundary” competition violations characters.

Currently antitrust European Union policy is directed to ensure the optimal ratio between the norms of national law States and functional conditions EU internal market. The main purpose of the antitrust regulation protection – competition protection as prevention institution restrictions on the activities of enterprises, guaranteeing market freedoms in a single European Economic Area union, creating conditions for honest competition between the EU states and enterprises and preventing market division opportunities by national to the new principle. This thesis was enshrined flax in the Treaty of Rome in 1957, in present time – the Treaty on the Functioning of the European Union, as amended by Lisbon Treaty, 2007.

So the main focus the EU competition policy is to eliminate threats to free market, improved production or goods, technical and economic meticulous progress economies, as well as increasing competitiveness the ability of European goods and services.

All such the agreements and cartels are prohibited in inter-enterprise practice. To restrict competition it includes the following main effects of economic entities: direct or indirect fixation of purchase or pro- sales and other terms of trade; restriction or establishing control over production market, technical development or capital investments; market distribution or sources of supply; application unequal conditions for equivalent transactions with other trading partners; the contracts with additional obligations not related to the subject these contracts, and other actions.

Now the basic legal norms of antimonopoly regulation are contained in the TFEU in Chapter 1, Title VII "Common rules on competition, taxation and approximation of laws" (Articles 101 – 109). Establishment of competition to ensure the functioning of the EU internal market in accordance with paragraph 1 (b) of art. 3 of the TFEU research relates to the exclusive competence of the European union. It should also be noted existence of legally binding Protocol 27 on the internal market and competition added to the TEU and the TFEU, which emphasizes the right of the European Union to take all measures to undermine competition in domestic him market on the basis of Art. 352 of the TFEU. [11]

The rules of the Title VII of the TFEU not only impose obligations on states members, but also give to the individuals rights and obligations of the judicial protection as in the national judicial authorities, as in the European Union.

In addition to these agreements, development of the European legislation in the sphere of competition is carried out by the Council of the European Union and the European Commission in collaboration with the European Parliament regulations in the form of regulations and directives. It should be noted that each country of the EU has its own antimonopoly legislation. And while the violation does not lead to limit competition in the domestic EU market, the issues of regulation of the companies are the subjects of the national level [10, p. 55-56].

The competition provisions are contained also in the regulations and directives of the Commission of the EU and its decisions on specific cases that have become administrative precedents. Also judicial practice is a source of law in specific cases that have become precedents for adoption by these courts decisions in similar cases.

The Regulation №1/2003 that entered in force on the 1st of May, 2004 is a main example of such a type of document. It is showed as an addition to the articles 101, 102 TFEU and explains procedure questions.

European antimonopoly regulation is based on the two key rules:

- Art. 101 of the Treaty on the Functioning of the EU (TFEU), which prohibits agreements between market participants aimed at restricting competition, in particular horizontal and vertical agreements (for example, cartel agreements, including the division of markets or price collusion);
- Art. 102 TFEU, which bans the abuse of a dominant position in the market, including the establishment of excessive compared to market rates, restriction of production, the rejection of innovation to the detriment of consumers.

For competitive EU law is characterized by relatively soft regulation. For example, if antitrust US law is built on the principle of prohibition monopolization of the market (Article 2 of the Sherman Act (Sherman Act) 1890), then the rules of competitiveness EU law does not provide for such ban. EU Competition Law is based on the correction of market behavior. European law takes into account what market shares does the company have if it begins to abuse its market position. [8, p. 38]

The institution that is responsible for implementing European policy in the field of the EU level, is the European Commission, in particular the Directorate-General for Competition (DG COMP) [1] whose decisions can be appealed to the Court of Justice of the European Union. In its turn the role of the European Parliament is to assess the actions of the Commission, as well as supervision of important changes in this area.

The Commission is empowered to follow violations of established rules of competition from enterprises, the Member States and take actions to curb them. In addition to executive function of control over the execution of taking decisions and taking actions in individual cases, the Commission will fill the legislative function in the mechanism of the competition regulation. According to the general rules of the EU for making decisions the Commission acts as a legislative body. The Council of the EU takes them later.

According to the art. 101 and 102 TFEU the Commission has the right of current control, analyzing the conditions of the market and competition inside it and also using other technologies to identify possible lower competition in the states. In the fields state aid and control over economic concentration the European Commission has the right to prior control data cannot be carried out without the approval by the Commission. According to the results of the investigation the Commission accepts motivated and informed decision on compliance of the activities of enterprises to the norms of the legislation about competition.

Along with the Directorate-General there are the national competition authorities, interacting within the European competitive network (the European Competition Network – ECN). This network is created as a forum for discussions and cooperation of the European national antimonopoly authorities in cases of detection of the antimonopoly legislation. The Commission and the competition authorities of the Member States associate with each other through the ECN in the following directions: informing each other about new cases of violation of antimonopoly legislation and adopted in this regard decisions; help and coordination in the investigations; the exchange of evidences and the other information; the discussions about various issues representing common interest. If the Commission reviewing a complaint or your own initiative establishes the existence of a violation it may oblige enterprises to stop the established violation by making of a decision. [9, p. 12-13]

Example of the control over cartel collusion. Among the main methods and mechanisms used all around the world to identify and combat cartels, as well as to prevent their further formation and developing, there are the following two. The first one is the threat of harsh sanctions, which is accompanied by the imposition on cartel participants (legal entities) of potentially high administrative fines, as well as the increasing criminal responsibility in different legal systems of the world. And the second one is a stimulation of disclosure of cartel collusion, implying exemption from liability in case of voluntary disclosure of cartel collusion, remuneration to third parties for information about its existence.

The threat of harsh sanctions for participating in cartel collusion, like other areas of law, performs a preventive (against potential violators) and a punitive (with respect to proven violations) function. Today, the main threat among possible sanctions is

potentially high administrative fines. In the EU, there is a guide that has been revised several times, which sets penalties in competitive cases. Every time when the management gave in to revision, it always led to a significant increase in fines for participating in cartel arrangements compared to the previous version.

Behind to the previous described methods of combating cartel collusion, there is often a fundamentally different direction to counteract the formation and activity of cartels, which implies a policy of "leniency" ("mitigation of punishment") in relation to some participants in the cartel collusion. Such a method consists in stimulating the disclosure of cartel collusion by providing an opportunity to obtain full or partial exemption (immunity) from liability and/or offering remuneration to third parties for information about the existence of such collusion.

More and more countries are resorting to finding the most effective methods of combating cartel formations, which include the method of stimulation. Due to its effectiveness, the leniency policy, which provides for programs of exemption from liability, is widely used in many countries of the world, in particular - the USA, Australia, Canada, and the EU countries.

In the European Union a cartel member who chooses to participate in a loyalty program and submitted a relevant application to the Commission of the EU must notify it of all other immunity applications filed with national competition authorities in order to facilitate interaction and simplify the coordination of the Commission and national agencies in investigating antitrust violations. At the same time, how the two loyalty systems relate to each other in the absence of a pan-European integrated program, so far raises some questions.

In January 2016, the Court of Justice of the European Union issued a preliminary opinion on the relationship between European and national loyalty programs in the case of C-428/14 DHL v. Italian Competition Authority (DHL Express (Italy) Srl and DHL Global Forwarding (Italy) SpA v. Autorità Garante della Concorrenza e del Mercato). According to the preliminary opinion of the Court of Justice, obtaining immunity in the framework of the antitrust investigation of a cartel in the European Union does not entitle the company to claim immunity in a similar investigation at the national level. [2]

First of all, the CJEU clarified that in view of the lack of a centralized system for evaluating immunity claims under the loyalty program within the framework of antitrust investigations at the European Union level, statements filed at the national level should be evaluated by the national antimonopoly authority in accordance with the requirements of national legislation. Additionally, the EU Court noted that the Commission's immunity notice applies only to the loyalty program developed by the Commission.

Secondly, the Court noted that each loyalty program developed and adopted by the national antimonopoly authority is autonomous with respect to other programs at the national level and with respect to loyalty programs at the European Union level. The CJEU also clarified that the national authority has the exclusive right to evaluate each submitted application for immunity and it is not bound by the decisions of the Commission.

So, we can make a conclusion that the companies, which wish to receive the loyalty program privileges should apply to the European Commission and to a national antimonopoly authority, if it is possible, in order to avoid misunderstandings. At the same time, both applications should correspond to each other to the maximum in order to avoid ambiguous interpretation, since the national authority has no obligation to analyze and take into account the main statement of immunity submitted to the EU Commission.

An innovative approach to identifying cartels is the reward program for individuals by reporting cartel collusion, recently introduced in the UK. The Office of Fair Trade of the United Kingdom (OFT) may offer remuneration to individuals who did not participate in the creation of a cartel, in the amount of up to one hundred thousand pounds sterling for information regarding its activities. In this case, the individual's anonymity will be protected.

On June 5, 2014, the Court of Justice of the European Union issued a decision that gave rise to reflection on a variety of issues in EU competition law. In its decision on the case of elevator manufacturers Kone, Otis, Schindler, ThyssenKrupp (case C-557/12) [9], the CJEU made a number of very important conclusions. One of them is that now any person will be able to claim damages caused by the cartel agreement directly from the cartel participants, even if the product (service) was

purchased from a third-party company that was not a cartel participant.

In 2007, the Commission, in the course of its investigation, revealed one of the most serious violations of antitrust laws by cartel members: the companies Kone, Otis, Schindler, ThyssenKrupp. The violation was that from 1994 to 2004, four companies actually inflated the prices of elevators and escalators sold in Belgium, Germany, the Netherlands and Luxembourg. Having among their buyers are mainly construction companies, which held tenders, including those for purchased elevators, the participants of the conspiracy coordinated the preparation of their bids in accordance with preliminary agreements, determining which of them would win and at what price. Following the investigation, all the cartel members were fined a total of 992 million euros. By the way, the penalty imposed by the Commission in this matter remains one of the highest fines ever levied on the cartel members.

After completing the investigation into the cartel collusion, the Austrian company ŐBB-Infrastruktur filed a lawsuit against all the above-mentioned companies in the amount of EUR 1.8 million to the local court. Although the plaintiff acquired elevators and escalators from a company that was not part of the cartel, the applicant nevertheless asked for compensation for his losses from the cartel members. In support of its claims, the plaintiff referred to the fact that, even purchasing products from companies that were not part of the cartel, ŐBB-Infrastruktur became a victim of umbrella pricing. In simple words, the effect of the umbrella is that all companies that operated on the elevator and escalator market, but did not enter the cartel, tried to orient themselves in their offers to the prices of tenders won by the cartel participants, retreating from them downward only slightly. Thus, the total offer price on the market is artificially high, and even those companies that are not part of the cartel also benefit from it. The difficulty for the applicant company was that Austrian laws expressly prohibited victims of umbrella pricing in cartel collusion to demand compensation if their suppliers were not part of the cartel. Austrian law does not allow damages if there is no direct causal link between damages and violation of antitrust laws. In this case, according to the court, this connection is indirect.

As soon as the case went to the Supreme Court of Austria, the latter immediately turned to the CJEU with a request.

The Court of Justice of the European Union, responding to the request, reasoned as follows.

According to Art. 101 TFEU and based on the interpretation of the practice of the Court of Justice of the EU, ANY PERSON has the right to demand compensation for damage suffered as a result of an antitrust violation in the presence of a causal link. The court explains that the price for which companies other than the cartel were oriented was artificially inflated by the cartel participants, that is, formed in the absence of normal market conditions. Taking as a basis the quotations of the members of the collusion in competitive procedures, companies that did not participate in the cartel, tried in their proposals to orient themselves on these prices. It is precisely in this that the EU Court sees the causal link and makes a very important conclusion. In a situation of cartel collusion, when price distortions occur due to the agreements of several monopolistic companies that have decided to divide the markets and inflate prices for their products, they will be responsible for claims of any persons for damages.

The second conclusion, which makes the Court of Justice of the European Union, solves the problem of direct prohibition in Austrian law for the compensation of such damage. The court recalls that, according to its well-established judicial practice, Art. 101 TFEU has a DIRECT effect. This means that it can directly be used by private individuals in legal proceedings to protect their rights and substantiate their claims. In this case, the national court should not apply the rules of national law that are contrary to EU law, even if it considers a dispute between two private individuals (horizontal direct effect). Supporting its findings, the EU Court refers to the principles of equivalence and efficiency that must be respected at the national level. At the same time, the goals and objectives of Art. 101 and 102 TFEU, which are reduced to ensuring effective and free competition in the EU internal market.

An analysis of the case revealed another important nuance related to the exemption from liability for disclosing cartel collusion. Many today are discussing the problem of the asymmetry of fines that cartel participants pay. So, if one of the cartel participants was the first to admit his guilt and revealed all the information about the Commission's conspiracy, then he is completely exempted from the

fine. The rest, who actively contributed to the Commission's investigation, the amount of the fine is halved. Accordingly, if at first all the participants of collusion on an equal basis receive superprofit from the cartel, having an equal share of the risk of being disclosed and fined, then with the advent of a responsibility mitigation program, this balance no longer exists. Here, only one party to the conspiracy will have complete immunity, and all others face the risk of significant fines. In this case, it is believed that the loyalty program proved to be extremely effective, since it contributed to the disclosure of cartel agreements, facilitating the work of the Commission. On the other hand, if private individuals are entitled to claim damages from all the participants in the conspiracy (as follows from the decision of the CJEU), then it is inevitable that the responsibility for damages lies with all the cartel participants. As a result, even the company that took advantage of the immunity in the administrative investigation, regardless of this, will pay damages to private individuals. In this connection, the question is quite reasonable: will not the effectiveness of this tool be compromised? Indeed, in this regard, a participant in a conspiracy will think 10 times before opening a conspiracy and starting to cooperate with antimonopoly authorities. The Court answered only that the loyalty program was developed by the Commission itself (OJ 2006 C-298, p. 17). It is not obligatory for the EU countries and, moreover, cannot deprive individuals of the right to indemnification. It appears, however, that the balance between the administrative investigation and the system of private claims is very important, and the fears that the responsibility mitigation program will lose its appeal are well founded.

Thus, the decision of the Court of Justice of the European Union in the KONE case again addresses the problem of combating cartels and eliminating the consequences of cartel activity in the form of arising market distortions (umbrella prices) and restriction of competition. Cartels are also slowing economic growth, as consumers pay more for goods than they would in free competition. Understanding this and supporting the Commission's fight against cartel collusion, the CJEU, in its decision, proposes another, potentially very effective tool for the eradication of cartels. By its decision, the CJEU opens the second anti-cartel front. On this front, the main role will be played by private individuals, who will now be able to recover their losses at the expense of the cartel.

Also I would like to notice that a cartel facilitator that gives the information, special data, manages a web-based platform, serves as a reseller could be prosecuted along with the cartels. The Court of Justice confirmed this statement in the AC-Treuhand Case. [4]

AC-Treuhand AG was a consultancy firm, which offers a full spectrum of services tailored to national and international associations and interest groups'. The company de-facto organized a huge number of meetings (near 160) relating to the cartels. It took part in these infringements between 1987 and 2000 years.

The Court said that AC-Treuhand was responsible for that it played an essential and similar role in both the infringements at issue by organizing meetings for the cartel participants which it attended and in which it actively participated, collecting and supplying to the participants data on sales on the relevant markets, offering to act as a moderator in case of tensions between the undertakings concerned and encouraging the parties to find compromises, for which it received remuneration.

Also we can see that the Court of Justice refers us to the previous made decisions in AC-Treuhand Case I. [6]

There is the next key conclusion of the Commission: "those who organize or facilitate cartels, thus not only their members, must henceforth fear being caught and having very heavy sanctions imposed on them".

Even the words of applicant (AC-Treuhand AG) that it didn't enter into cartel agree ment, only concluded a bargain about provision of the services – didn't mean its innocence. It said that its actions didn't have a goal to disturb the competition on a market. But the Court decided that any undertaking, which has adopted collusive conduct, including consultancy firms, which were not active on the relevant market affected by the restriction of competition could reasonably have foreseen that the prohibition laid down in legislation (Art. 81 (1) EC). The CJEU supposed that in this situation actions could not be unconscious and the firm had to realize that it actively made a contribution to a cartel between the producers, which are active on a different market than a market where the consultancy firm acts.

Conclusions. Summing up the done work, we can draw the following conclusions. A cartel is the association of firms that enter into an explicit or secret agreement on the coordination of their activities: setting prices and controlling output volumes. The cartel takes into account the benefits of all its members from the reduction in the output of each firm. This is an incentive to merge into a cartel. And the goal of cooperative interaction of firms is to maximize the profit of the cartel, that is, to maximize their own profits. Thus, it is precisely the essence of cartel associations' gives rise to the reason why states are counteracting this phenomenon. Antimonopoly policy is aimed at deterring the forces of monopoly associations and the existence of healthy competition in the market.

References:

1. Directorate-General for Competition (2019). – *Official web-site*. URL: https://ec.europa.eu/dgs/competition/index_en.htm [in English].

2. C – 428/14 DHL Express (Italy) Srl and DHL Global Forwarding (Italy) SpA v Autorità Garante della Concorrenza e del mercato (2016) – *Reports of Cases* [in English].

3. C – 557/12 Kone AG and Others v ÖBB-Infrastruktur AG (2014) – *Reports of Cases* [in English].

4. Case T-27/10 AC-Treuhand AG v European Commission (2014) – *Reports of Cases* [in English].

5. Case T-77/92 Parker Pen Ltd v Commission of the European Communities (1994) – *European Court Reports* [in English].

6. Case T-99/04 AC-Treuhand AG v Commission of the European Communities (2008) – *Reports of Cases* [in English].

7. Brandenburger, A. M., Neilbuff, B. J., (2012). Co-opetition: A Revolution Mindset that Combines Competition and Cooperation: The Game Theory Strategy that's changing the game of business. – *Doubleday* [in English].

8. Boner, R. A., Krueger, R. (1991). The Basics of Antitrust Policy. – *A Review of Ten Nations and the European Communities. World Bank technical paper # 160, 38* [in English].

9. Nazzini, R., (2011). The Foundations of European Union Competition Law: The Objective and Principles of Article 102. – *Oxford: Oxford University Press* [in English].

10. Lianos, I., Kokkoris, I. (2009). The Reform of EC Competition Law: New Challenges. – *Kluwer Law International. International competition law series. Part. 3, ch. 4, p. 55-56* [in English].

11. Consolidated version of the Treaty on the Functioning of the European Union from 26 October 2012 (2012) – *Official Journal, 47-390* [in English].