

UDC 346.546

## Antimonopoly regulation of food markets in the EU

**Ol'ga O. Smirnova**

PhD in Economics,  
Professor,  
Slavic-Greek-Latin Academy,  
105000, 20, Radio st., Moscow, Russian Federation;  
e-mail: oos39@mail.ru

### Abstract

**Objective.** The article aims to study a antimonopoly regulation of food markets in EU members. **Methodology.** Research methodology involves application of such specific scientific methods as comparative historical ones, as well as general methods of scientific cognition, including generalisation, concretisation, analysis and synthesis. **Results.** The food crises of 2007 and 2010 led to the transformation of modern antimonopoly regulation in member states of the European Union. It is currently focused on the evaluation of the impact of global food prices, regulations becoming more and more detailed with a view to dealing more effectively with violations of the antimonopoly legislation. However, the norms of these normative acts contravene the provisions of antimonopoly regulation. The author point out that there is a conflict between the provisions of Article 39 of the Treaty on European Union, which determines the general directions of agricultural policy in the European Union, and the provisions of Articles 101 and 102, which determine the types of unacceptable market behaviour of producers of goods and services. **Conclusion.** In order to construct a legal model of the antimonopoly regulation of food markets, it is necessary to determine the cases in which anticompetitive behaviour of participants in agrofood markets is considered to be permissible.

### For citation

Smirnova O.O. (2019) Antimonopol'noye regulirovaniye prodovol'stvennykh rynkov v ES [Antimonopoly regulation of food markets in the EU]. *Ekonomika: vchera, segodnya, zavtra* [Economics: Yesterday, Today and Tomorrow], 9 (1B), pp. 857-863.

### Keywords

Food markets, antimonopoly regulation, EU food market, food crisis, prices for food products, anticompetitive agreements.

## **Introduction**

As the practice shows, the use of the model of antimonopoly regulation, describing all legal relations arising in all markets of goods and services, is not effective without considering the specifics of the socio-economic characteristics of the regulated facility. So, the antimonopoly body makes the decision only after months of consideration, and the decision itself comes into force only after a judicial appeal, while the situation that has developed in the food market can lead to negative social consequences. Therefore, considering the characteristics of the circulation of primary commodities in the world market and the problem of the economic concentration of the processing and distribution infrastructure, an effective model of antimonopoly regulation of food producers is one of significant research areas.

The article considers EU regulation initiatives in the field of ensuring food security related to the restriction of food availability because of the anti-competitive behavior of agricultural producers.

## **Literature review**

Several works shows that the notion of the market power of agroproducers has significantly changed over the past 50 years [Carter, Mesbah, 1993]. Earlier it was widely believed that this market is closest to the state of perfect competition, because it was formed in conditions when the main agricultural producers were farms that could not influence the price and conditions of goods circulation [Elagina, 2015; Khlestov, 2007]. Currently, it is considered that the structure of markets from the moment of changing technological structures and increasing the importance of transnational corporations has been significantly transformed, under the influence of intensification of processes of economic concentration of production [Smirnova, 2016; Bolotova, 2015, www].

In relation to the anticompetitive behavior of agricultural producers in the world market of raw food products and end-use goods in the EU markets, the most significant are studies of antimonopoly regulation regarding the formation of food security policies, in particular regarding the role of antimonopoly regulation in selected EU food markets (such as olive oil and meat), as well as the transformation of the paradigm of antimonopoly regulation in the part of conducting market analysis [Dragoi, Iordache, 2016]. A number of studies are devoted to the study of types of market restrictions existing in the agro-industrial complex markets [Leslie, 2012]. In addition, it is very important to consider legislative initiatives adopted in the context of increasing pressure from world prices for raw food products [Schmidt, 2013].

## **Methodology**

To determine the legal model of antimonopoly regulation of EU food markets, it is necessary to take into account research in the field of economic concentration of production, economic mechanism for adopting world food prices, the EU antitrust law and its application practice in regulating food markets, as well as legislative initiatives to ensure food security in conditions for a spasmodic change in the prices of raw food products in the world market. Therefore, research methodology involves application of such specific scientific methods as comparative legal and historical legal ones, as well as general methods of scientific cognition, including generalisation, concretisation, analysis and synthesis.

---

### **Normative definition of antimonopoly legislation in EU countries**

The competition protection policy is also an instrument for achieving such strategic goals of the EU economy as sustainable economic growth, expansion of the innovation sector, efficient allocation of resources [Chernysh , 2014]. A feature of its implementation in the EU countries is the fact that antitrust regulation is carried out through the activities of both the Commission of the European Union and the national antimonopoly authorities [Tichý, 2014]. Comparing antimonopoly regulation with other methods of government influence on the real sector of the economy, it should be noted that it is not of a preventive character: in fact, instruments determine the measures of responsibility of market participants for anticompetitive behavior.

To determine the nature of these actions, we apply Art. 101, 102 of the Treaty on the European Union, which provide a complete listing of individual and collective actions, such as abuse of dominant position in various forms, including predatory pricing and price discrimination, a direct impact on prices and conditions of commodity circulation in the market, entry into illegal anticompetitive agreements with producers, including through professional associations. In this case, it is pointed out that similar actions are not prohibited in case the product is innovative.

In addition, each of the EU countries has a national antimonopoly legislation, harmonized with the provisions of the Treaty on the European Union. In this case, investigations of violations of the antimonopoly legislation can be carried out by both the EU Commission and national antimonopoly authorities. The issues of separation of jurisdiction depend on geographical boundaries of the market, where a violation of the antimonopoly legislation is revealed. If the market is cross-border, then the case is considered by the EU Commission.

Thus, modern antitrust regulation in the EU countries comprehensively determines the types of individual and group anticompetitive behavior of market participants, which allows to investigate cases of violations in national and cross-border markets.

### **Practice of antimonopoly regulation of food markets in EU countries**

According to reports from the activity of antitrust authorities [ECN activities in the food sector ..., 2012, www], the national antimonopoly authorities of the European Union conducted 120 investigations in the food market from 2004 to 2011, about 60 investigations were still ongoing in 2015.

After a spasmodic increase in world food prices, the number of cases of violation of antimonopoly legislation significantly increased after 2007. According to the statistics of the activities of national antimonopoly bodies, the maximum number of cases was investigated in Greece, Germany and Spain, with the most frequent cases of violations of the antimonopoly legislation in the activity of vertically integrated entities producing several types of products, cereals, milk, fruits and vegetables, meat and coffee [Ibidem].

More than half of cases of violation of the antimonopoly law were connected with the implementation of the intermediate link of industrial processing (for example, with the production of flour) and the sale of finished products in bulk. About half (49%) of violations were related to vertical restrictions, as a result of which producers coordinated the activities of subsequent stages of industrial processing. It should be noted that in more than half of the cases for the adoption of decisions on violation of the antimonopoly law, the norms of national legislations and not the provisions of the Treaty on the European Union were applied.

## **Results and discussion**

The provisions of Art. 39 of the Treaty on the European Union allow some types of anti-competitive behavior by agro-industrial producers to ensure food security. It should be noted that this approach was supported by the decisions of the Commission of the European Union No. 1184/2006 and No. 1237/2007 [Dragoi, Iordache, 2016]. On the other hand, within the framework of consideration of cases on violations of the antimonopoly legislation, decisions were made, according to which agricultural producers should take into account the provisions of Art. 101, 102 of the Treaty on European Union.

In addition, the Commission of the European Union adopted a special document specifying the rules for the antimonopoly regulation of agri-food markets, according to which there are some differences in the regulation of this sector. So, according to the world practice, often agricultural producers join in special associations and their goal is not only to defend their interests in government bodies, but also to sell in the domestic and international market. Although this activity is formally a concerted action, within certain limits it is permissible under the provisions of this document. On the other hand, in accordance with its provisions, control of vertical restrictions between suppliers of raw food products and the sector of processing of agricultural raw materials is increasing.

Also, the Commission of the European Union adopted a number of normative documents that determine the functioning of certain socially and economically important markets, such as the olive oil market, the share of which is 58% in world trade of the EU countries [Guidelines on specific rules ..., 2015, www]. However, such details can lead to conflicts of law enforcement in the context of rapid transformation of world food markets, strengthening the role of developing countries, increasing the role of agroholdings and high price volatility in the world market.

## **Conclusion**

Despite the fact that the current version of Art. 101, 102 of the Treaty on the European Union, in fact, lists all prohibited types of market behavior, the system of antimonopoly regulation can not always respond effectively to the challenges of the world food market. Under the influence of the food crisis in 2007 and 2010, there is a transformation of modern anti-monopoly legislation in the EU countries. At present, it is focused on taking into account the impact of world food prices, and more and more detailed regulations are aimed at the most effective regulation of the most typical for the food market violations of antimonopoly legislation. In addition, this detailing now includes, among other things, individual markets for food - olive oil, meat and cereals. However, the norms of these normative acts come into conflict with the provisions of antimonopoly regulation, while at the same time there is a conflict of the provisions of Art. 39 of the Treaty on the European Union, which defines the general directions of the EU agricultural policy, and the norms of Art. 101, 102, establishing unacceptable types of market behavior of producers of goods and services. Thus, when forming a legal model of antimonopoly regulation of food markets, it is necessary to determine cases of admissibility of anti-competitive market behavior of participants in agro-food markets and to detail only certain issues of determining market power and individual, most characteristic types of violations of antimonopoly legislation.

## **References**

1. Antitrust Guidelines in the agricultural sector (2015). Official journal of the European Union, 58. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2015:431:FULL&from=EN> [Accessed 22/08/16].

2. Bogdanov D.D. (2015) *Institutsional'nye aspekty regulirovaniya tsenovogo povedeniya dominiruyushchei firmy* [Institutional aspects of the regulation of the pricing behaviour of the dominant firm]. *Tavrisheskii nauchnyi obozrevatel'* [Taurida academic observer], 1, pp. 15-16.
3. Bogdanov D.D., Smirnova O.O. (2010) *Antimonopol'noe regulirovanie roznichnoi trgovli prodovol'stvennymi tovarami* [Antimonopoly regulation of food product retail]. *Sovremennaya konkurentsia* [Modern competition], 4 (22), pp. 26-34.
4. Bolotova Y. (2015) *Agricultural production restrictions and market power: an antitrust analysis*. Available from: [http://ageconsearch.umn.edu/bitstream/196848/2/SAEA2015\\_AgProductionRestrictionsAntitrustAnalysis\\_Bolotova%2001-15-2015.pdf](http://ageconsearch.umn.edu/bitstream/196848/2/SAEA2015_AgProductionRestrictionsAntitrustAnalysis_Bolotova%2001-15-2015.pdf) [Accessed 22/08/16].
5. Carter M.R., Mesbah D. (1993) Can land market reform mitigate the exclusionary aspects of rapid agro-export growth? *World development*, 21 (7), pp. 1085-1100. doi: 10.1016/0305-750X(93)90001-P
6. Chernysh A.V. (2014) *Antimonopol'nye rassledovaniya v Evropeiskom Soyuze, prava cheloveka i Evropeiskii Soyuz po pravam cheloveka* [Antimonopoly investigations in the EU, human rights and the ECHR]. *Aktual'nye problemy rossiiskogo prava* [Topical problems of Russian law], 8, pp. 1778-1784.
7. Dragoi A.E., Iordache L. (2016) Antitrust policy impact on EU's agricultural sector. *Knowledge horizons – Economics*, 8 (1), pp. 40-45.
8. ECN activities in the food sector. Report on competition law enforcement and market monitoring activities by European competition authorities in the food sector (2012). Available from: [ec.europa.eu/competition/ecn/food\\_report\\_en.pdf](http://ec.europa.eu/competition/ecn/food_report_en.pdf) [Accessed 22/08/16].
9. Elagina A.S. (2015) *Printsipy ustoichivogo razvitiya pri regulirovanii prodovol'stvennykh rynkov: obobshchenie mezhdunarodnogo opyta* [The principles of sustainable development in the regulation of food markets: a summary of international experience]. *Tavrisheskii nauchnyi obozrevatel'* [Taurida academic observer], 4-3, pp. 154-155.
10. Guidelines on specific rules for olive oil, beef and veal and arable crops sectors (2015). Official journal of the European Union, 58. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2015:431:FULL&from=EN> [Accessed 22/08/16].
11. Konstantinova E.V. (2018) *Primenenie neuronnykh setei dlya tselei optimizatsii sostoyanii birzhevoi trgovli* [The use of neural networks for the purpose of optimizing the state of exchange trading]. *Innovatsii i investitsii* [Innovations and investments], 7, pp. 254-259.
12. Konstantinova E.V. (2017) *Metody kvalimetricheskoi otsenki prognozirovaniya finansovoi situatsii na rynkakh posredstvom neuronnoi seti* [Methods of qualimetric assessment of forecasting the financial situation in the markets by means of a neural network]. *Ekonomika: vchera, segodnya, zavtra* [Economics: Yesterday, Today and Tomorrow], 7 (7B), pp. 200-208.
13. Konstantinova E.V. (2018) *Globalizatsionnye faktory stanovleniya sfery finansovykh tekhnologii* [Globalization factors of the development of the sphere of financial technologies]. *Ekonomika: vchera, segodnya, zavtra* [Economics: Yesterday, Today and Tomorrow], 9, pp. 248-261.
14. Konstantinova E.V. (2018) *Obespechenie bezopasnosti dannykh pri ispol'zovanii tekhnologii blokchein v klasternykh i oblachnykh vychisleniyakh* [Ensuring data security when using blockchain technology in cluster and cloud computing]. *Innovatsii i investitsii* [Innovations and investments], 2, pp. 340-347.
15. Khlestov O.N. (2007) *Eksterritorial'noe deistvie antimonopol'nogo prava Evropeiskogo Soyuza* [The extraterritorial operation of the antimonopoly law of the European Union]. *Zhurnal rossiiskogo prava* [Journal of Russian law], 6 (126), pp. 141-146.
16. Leslie C.R. (2012) Antitrust law as public interest law. *UC Irvine law review*, 2, pp. 885-909.
17. Schmidt J.P. (2013) Antitrust developments in the food sector in the EU. *European competition law review*, 34 (5), pp. 274-279.
18. Smirnova O.O. (2016) *Mirovye prodovol'stvennye krizisy 2008 i 2010 goda: prichiny i posledstviya* [The global food crises of 2008 and 2011: causes and consequences]. *Krymskii nauchnyi vestnik* [Crimean scientific bulletin], 4 (10), pp. 80-91.
19. Smirnova O.O., Agapova E.V., Elagina A.S. (2015) *Vozmozhnosti i ogranicheniya vyyavleniya tsenovoi diskriminatsii tret'ego tipa* [Possibilities and limitations of identifying price discrimination of the third type]. *Vestnik Samarskogo gosudarstvennogo ekonomicheskogo universiteta* [Bulletin of Samara State University of Economics], 5 (127), pp. 16-18.
20. Smirnova O.O., Shikhina N.I. (2016) *Normativnoe regulirovanie sluchaev tsenovoi diskriminatsii na rynkakh prodovol'stviya* [Regulation of the cases of price discrimination in food markets]. *Krymskii nauchnyi vestnik* [Crimean scientific bulletin], 4 (10), pp. 105-117.
21. Tichý L. (2014) The decline of the territoriality principle in EU antitrust law. *Rechts Zeitschrift für ausländisches und internationales Privatrecht*, 78 (1), pp. 193-228. doi: 10.1628/003372514X676718
22. Shashkova A.V. Corruption Is a Problem of Political Theory and Practice. *Montenegrin Journal of Economics*. Vol. 14, No. 3 (2018), 143-154.
23. Shashkova A.V. Corporations and the State: Emerging of the Problem of Corporate Liability. *Opción*, Año 34, Especial No.14 (2018):432-458.

24. Shashkova A.V. PRO ET CONTRA CRIMINALIZATION OF CORPORATE LIABILITY IN THE RUSSIAN FEDERATION. M. Kutafin University Law Review. Volume 2. October 2017. Issue 2. p. 544 -554

## **Антимонопольное регулирование продовольственных рынков ЕС**

**Смирнова Ольга Олеговна**

Кандидат экономических наук, профессор,  
Славяно-Греко-Латинская академия,  
105000, Российская Федерация, Москва, ул. Радио, 20;  
e-mail: oos39@mail.ru

### **Аннотация**

**Цель.** Целью работы является исследование антимонопольного регулирования продовольственных рынков в странах Европейского союза. **Методология.** Методология работы включает в себя применение таких частных научных методов, как исторический, а также общие методов научного познания – обобщения, конкретизации, анализа и синтеза. **Результаты.** Под влиянием кризиса продовольствия 2007 и 2010 года произошла трансформация современного антимонопольного законодательства в странах Европейского союза. В настоящее время оно ориентировано на учет влияния мировых цен на продовольствие, при этом все больше детализируются нормативные положения с целью как можно более эффективного регулирования наиболее характерных для продовольственного рынка нарушений антимонопольного законодательства. Кроме того, данная детализация в настоящее время касается в том числе и отдельных рынков продовольствия – оливкового масла, мяса и злаковых культур. Однако нормы данных нормативных актов входят в противоречие с положениями антимонопольного регулирования, при этом в настоящее время также не решена коллизия положения ст. 39 Договора о Европейском Союзе, которая определяет общие направления аграрной политики Европейского союза, и норм ст.ст. 101, 102, которые устанавливают недопустимые виды рыночного поведения производителей товаров и услуг. **Заключение.** При формировании правовой модели антимонопольного регулирования продовольственных рынков необходимо определить случаи допустимости антиконкурентного рыночного поведения участников агропродовольственных рынков, а также детализировать отдельными нормативными актами только вопросы определения рыночной власти и отдельные, наиболее характерные виды нарушений антимонопольного законодательства.

### **Для цитирования в научных исследованиях**

Смирнова О.О. Антимонопольное регулирование продовольственных рынков в ЕС // Экономика: вчера, сегодня, завтра. 2019. Том 9. № 1B. С. 857-863.

### **Ключевые слова**

Продовольственные рынки, антимонопольное регулирование, продовольственные рынки ЕС, продовольственный кризис, цены продовольственных товаров, антиконкурентные соглашения.

---

**Библиография**

1. Antitrust Guidelines in the agricultural sector // Official journal of the European Union. 2015. Vol. 58. URL: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2015:431:FULL&from=EN>
2. Bolotova Y. Agricultural production restrictions and market power: an antitrust analysis. URL: [http://ageconsearch.umn.edu/bitstream/196848/2/SAEA2015\\_AgProductionRestrictionsAntitrustAnalysis\\_Bolotova%2001-15-2015.pdf](http://ageconsearch.umn.edu/bitstream/196848/2/SAEA2015_AgProductionRestrictionsAntitrustAnalysis_Bolotova%2001-15-2015.pdf)
3. Carter M.R., Mesbah D. Can land market reform mitigate the exclusionary aspects of rapid agro-export growth? // World development. 1993. Vol. 21. No. 7. P. 1085-1100. doi: 10.1016/0305-750X(93)90001-P
4. Dragoi A.E., Iordache L. Antitrust policy impact on EU's agricultural sector // Knowledge horizons – Economics. 2016. Vol. 8. No. 1. P. 40-45.
5. ECN activities in the food sector. Report on competition law enforcement and market monitoring activities by European competition authorities in the food sector. URL: [ec.europa.eu/competition/ecn/food\\_report\\_en.pdf](http://ec.europa.eu/competition/ecn/food_report_en.pdf)
6. Guidelines on specific rules for olive oil, beef and veal and arable crops sectors // Official journal of the European Union. 2015. Vol. 58. URL: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2015:431:FULL&from=EN>
7. Leslie C.R. Antitrust law as public interest law // UC Irvine law review. 2012. Vol. 2. P. 885-909.
8. Schmidt J.P. Antitrust developments in the food sector in the EU // European competition law review. 2013. Vol. 34. No. 5. P. 274-279.
9. Tichý L. The decline of the territoriality principle in EU antitrust law // Rabels Zeitschrift für ausländisches und internationales Privatrecht. 2014. Vol. 78. No. 1. P. 193-228. doi: 10.1628/003372514X676718
10. Богданов Д.Д. Институциональные аспекты регулирования ценового поведения доминирующей фирмы // Таврический научный обозреватель. 2015. № 1. С. 15-16.
11. Богданов Д.Д., Смирнова О.О. Антимонопольное регулирование розничной торговли продовольственными товарами // Современная конкуренция. 2010. № 4 (22). С. 26-34.
12. Елагина А.С. Принципы устойчивого развития при регулировании продовольственных рынков: обобщение международного опыта // Таврический научный обозреватель. 2015. № 4-3. С. 154-155.
13. Константинова Е.В. Применение нейронных сетей для целей оптимизации состояний биржевой торговли // Инновации и инвестиции. 2018. № 7. С. 254-259.
14. Константинова Е.В. Глобализационные факторы становления сферы финансовых технологий // Экономика: вчера, сегодня, завтра. 2018. №9. С. 248-261.
15. Константинова Е.В. Методы квалиметрической оценки прогнозирования финансовой ситуации на рынках посредством нейронной сети // Экономика: вчера, сегодня, завтра. 2017. Том 7. № 7В. С. 200-208.
16. Константинова Е.В. Обеспечение безопасности данных при использовании технологии блокчейн в кластерных и облачных вычислениях // Инновации и инвестиции. 2018. № 12. С. 340-347.
17. Смирнова О.О. Мировые продовольственные кризисы 2008 и 2010 года: причины и последствия // Крымский научный вестник. 2016. № 4 (10). С. 80-91.
18. Смирнова О.О., Агапова Е.В., Елагина А.С. Возможности и ограничения выявления ценовой дискриминации третьего типа // Вестник Самарского государственного экономического университета. 2015. № 5 (127). С. 16-18.
19. Смирнова О.О., Шихина Н.И. Нормативное регулирование случаев ценовой дискриминации на рынках продовольствия // Крымский научный вестник. 2016. № 4 (10). С. 105-117.
20. Хлестов О.Н. Экстерриториальное действие антимонопольного права Европейского Союза // Журнал российского права. 2007. № 6 (126). С. 141-146.
21. Черныш А.В. Антимонопольные расследования в Европейском Союзе, права человека и Европейский Союз по правам человека // Актуальные проблемы российского права. 2014. № 8. С. 1778-1784.
22. Shashkova A.V. Corruption Is a Problem of Political Theory and Practice. Montenegrin Journal of Economics. Vol. 14, No. 3 (2018), 143-154.
23. Shashkova A.V. Corporations and the State: Emerging of the Problem of Corporate Liability. Opción, Año 34, Especial No.14 (2018):432-458.
24. Shashkova A.V. Pro et contra criminalization of corporate liability in the russian federation. M. Kutafin University Law Review. Volume 2. October 2017. Issue 2. p. 544 -554.