

Problematic Issues of Competition in the Outdoor Advertising Market

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Abstract

The article analyzes problematic issues related to competition and the legal regulation of the outdoor advertising market. This form of advertising remains effective in promoting goods and services, despite the rapid development of new technologies and the widespread popularity of the Internet. Outdoor advertising is one of the most heavily regulated types of advertising, with the current laws outlining several requirements and the necessity of obtaining a placement permit. However, the legislation governing the placement of outdoor advertising is not perfect. Some issues are controversial, and others are not addressed by the legislation at all. Since many matters concerning outdoor advertising placement are left to the discretion of local self-government bodies, there is a risk of creating additional barriers to market entry and negatively impacting competition in the market. Therefore, there is a need to analyze the problematic issues in the outdoor advertising market and find solutions. Based on the conducted research, the author proposes amendments to the current legislation to enhance competition in the placement of outdoor advertising.

Keywords: outdoor advertising; economic competition; unfair competition; market regulation; legal regulation of outdoor advertising.

Проблемні питання конкуренції на ринку зовнішньої реклами

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Анотація

У статті аналізуються проблемні питання конкуренції та правового регулювання ринку розміщення зовнішньої реклами. Така реклама є ефективним засобом просування товарів та послуг. Незважаючи на швидкий

розвиток новітніх технологій та широку популярність мережі Інтернет, зовнішня реклама не втрачає своєї популярності та ефективності. Зовнішня реклама є одним із найбільш юридично врегульованих видів реклами, до якого законодавством закріплено низку вимог, зокрема необхідність отримання дозволу на розміщення такої реклами. Проте законодавство в сфері розміщення зовнішньої реклами не є досконалим. Деякі питання є суперечливими, а деякі взагалі не врегульовані законодавством. Зважаючи на той факт, що багато питань щодо розміщення зовнішньої реклами залишені законодавцем у компетенції органів місцевого самоврядування, існує небезпека створення додаткових бар'єрів для входу на ринок і, як наслідок, негативного впливу на конкуренцію на ринку. Зазначене свідчить про необхідність аналізу наявних на ринку зовнішньої реклами проблемних питань та пошуку шляхів їх вирішення. На основі проведеного дослідження авторка пропонує внести зміни до чинного законодавства для посилення конкуренції на ринку розміщення зовнішньої реклами.

Ключові слова: зовнішня реклама; економічна конкуренція; недобросовісна конкуренція; регулювання ринку; правове регулювання зовнішньої реклами.

Introduction

Outdoor advertising emerged throughout North American and European urban areas in the late 1700s as a commercialization of exterior surfaces on highly-visible buildings [1]. Outdoor advertising is an integral part of modern society; it surrounds us everywhere and influences the formation of social consciousness. The outdoor advertising market is immensely popular among manufacturers, as it helps attract the attention of a wide range of consumers to goods and services.

Outdoor advertising reaches customers outside their homes – on the street, in public places and when traveling [2]. Evidence shows that advertising can open doors for an industrial salesperson, in addition, several studies found that advertising generates awareness and favourable attitudes thereby supporting sales rather than directly causing them [3]:

- can open doors for an industrial sales person (Ray, 1982) and several studies;
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Considering this, the legal regulation of the outdoor advertising market, including the placement of such advertising and competition in the market, is an important issue that requires detailed study. The current legal framework governing the outdoor advertising market is not perfect, and this imperfection can also have a negative impact on competition in the market.

The purpose of this article is to analyze the main issues concerning competition in the outdoor advertising market and to develop proposals for overcoming these problems and enhancing competition in the market.

The advertising market and its state in any country with a market economy serve as indicators of the country's economic, political, cultural, social, and innovative development. Competition is an inherent feature of market relations, and there exists an objective need for advertising in conditions of high market competition. At the same time, advertising itself is a factor that influences the level of competition.

The population's demand for goods and services plays a significant role in shaping the landscape of competition. Advertising serves to stimulate this demand, yet it also grows in response to favorable economic and financial conditions among the population. As such, the evolution of the advertising market undoubtedly reflects positive trends within both macro- and microeconomic realms. Conversely, a decline in this market serves as an indicator of adverse shifts in the economy and politics [4].

Competition is a fundamental concept that reflects the essence of market relations. Understanding the nature of competition, its various forms, manifestations, methods of competitive struggle, and the factors influencing the readiness of economic entities to engage in competition is crucial for enhancing the efficiency of these entities [5].

Competition entails a struggle between enterprises, representing an economic process of interaction between them. The objective of this interaction is to secure optimal sales conditions for products, meet the diverse needs of buyers, and consequently, yield higher profits.

Distinctive features of the outdoor advertising market, in comparison to other advertising markets such as transportation advertising, television advertising, radio advertising, and print media advertising, include specialized regulations for its governance, distribution methods, and the composition of market participants.

Currently, outdoor advertising stands as an indispensable form of advertising. It boasts qualities of high efficiency, subtlety, and accessibility across varying budgets. The popularity and significance of this advertising form stem from its ability to employ a diverse array of formats and combinations. Despite the advancements in advertising technologies like the Internet and digital media, outdoor advertising maintains its stability and even holds substantial developmental potential [6]. Many studies have proved that consumers are becoming accustomed to accessing product information online when they encounter offline advertisements [7].

Literature review

Numerous Ukrainian and international scholars have studied a broad range of advertising-related topics, including the legal aspects of advertising placement, encompassing: L.M. Zhukovska, Yu.I. Zorina, O.H. Kurchyn, L.V. Mamchur, M. Chepeliuk.

Nevertheless, the current economic legal scholarship lacks an all-encompassing examination of how the legal framework governing outdoor advertising placement influences competition within this market. This gap underscores the need for conducting the research reflected in the present article.

Outdoor advertising serves as an effective tool for influencing the consumer goods sector, tailored to capture the attention of wide segments of the consumers. In the present day, advertising ranks among the most important factors shaping individuals' perception of the world, shaping their value systems, and potentially even reshaping their lifestyles [8].

Materials and Methods

Considering the research subject outlined by the author, she chose to employ a comprehensive approach in applying research methods during her study. Specifically, through the use of theoretical analysis method, the author of the article successfully examined numerous existing theoretical studies in the field of economic law.

The methods of synthesis and critical analysis enabled the author to consolidate various theoretical sources and derive conclusions and generalizations. Additionally, the author employed the dialectical method, which facilitated a comprehensive investigation into and revelation of the nature of competition in the outdoor advertising market. To analyze the present legal framework and the content of legal norms, the author of the study utilized the formal legal method.

The formal-logical method enabled the identification of existing shortcomings in the current legal regulation of the outdoor advertising market and its competition, as well as the formulation of potential solutions for these challenges.

Through the intricate utilization of the abovementioned methods, the author successfully conducted a comprehensive study of the nature of competition in the outdoor advertising market, addressing its associated challenges. Our analysis encompassed an evaluation of how the degree of competition influences both the growth of the outdoor advertising sector and the overall state economy. We identified deficiencies within the existing legal framework concerning outdoor advertising placement, recognizing

their detrimental effects on the level and progression of competition in the examined market.

The comprehensive approach to selecting research methods was instrumental in unveiling the study's subject matter and formulating practical recommendations. The implementation and practical application of these recommendations are poised to yield a positive impact on competition in the outdoor advertising market.

Results and Discussion

Outdoor advertising captivates with its diversity, rendering it a universally effective medium to engage a vast spectrum of consumers. Based on their functional purposes, the subsequent categories of advertising can be discerned: posters and billboards (both mobile and stationary); printed promotional materials; advertisements affixed to corporate or public transportation, among others [9].

Advertising has long been an essential tool used by firms [10]. Advertising serves as a form of information for consumers, aiding them in discovering specific products and services, including their attributes, design, quality, and available alternatives. It's important to note that the information presented in advertising doesn't always precisely reflects the reality; rather, it often exaggerates the qualities of the product.

D.A. Kiveliuk underscores that the impact of advertising on consumers possesses a distinct nature with dual significance: firstly, to convey informative messages about product attributes, and secondly, to engage the consumer as a participant in the transaction [11].

Legal framework governing advertising activities

The existing legal framework for advertising activities comprises both laws and regulations. The legal norms governing activities in the field of advertising are primarily focused on preventing unfair competition in the advertising placement market and safeguarding consumer interests [12].

The current legislation that governs various aspects of advertising placement is complex in its nature, encompassing both private and public legal norms. This complexity arises from the necessity to harmonize both public and private interests within advertising relationships [13].

In accordance with para. 7 of Art. 1 of the Law of Ukraine "On Advertising" outdoor advertising means advertisement placed on special temporary and stationary constructions located in open areas as well as on exteriors of houses, buildings, on elements of street equipment, above street roads and traffic ways [14].

Advertising exclusively pertains to information regarding products or services with the intent of shaping or sustaining awareness among consumers, fostering their interest in said goods and services. As such, advertising should include calls to purchase a product or service, exaggerate its qualities, or highlight its notable qualities. Without these elements, information about a product or service wouldn't be classified as advertising [15].

Certain requirements for the placement of outdoor advertising are also laid down in the following legal acts: Laws of Ukraine "On Advertising", "On Improvement of Settlements", "On Local Self-Government in Ukraine", "On Protection of Cultural Heritage", "On the Permit System in the Field of Economic Activities", "On Administrative Services"; "Standard Rules for Outdoor Advertising Placement", Approved by Resolution of the Ukrainian Government dated December 29, 2003 No. 2067; Standard Rules for Outdoor Advertising Placement Outside the Boundaries of Settlements, Approved by Resolution of the Ukrainian Government dated December 5, 2012 No. 1135.

Recognizing the inadequacy of the current legal framework for outdoor advertising, the legislator introduced for consideration Draft Law No. 5094 "On Amendments to Certain Laws of Ukraine to Improve Legislation in the Field of Outdoor Advertising". This Draft Law, aimed at amending certain Ukrainian laws to enhance the legislation governing outdoor advertising, was passed in its first reading. Subsequently, on February 18, 2023, the draft law was added to the agenda of the Verkhovna Rada of Ukraine [16].

Presently, the draft law has not yet been enacted. Nonetheless, we deem its adoption imperative in the near future, as the law seeks to align and standardize the legal framework governing outdoor advertising.

Beyond the various requirements stipulated in the Law of Ukraine "On Advertising", the primary distinctive aspect of outdoor advertising placement is the necessity to obtain a permit for its placement.

According to para. 3 of the Standard Rules for outdoor advertising placement, the placement of outdoor advertising requires permits and must adhere to the process outlined by the executive bodies of village, settlement, and city councils [17].

A permit is a document of a specified format, granted to an outdoor advertising distributor based on a resolution by the executive body of a village, settlement, or city council. This document confers the privilege to display outdoor advertising within a defined timeframe and location. The permit serves as the legal basis linking the initiation of contractual relationships in the outdoor advertising market, effectively legitimizing the placement of advertisements.

The variety of outdoor advertising means is indeed impressive, making it challenging to discern consistent patterns in how advertisers present their intended messages to the target audience. These messages can take on various forms. Furthermore, as cutting-edge technologies continue to advance, novel advertising mediums continually emerge.

Existing problems of the outdoor advertising market

The Antimonopoly Committee of Ukraine, in the Report based on the results of their research of the outdoor advertising market, pinpointed the most common problems, including [6]:

- 1) Demands for the submission of supplementary documents beyond those outlined in the Standard Rules for outdoor advertising placement, as prerequisites for obtaining an advertising placement permit;
- 2) Additional barriers to market access include the involvement of additional bodies in market admission procedures;
- 3) Different (discriminatory) fees for the temporary use of advertising media locations without objective reasons result in the creation of unequal conditions to market access for conducting business activities;
- 4) An existing moratorium on issuing permits for the placement of outdoor advertising.
- 5) An advantage of communal enterprises is their ability to combine administrative functions and economic activities in the market. This positioning gives them a favorable edge over private ownership competitors;
- 6) The lack of legislative regulation regarding the dismantling procedure of advertising media results, among other things, in the arbitrary and illegal placement of advertising structures. This distortion of competition in the market is also a consequence;
- 7) Unauthorized placement of outdoor advertising without obtaining the required permit.

A thorough analysis of the outlined issues in the outdoor advertising placement market leads to the conclusion that these problems collectively exert a negative influence on market competition, causing varying degrees of distortion. Furthermore, each of these issues can be traced back to the imperfect legal regulations governing the outdoor advertising market.

An additional distinctive characteristic of these problems is their interconnected nature. For instance, the presence of supplementary market entry barriers or discriminatory conditions can give rise to issues such as unauthorized outdoor advertising placement. Similarly, unregulated dismantling of advertising infrastructure can contribute to a scenario conducive to arbitrary and illegal placement of advertising structures.

Author's proposal

Considering the adverse outcomes stemming from issues in the outdoor advertising market, the author in the present article proposes implementing the following modifications to the existing legislation:

1. It is recommended to develop and approve a comprehensive Procedure for dismantling advertising media. This procedure should intricately outline the conditions and steps involved in dismantling advertising infrastructure. By doing so, it would effectively curtail arbitrary and unauthorized placement of advertising structures. This, in turn, would mitigate the potential for market competition distortion in the outdoor advertising sector.

2. Integrate into the existing legislation provisions aimed at strengthening oversight over the illegal placement of outdoor advertising. The current supervision of compliance with legal prerequisites for permit acquisition proves insufficient, leading to frequent cases of outdoor advertising being displayed without proper authorization.

3. Propose the prohibition of enacting moratoriums on outdoor advertising placement. However, it is advisable to mandate local self-government bodies to seek consultation with the Antimonopoly Committee of Ukraine in cases of potential need for such a moratorium under exceptional circumstances. In such instances, the local self-government entity should substantiate the justification and necessity for introducing an advertising moratorium or permit ban. The Antimonopoly Committee of Ukraine, in turn, would evaluate the moratorium's potential impact on market competition, granting approval only if significant negative consequences are not anticipated.

4. Enact a prohibition on granting temporary use of advertising media locations to communal enterprises that combine administrative functions and economic activities in the outdoor advertising placement market. Implementing these measures will effectively uphold a robust level of competition in the market.

5. Enhance monitoring of any additional barriers and discriminatory conditions in the market entry, aiming to prevent discrepancies in fees for temporary usage of advertising media locations without valid justifications. Specifically, it is essential to establish an exhaustive catalog of exceptional circumstances at the legislative level where varying fees for temporary advertising location use are not considered to be discriminatory.

These described recommendations have the potential to enhance competition in the outdoor advertising market, while also enhancing transparency and clarity of market conditions for business entities. Consequently, this will encourage enterprises to engage in outdoor advertising activities more frequently, contributing to the promotion of

goods and services. Ultimately, this could lead to an improvement in the economic well-being of the state.

Conclusions

Competition serves as a vital indicator of a country's development and state of economics in a country with a market economy. It is through competition that superior products, whether goods or services, are nurtured. Advertising plays a pivotal role in fostering this competitive environment, yet it simultaneously raises the significant issue of competition within the advertising market itself.

In the article, the author arrives at the conclusion that the legal regulations governing the outdoor advertising placement market are not perfect. The author analyzes contemporary issues within the outdoor advertising market and proposes recommendations for amending the existing legislation. These suggestions aim to foster competition in the outdoor advertising placement market, ultimately leading to the growth and enhancement of the market itself.

Specifically, the author suggests the following measures: developing and implementing a Procedure for dismantling advertising media; enhancing oversight against unauthorized outdoor advertising placement; imposing a prohibition on introducing moratoriums for outdoor advertising placement without approval from the Antimonopoly Committee of Ukraine; restricting the granting of temporary usage of advertising media locations to communal enterprises merging administrative functions and economic activities in the outdoor advertising market; strengthening control over potential additional barriers or discriminatory access conditions to the market, thereby preventing disparate fees for temporary advertising location use without valid and objective justifications.

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