

Antitrust legislation as a tool for shaping the competitive environment: Social consequences for business process management

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Abstract. The aim of the study was to reveal the mechanism by which antitrust legislation transforms legal prohibitions into changes in the organisational behaviour of companies, and to determine the social consequences of this process for business process management in the context of reforming EU and Ukrainian competition law. The study was carried out on the basis of a normative and doctrinal analysis of primary competition law acts, official guidelines of the European Commission and reports of international organisations for 2020-2025. It was established that antitrust legislation performs not only a sanctioning but also a structuring function, setting the legal parameters of the market by defining the boundaries of market power, procedural guarantees and standards of proof. A comparative analysis of EU and Ukrainian law revealed a common architectural logic in both legal systems with significant differences in the thresholds of concentration control: while European regulation is focused mainly on large-scale transnational agreements, Ukrainian thresholds cover a much wider range of entities. It was found that the requirements of the regulation of vertical agreements and horizontal guidelines of the European Commission transformed legal prohibitions into specific procedures for managing contracts, data and intercompany projects, while concentration control formed a separate regulatory regime for mergers and acquisitions with specific points of legal screening. According to the Antimonopoly Committee of Ukraine for 2024, out of 365 considered applications for concentrations, 131 were returned without consideration due to procedural shortcomings. The reform of Ukrainian competition legislation in 2023 confirmed convergence with European standards by expanding inspection powers and modernising the immunity mechanism. The study found that between 2020 and 2025, antitrust compliance transformed from an external legal constraint into an element of the internal architecture of corporate governance. The results have practical implications for companies developing compliance programmes, for regulators assessing the effectiveness, and for competition law researchers in the context of comparative studies

Keywords: compliance; market power; merger control; enforcement; digital markets; transparency of procedures

Introduction

Ukraine's growing European integration ambitions and its course towards EU membership led to increased interest in reforming antitrust regulation as one of the key instruments of market transformation. The concentration of economic power, the monopolisation of certain industries, and the spread of unfair competitive practices directly affect the conditions for conducting business, the structure of enterprise costs, and the quality of management decisions. At the same time, antitrust legislation forms not only the legal framework of competition, but also the social context of business functioning, determining the accessibility of markets, the level of consumer prices, and working conditions. Understanding the relationship between competition regulation and social consequences for business process management remains an urgent theoretical and practical task, as Ukraine carries out a comprehensive reform of competition law in order to comply with EU standards.

The comparative legal dimension of antitrust regulation was studied by V.Yu. Strilko *et al.* (2020), who found that the Antimonopoly Committee of Ukraine, in terms of quantitative and qualitative indicators, generally corresponds to the level of similar institutions in Poland and Germany. At the same time, scientists concluded that the extension of the relevant EU directives to the Ukrainian legal system is a necessary prerequisite for more effective integration. The related issues of the administrative and legal nature of competitive relations were studied by I. Kravtsova (2020), who proved that economic competition is an independent object of administrative regulation and justified the distinction between public law and economic law mechanisms for its protection. The author identified key gaps in the system of administrative support for the competitive environment.

The issue of harmonisation of Ukrainian legislation with EU norms was investigated by O.O. Bakalinska *et al.* (2021),

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who found that the absence of a full-fledged mechanism for regulating the exchange of information between competitors in Ukraine creates significant risks for market entities and complicates the enforcement of the Antimonopoly Committee established on the basis of Law of Ukraine No. 2210-III “On the Protection of Economic Competition” (2001). The authors noted the need to urgently fill this gap with an orientation to the standards of Articles 101 and 102 of the Consolidated Version of the Treaty on the Functioning of the European Union (2012). A systemic view of the state of regulatory regulation of competition was proposed by O.S. Serdyuk & I.P. Petrova (2022), who recorded a steady trend towards a reduction in the number of violations during the period under study while maintaining the dominant share of abuses of monopoly positions. The researchers confirmed that the current legislation requires improvement both in the regulatory sphere and in law enforcement practice.

Mechanisms for combating unfair competition as a separate legal institution were characterised by O. Bakalinska (2023), who found that the existing legislative structures are inferior in effectiveness to similar instruments of EU law and do not correspond to modern market realities. The author substantiated that reforming these mechanisms is a necessary prerequisite for Ukraine’s integration into the Single Market. The challenges of the digital economy for competition law were examined by A. Gerasymenko & N. Mazaraiki (2023), who found that the current legislation does not cover network effects, algorithmic pricing, and data concentration. The researchers proposed a conceptual model for adapting antitrust law to the conditions of the digital economy. The sectoral cross-section of competition policy was reflected by Yu. Kanaryk & B. Surzhok (2023), who proved that the antitrust regulation of the agricultural products market needs to be updated taking into account international standards. Scientists formulated specific legislative proposals for the institutional reorganisation of the agricultural market. State aid control as an element of the competitive environment was studied by D. Andrukhovych (2023), who distinguished between the concepts of monitoring and control and established that an effective system of such control is an integral part of competition policy. The author proved that in conditions of economic shocks, it is the institutional capacity of control bodies that determines the real level of competition in the market.

The social consequences of competition regulation became the subject of extensive interdisciplinary analysis in the international scientific literature. A. Ezrachi *et al.* (2022) found that the key mechanism for transmitting the influence of competition law on the distribution of income is the level of enterprise profits. Scientists substantiated the ability of active law enforcement to significantly limit the growth of economic inequality, especially in conditions of low levels of labour protection. A. Zac (2022), based on a comparative analysis, found that countries with the American antitrust model demonstrate a higher level of income inequality than those that follow the EU model. This result allowed arguing that the choice of a competition law model is directly correlated with the nature of the distribution of social welfare. An applied dimension of this connection was revealed by C. Decker *et al.* (2022), who calculated that competition law enforcement in the UK provided proportionally greater savings for low- and middle-income households. The results obtained empirically confirmed the ability of competition

policy to perform a redistributive social function. M. Battaglion *et al.* (2023) found that the digital transformation of markets and the growth of protectionist pressure require a fundamental update of regulatory instruments. Researchers proved that without enhanced coordination between institutional actors, regulators are unable to effectively counteract new forms of abuse of market power. Despite a wide range of developments, the complex relationship between antitrust legislation and social consequences for business process management in the context of European integration transformation remains insufficiently studied.

The purpose of this study was to determine the role of antitrust legislation as a tool for shaping the competitive environment and to identify its social consequences for business process management. To achieve this goal, the following tasks were formulated:

- 1) to reveal the legal content and functions of antitrust legislation as a regulatory tool for shaping the competitive environment;
- 2) to establish the social consequences of antitrust regulation for managing business processes of entities;
- 3) to substantiate the institutionalisation of antitrust compliance as an element of corporate governance in the context of reforming the competition law of the EU and Ukraine.

Materials and methods

The conceptual framework of the study was the institutional-legal approach, within which antitrust legislation was considered not as a set of isolated prohibitions, but as a systemic regulatory mechanism that forms the institutional environment of the market and determines the behavioural parameters of its participants. This approach allowed combining regulatory analysis with the sociological dimension of regulation, where legal norms are considered as a factor in changing the organisational culture and internal procedures of enterprises. To analyse the social consequences of antitrust regulation, a qualitative content analysis of law enforcement materials was additionally used: decisions of the European Commission (2025a; 2025b) in cases of cartels, abuse of dominant position and vertical restraints, which contain sections on the theory of harm and market effects, as well as decisions and regulations of the Antimonopoly Committee of Ukraine (2020; 2024), which describe the mechanism of the violation, the arguments of the parties and the sanctions applied.

The main research method was the formal-legal method, which was used to analyse the regulatory content of key competition law acts: Articles 101-102 Consolidated Version of the Treaty on the Functioning of the European Union (2012), Council Regulation No. 1/2003 (2002), Council Regulation No. 139/2004 (2004), Commission Regulation No. 2022/720 (2022) and the Digital Markets Act (2022). At the level of Ukrainian law, this method was used to study the text of Law of Ukraine No. 2210-III (2001), in particular in the version introduced by Law of Ukraine No. 3295 (2023). Formal and legal analysis allowed determining the structural logic of each regulatory act, establishing a distinction between *ex ante* and *ex post* regulatory instruments, and clarifying how the legislator distributes procedural responsibilities between the regulator and entities. The system approach ensured that antitrust compliance was considered as a holistic organisational system, the elements of which (risk

assessment, decision documentation, reporting channels, response to inspections) are interdependent and cannot be assessed in isolation. This approach was used in the analysis of the International Competition Network (2021; 2022) guidance documents, the Organisation for Economic Co-operation and Development (2021) materials on compliance programmes, and the ISO 37301:2021 (2021).

The doctrinal-analytical method was used to process analytical and advisory materials of international organisations, in particular reports of the United Nations Conference on Trade and Development (2021; 2023a; 2023b) on the experience of compliance in Latin American countries – a region chosen as a comparative context due to the structural similarity of the conditions for institutional building of competition authorities with Ukrainian ones: limited initial capacity of regulators, transition to a market economy and gradual implementation of international law enforcement standards, analytical reports on competition and consumer protection in the digital economy, thematic reports on competition and sustainable development, as well as reports of the Organisation for Economic Co-operation and Development (2023; 2024b) on the consumer benefit standard and the connection between competition and inequality. This method made it possible to establish how doctrinal discussions about the goals of competition law are transformed into specific regulatory approaches and requirements for business processes.

Results

Antitrust legislation as a mechanism of legal architecture of the market. As a result of the normative and doctrinal analysis, it was established that antitrust (competition) legislation in modern legal systems performs not only a sanctioning but also a structuring function: it sets the legal parameters of the market as a socio-economic institution by defining the permissible limits of market power, procedural guarantees for economic entities and standards of proof for control bodies. At the EU level, this architecture is built around two basic prohibitive structures: the prohibition of anticompetitive agreements and concerted practices and the

prohibition of abuse of a dominant position, enshrined in Articles 101-102 of the Consolidated Version of the Treaty on the Functioning of the European Union (2012). An analysis of the text of Article 101 shows that it is focused on the protection of competition as a process and is not limited to cartel agreements in the narrow sense: any coordination mechanisms between competitors or supply chains that can affect trade between Member States fall under its scope. Article 102, in turn, fixes the limits of permissible behaviour of an enterprise with market power, focusing on abuse, and not on the very fact of dominance as such. This distinction is of direct importance for the management of business processes: legal risk arises not from the market position of the enterprise in itself, but from the behaviour that the company carries out on the basis of this position, which turns the analysis of behavioural decisions into a mandatory element of internal control.

The procedural architecture of the application of Articles 101-102 of the Treaty on the Functioning of the EU is determined by Council Regulation No. 1/2003 (2002), which established a model of decentralised enforcement: the powers of national competition authorities and courts of the Member States to apply EU law alongside the Commission, as well as the investigative tools at the Commission's disposal, in particular requests for information and on-site inspections. A separate structural block is the control of concentrations, regulated by Council Regulation No. 139/2004 (2004): it embeds in transactional business processes the obligation to notify or obtain authorisation in cases where the concentration reaches the thresholds of significance for the internal market, determined by the aggregate worldwide and pan-European turnover of the parties. The consequence of this mechanism is that the legal qualification of the deal begins at the structuring stage, rather than after completion, which changes the distribution of responsibilities between the mergers and acquisitions (M&A) team, the legal function and financial analysis. A comparative systematisation of process triggers for merger control in EU and Ukrainian law, as well as the impact on the management of M&A processes, is given in Table 1.

Table 1. Process triggers for merger control in the EU and Ukraine and integration into M&A business processes

Process element	EU	Ukraine	Process implications for M&A management
Legal basis	Council Regulation No. 139/2004 (2004)	Law of Ukraine No. 2210-III "On the Protection of Economic Competition", section 4	Legal screening for merger and standstill risks is required at the stage of structuring the deal
Thresholds for mandatory notification	(1) Worldwide aggregate turnover >EUR 5 billion and EU turnover of each of two or more participants >EUR 250 million; or (2) worldwide aggregate >EUR 2.5 billion + thresholds in three or more Member States (EUR 100/25 million) + EU turnover of two or more participants >EUR 100 million	(1) Aggregate assets or sales of participants >EUR 30 million worldwide and assets or sales in Ukraine of each of two or more participants >EUR 4 million; or (2) assets or sales in Ukraine of the object of acquisition or creation >EUR 8 million and the global turnover of the other participant >EUR 150 million	The "data room" and financial model require consolidated group data (turnover, sales, assets), a legally correct definition of the group and control, and a schedule of regulatory conditions
Prohibition of implementation until authorisation (standstill)	The implementation of the concentration is prohibited until the Commission's decision or the expiration of the phase I period without objections	A concentration requiring authorisation cannot be implemented until the Antimonopoly Committee of Ukraine's decision is received	Hold-separate and clean team rules are required; prohibition of early integration of IT, commerce, prices, client lists

Table 1, Continued

Process element	EU	Ukraine	Process implications for M&A management
Terms of basic consideration	Phase I: 25 business days; Phase II: 90 business days with extensions	Up to 30 days from the date of acceptance of the application; simplified procedure up to 25 days	The timeline of the deal should include: (a) preparation of the package, (b) deadlines for responses to inquiries, (c) a buffer for the in-depth phase
In-depth investigation	Transition to Phase II in case of serious doubts about the compatibility of the concentration with the internal market	If grounds for prohibition appear, proceedings are initiated in the case according to the procedure of the Antimonopoly Committee of Ukraine	Ready-made scenarios are required: economic justification, protection of market definition, effect models, a package of possible remedies
Practical Metrics (Ukraine, 2024)	-	365 cases of concentration permits; 364 permits granted; 131 applications returned without consideration or refusal to decide; 12 cases with in-depth examination in the central office	The quality of the application and readiness for the in-depth phase are decisive: the return of the application delays the deal and increases transaction costs

Source: compiled by the author based on Antimonopoly Committee of Ukraine (2024)

Table 1 illustrates that the merger control systems in the EU and Ukraine, despite differences in thresholds, reproduce a common procedural logic: the obligation of ex ante notification and the standstill rule transform mergers and acquisitions from a purely commercial transaction into a regulatory process with clearly defined deadlines and control points. Practical statistics of the Antimonopoly Committee of Ukraine for 2024 demonstrate that the vast majority of concentrations are approved, but a significant proportion of applications are returned without consideration due to procedural shortcomings, which emphasises the impact of the quality of preparation of the package of documents on the duration and outcome of the procedure. A significant difference remains the level of thresholds: Ukrainian thresholds are focused on a much smaller scale of deals compared to the EUMR, which covers a wider range of transactions and requires smaller companies to incorporate regulatory screening into the early stages of M&A planning. The standstill rule, combined with hold-separate requirements, forms a separate operating regime for the deal team, within which coordination between the parties before obtaining permission is legally limited, thereby requiring early design of the pre-approval architecture. Taken together, the table confirms that concentration control is not only a legal procedure, but also a structural element of transaction risk management, built into corporate business processes. Thus, in the practice of large M&A deals, mergers, and acquisitions teams form separate regulatory plans-schedules, which include the preparation of a package of documents for notification to the regulator, the introduction of clean team protocols for the pre-approval period and the reservation of buffer periods for a possible in-depth review phase.

Analysis of the updated European Commission Notice No. C/2024/1645 (2024) on the definition of the relevant market has shown that this document directly links market definition to the application of Articles 101-102 of the Treaty on the Functioning of the EU and merger control and clarifies: market definition is an intermediate analytical step that does not in itself predetermine the conclusion on the presence of a violation or competitive effects. At the same time, the Communication expands the methodological basis of the assessment, including the analysis of digital

markets, network effects, non-price competition and innovation pressure, which was not previously fully covered. From the point of view of business process management, this means increasing the requirements for internal analytical procedures: modelling of interchangeability, assessment of geographical boundaries, collection of data on consumer behaviour become a necessary preparatory stage before potential interaction with the regulator, since the legal qualification of dominance or significant restriction of competition begins to depend on the quality of the primary economic justification that the company is able to provide.

In the Ukrainian legal sphere, a similar construction is reproduced in the Law of Ukraine No. 2210-III (2001), which systematically combines the prohibition of anti-competitive concerted actions (section 3), control of concentrations (section 4), as well as the mechanism of liability for abuse of a monopoly (dominant) position (section 2). Analysis of the text of the Law shows that the Ukrainian model, similar to the European one, is built around the categories of “market”, “economic entity” and “economic competition”, however, with an increased role of the administrative procedure as an instrument of preventive influence on the market structure, in particular through permits for concentrations, approval of certain categories of concerted actions and consideration of relevant applications of economic entities. The reform introduced by Law of Ukraine No. 3295 (2023), significantly modified this design: the regulatory changes included increasing the resource autonomy of the Antimonopoly Committee of Ukraine, expanding and detailing the inspection powers and the regime for the seizure of evidence, improving the leniency programme or its mitigation (leniency, i.e. the mechanism under which a cartel participant who was the first to voluntarily report a violation and cooperates with the body can receive full or partial exemption from the fine), introducing joint and several liability as a safeguard against evasion of fines, and granting the Committee the right to issue regulations to ensure the implementation of its own decisions (Organisation for Economic Co-operation and Development, 2024a). Additionally, after the 2023 amendments, Article 31 of the Act allowed parties who filed an application for permission to conduct concerted actions to access the case file after establishing the grounds for the pro-

hibition, which increased the transparency of the relevant procedure (Organisation for Economic Co-operation and Development, 2025).

The results of the comparative analysis allowed identifying a trend towards hybridisation of competition regulation in response to the specifics of digital markets and network effects. The Digital Markets Act (2022) established a set of direct obligations for “gatekeepers” (systemically important platforms identified by the Commission) and a procedure for the identification, forming a regime of *ex ante* obligations that should prevent unfair practices even before these practices qualify as abuse of dominance in the classical logic of Article 102 of the Digital Markets Act. An analysis of the text of this Regulation shows that it does not replace classic antitrust prohibitions, but changes the balance between the need to prove competitive effects in each specific case and the regulatory establishment of standards of conduct that are mandatory *a priori*. This approach has direct social consequences: establishing obligations for gatekeepers without the need to prove harm in each individual case accelerates the elimination of practices that limit the access of small and medium-sized businesses to platform markets, reduces information asymmetry between the platform and its users and creates more predictable conditions for innovative competition. In the future, such a regulatory approach may contribute to a wider distribution of the benefits of the digital economy among market participants, in particular by lowering entry barriers for new players and improving the quality and diversity of services for end users. The Commission’s 2024 Competition Report notes that enforcement this year was seen in the broader context of the twin transitions, green and digital, without departing from the basic tests of Articles 101-102 TFEU, which indicates a broadening of the political and legal context of antitrust interventions (European Commission, 2025a). Data on fines in cartel cases show fluctuations in sanctioning activity: in 2022 the total amount of fines was EUR 188,594,000, in 2023 – EUR 88,951,000, in 2024 – EUR 48,652,000 (European Commission, 2025b). These indicators do not reflect a decrease in the severity of the approach, but rather the objective dependence of activity on the portfolio of cases and the stages of the completion in a particular budget year, which is a standard characteristic of the cyclical nature of law enforcement in the field of cartel violations.

Institutionalisation of compliance in business process management. Analysis of regulatory and advisory documents from the years under study showed that antitrust legislation in this period actually moved from the level of external legal risk to the level of internal architecture of business process management: it began to determine not only the boundaries of permissible market strategies, but also the procedures for the design, approval, documentation, and control. A key link in this shift was the institutionalisation of antitrust compliance as a system for preventing violations, where the legal requirement (prohibition of cartels, abuse of dominance, anticompetitive vertical restraints) is transformed into a set of manageable process rules for sales, procurement, marketing, work with partners and for senior management. According to the International Competition Network (2022), effective compliance involves regular risk assessments, clear policies for communicating with competitors and counterparties, procedures for escalating suspicious situations, internal monitoring, and disciplinary action for

high-risk areas. The Organisation for Economic Co-operation and Development (2021) emphasises that compliance programmes that really impact an organisation’s behaviour include not only staff training, but also risk assessments that take into account the specifics of markets and products, autonomous channels for reporting violations, and mechanisms for verifying the effectiveness of the programme itself. The United Nations Conference on Trade and Development (2023a), in a study of the experience of Latin American countries, recorded that companies that formalised internal compliance procedures had a lower level of violations and a higher level of readiness to interact with the regulator compared to companies that were limited to declarative codes of conduct. For Ukraine, it is indicative that the Antimonopoly Committee of Ukraine, back in 2020, used the tool of recommendations as a form of preventive influence, directly expecting organisational measures from entities and authorities to prevent violations: thus, the reactive model (fine after detection) is supplemented by a procedural requirement to prevent and correct behaviour before opening a case (Antimonopoly Committee of Ukraine, 2020).

At the operational level, it was established that the most process-intensive transformations occur in the vertical block, in particular in distribution, pricing, work with dealers, franchisees, marketplaces and online channels. The Vertical Block Exemption Regulation and the corresponding Commission Guidelines created a structured matrix of what is permitted and prohibited for businesses, which requires legal due diligence to be built into the life cycle of a commercial contract: from the development of a contract template to post-contractual monitoring of performance (Commission Regulation No. 2022/720, 2022; Communication from the Commission..., 2022). An analysis of the text of the Vertical Block Exemption Regulation confirms that the “safe harbour” for vertical practices is tied to compliance with market shares (30% for the supplier and 30% for the buyer) and to the absence of so-called “hard limits”, primarily resale price fixing and absolute territory allocation. Because of this, companies in the practice of business process management are forced to formalise the rules for distinguishing between recommended and fixed prices, standards for communications with dealers regarding promotions, bonuses and price monitoring, as well as approaches to the allocation of territories and customers without transforming segmentation into a ban on passive sales. The Commission’s guidelines on vertical restraints additionally regulated the “dual distribution” regime, in which the supplier simultaneously acts as a competitor of its distributors: in this case, the issue of competition arises not from the text of the contract, but from what data is collected and who has access to commercially sensitive information, in particular sales volumes, prices and customer segments, and how this data is used for strategic decisions. This forces businesses to translate antitrust control into the plane of data management: access restrictions, log keeping, the use of “clean rooms” when analysing partner data and a clear separation of roles between sales, analytics and legal functions.

In the area of horizontal cooperation and project cooperation, an analysis of the 2023 Guidelines of the European Commission (Communication from the Commission No. 2023/C 259/01, 2023) on horizontal agreements showed that this document describes in a structured way risk scenarios for typical business processes: information exchange,

joint procurement, research, and development (R&D) co-operation, standardisation, production and commercial arrangements between competitors. These scenarios cover the process-management dimension: determining the composition of intercompany project working groups, meeting agendas and rules for the recording, prior approval of materials, and checking the presence of sensitive information in presentations and correspondence. The 2023 Guidelines also contain a separate section on agreements related to sustainable development, stating that even socially oriented initiatives can pose a risk of coordination of market behaviour if prices, volumes, or market access conditions are in fact agreed within the framework of a horizontal project. Therefore, social or environmental effects do not negate the need for legal scrutiny at the business process level. The updated

Communication from the European Commission (2024) on the definition of the relevant market provided modern guidelines for the analysis of digital markets, innovative products and non-price competition, which encourages companies to formalise analytical procedures in M&A planning, new product launches, selection of sales channels and assessment of market power. The specificity of non-price competition in the context of merger control is further highlighted in the analytical material of the European Commission Directorate-General for Competition (2024b), which found that the assessment of mergers is increasingly focused on indicators of quality, diversity, innovation and access conditions, and not exclusively on price effects. A generalised matrix of antitrust compliance by types of business processes, legal risks, social effects and control indicators is given in Table 2.

Table 2. Antitrust compliance matrix: business processes, legal risks, social impacts and control indicators

Business process	Typical risk scenario	Social impact	Early indicators	Minimum set of process controls
Procurement and tenders	Bid-fixing, “rolling” of winners, division of lots	Inflated costs of public and corporate procurement, decline in supply quality, distrust of procedures	Low number of participants; repetitive patterns of winners; abnormally close prices; identical errors in documents	“No. contact” policy for bidding; control of the chain of bid preparation; decision log; independent review
Sales, pricing, distribution	Resale price fixing, hidden discount coordination, territorial restrictions with foreclosure effect	Price increases, narrowing of choice, unequal conditions for small sellers	Template requirements to “keep the price”; penalties for discounts; dealer complaints; sharp synchronous price changes in the network	Standards of communication with dealers; review of standard contracts; control of promotional campaigns by the legal function
Industry associations, working groups	Exchange of sensitive information (prices, volumes, customers), standardisation with discriminatory access	Entry barriers for SMEs, reduction of innovation pressure	Meetings without agenda or minutes; informal exchange of market forecasts; unmanaged messaging	Rules for participation in meetings; legal screening of materials; minutes; list of prohibited topics
Data, platforms, ecosystems	Self-privileging, discriminatory access to interfaces and data, interoperability limitations	Decreased quality and innovation, market closure, asymmetry of opportunities for business users	Increased complaints from business users; changes in access rules without justification; drastic redistribution of traffic or ranking	Data and access governance (roles, logs); non-discrimination criteria; audit of ranking rules; complaint handling procedure
M&A and integration	Premature coordination (gun-jumping), exchange of sensitive data without “clean rooms”, integration before permission	Risk of weakening competition de facto until regulatory control is completed	Joint pricing or sales committees before closing the deal; access to Customer Relationship Management and margin data	Clean team and clean room; hold-separate; data access protocols; control of management communications
Internal control and response	Unpreparedness for requests and inspections, chaotic document storage	Growing compliance costs and disputes; falling trust in the company and in market rules	Lack of retention policy; unmanaged messaging; lack of communication channels	Compliance management system (policies, risk assessment, training, monitoring, speak-up channel); response protocol

Source: compiled by the author based on ISO 37301:2021 (2021), International Monetary Fund (2021), Organisation for Economic Co-operation and Development (2021; 2024b), International Competition Network (2022)

Table 2 shows the systemic relationship between legal risks, organisational behaviour and social consequences of antitrust regulation in terms of six types of business processes that together cover the entire operating cycle of a company: from procurement and sales to data management and response to inspections. The main methodological feature of the matrix is that it establishes a connection between early risk indicators and a minimum set of controls, not limited to a declarative description of prohibited actions, which is

consistent with the Organisation for Economic Co-operation and Development approach to assessing the effectiveness of compliance programmes. The Procurement and Tenders block demonstrates that antitrust risk most often materialises not through explicit collusion, but through process patterns, the detection of which requires analytical monitoring, which is a conclusion confirmed by the Organisation for Economic Co-operation and Development sectoral reviews on public procurement. The social dimension of each row of the

matrix records those legal violations in business processes translate into tangible social effects: increased prices, asymmetry of bargaining power, reduced innovation and market foreclosure, which are consequences documented in the International Monetary Fund's studies on the growth of market concentration.

The analysis of procedural aspects of law enforcement showed that business process management in competition law includes not only a preventive but also a reactive component, namely the readiness to interact with the competition authority in the format of inspections, information requests, internal investigations and corrective measures. The recommendations of the Organisation for Economic Co-operation and Development (2021) emphasise that legal risks are exacerbated where an organisation does not have defined procedures for document retention, channels for reporting violations, rules for conducting internal investigations and systems for monitoring management communications. Accordingly, antitrust compliance in business processes has two interrelated dimensions: regulating normal commercial activities (contracts, meetings, data, sales) and regulating crisis scenarios when rapid legal assessment and stopping of risky practices are required. This approach is consistent with the position of the International Competition Network (2022), which noted that an effective compliance programme changes organisational behaviour, translating informal agreements into the sphere of prohibited practices and creating internal incentives for caution, fixing decisions and abandoning risky market practices. Thus, antitrust law begins to function as a standardiser of organisational behaviour: it sets minimum parameters of process discipline regarding who and how approves commercial initiatives, what data can be collected and exchanged, how industry association meetings are formalised, how minutes are kept and documents are stored. This brings antitrust compliance closer to corporate governance and internal control as broader management functions, rather than reducing it to a separate legal service.

Social consequences of regulation and transparency requirements. The analysis of approaches to the objectives of competition law showed that antitrust legislation is considered in modern legal doctrine and regulatory practice not only as a technical tool for maintaining market efficiency, but also as a regulatory mechanism that shapes socially significant parameters of the functioning of the economy: fairness of access to markets, quality of consumer choice, predictability of rules for small and medium-sized businesses, as well as trust in state institutions and corporate behaviour. In the European Commission (2025a) report on competition policy for 2024, "consumer benefit" is interpreted broadly and covers non-price parameters of competition, in particular quality, innovation, diversity, conditions of access to sales channels. This expansion has a direct impact on the design of business processes: competitive risks arise not only from explicit price agreements, but also from business decisions that may impair non-price competition, for example by limiting innovation pressure or restricting access to key infrastructures or data sets. Accordingly, legal scrutiny is starting to cover not only contracts but also internal policies on data, access to programming interfaces, interoperability, transparency of ranking algorithms and non-discriminatory access conditions for partners. The European Commission's (2024) analytical review of non-price competition confirmed that merger as-

essment practices increasingly take into account the effects on the quality of products and services, on innovation incentives and on the access structure in the relevant market.

The analysis of the materials of the Global Forum on Competition of the Organisation for Economic Co-operation and Development (2024a; 2024b) in 2024 showed that the sociological dimension of antitrust regulation is manifested primarily through the connection between competition and the distribution of economic benefits: persistent market power is able to redistribute these benefits in favour of dominant players through higher prices, worse conditions of market access, asymmetry of bargaining power in supply chains and reduced incentives to improve quality. The document states that competition policy potentially acts as a partial response to the growth of wealth inequality, but only on condition that enforcement and regulatory policy actually reduce barriers to entry and deter market foreclosure practices, and are not limited to formal fines. For business process management, this connection creates a specific managerial consequence: companies that build strategies on long-term rent models, in particular on controlling access to sales channels through exclusivity without objective justification, on using data to cut off competitors, or on self-privileging in ecosystems, fall into a zone of increased legal and reputational vulnerability. At the same time, companies that integrate competitively neutral approaches to procurement, partner programmes, access to interfaces, and non-discriminatory conditions for counterparties, receive a managerial result in the form of more stable interaction with stakeholders, i.e., suppliers, platform partners, business customers, and end users, since the rules are more predictable and controllable.

An analysis of the debate on the limits of the consumer benefit standard in the report of the Organisation for Economic Co-operation and Development Committee (2023) on Competition showed that the existing standard provides a number of advantages for enforcement, including predictability, economic operationalisation and protection against excessive extension of authority, but there is debate about the ability of this standard to capture non-consumer and distributional effects. The increased focus on such effects does not mean abandoning the economic logic of competition law; on the contrary, it requires businesses to better document objective justifications and results, such as increased efficiency, stimulated innovation, improved quality. This strengthens the role of internal analytical procedures and an evidence-based culture in decision-making: the preparation of internal memoranda on pro-competitive justifications for initiatives becomes part of the standard operating process, and not just a response to a regulator's request.

It was also established that the social legitimacy of competition policy in 2020-2025 is associated with the principles of procedural fairness and transparency, and these principles have a direct organisational impact on business processes. According to the International Competition Network (2021) Framework for Competition Agency Procedures 2021, the standards of due process, i.e., predictability, transparency, the opportunity to be heard, the motivation of decisions, proportionality, and equality of the parties, are considered as a condition for trust in law enforcement and, accordingly, in the investment climate and the cost of compliance for business. These standards work in both directions: the standards require integrity from the state, but at the same time stimulate business to form an internal discipline of

documentation and transparency as a condition for defending the own position. The more robustly a company can trace its decisions, namely who agreed, on what basis, what alternatives were analysed, how competition risks were assessed, the lower the transaction costs of responding to requests, inspections, and merger control procedures. Transparent procedures and documented decisions at the same time reduce the scope for informal agreements and opaque rules of access to market opportunities, which in a broader sense supports a level playing field for participants with different resource potential.

The analysis of documents of the United Nations Conference on Trade and Development (2021; 2023b) in the field of competition and consumer protection showed that in the digital economy, the practices of large platforms intersect with problems of information asymmetry, deceptive practices, opaque contractual terms and imbalances of bargaining power, as a result of which the effect of competition policy on society becomes more tangible when it is consistent with consumer protection instruments and takes into account inclusive access to markets. Incorporating public benefits, including those related to sustainable development, into the competition debate does not remove the basic prohibitions on cartels or abuses, but requires a clear framework for assessing when concerted behaviour can be justified by benefits for consumers and society, and how to avoid disguising anti-competitive practices as social initiatives. For business process management, this means developing procedures that separate legitimate corporate initiatives, such as environmental standards or responsible supply chains, from risky coordination of market behaviour: through prior legal due diligence, definition of the permissible amount of information exchange between participants, transparent criteria for engaging partners, and metrics of social impact that do not translate into price controls, market sharing, or restriction of access by competitors. As a result, the social consequences of antitrust legislation are realised primarily through changes in organisational behaviour: the formation of internal transparency, restrictions on market closure practices, increased responsibility for non-price parameters of competition, and strengthening procedural discipline as a condition for stakeholders' trust in the company and in state control mechanisms in general.

Discussion

The results of the normative and doctrinal analysis show that antitrust legislation in modern legal systems performs not only a sanctioning but also a structuring function, setting the legal parameters of the market by defining the permissible limits of market power and procedural guarantees for economic entities. This is consistent with the conclusions of P. Ibáñez Colomo (2023), who, in the context of the “second modernisation” of Article 102 of the Treaty on the Functioning of the EU, argues that law enforcement in the field of dominance is in constant tension between the effectiveness of enforcement, legal certainty and effective judicial control. The ambivalence of the Commission's approaches to the qualification of exclusive practices reduces predictability for business, and the legal risk itself arises not from the market position of the enterprise as such, but from the behaviour it carries out on the basis of this position. R. Gilbert (2023), in a broad review of antitrust reforms, states that the growth of market power is a well-documented phenomenon in most

developed economies, but reforms that depart from traditional principles of competitive effects analysis carry potential risks for consumers and overall economic efficiency. This conclusion is partly at odds with the observed trend towards expanding regulatory interventions through the Digital Markets Act (2022), which involves the establishment of ex ante obligations without proving competitive effects in each individual case.

The revealed hybridisation of competition regulation in response to the specifics of digital markets coincides with the assessments of several researchers. F. Bostoen (2023) analyses the objectives of the Digital Markets Act (2022) through the prism of intra-platform and inter-platform competition and concludes that the act is built on two assumptions: the procedural inefficiency of Article 102 of the Treaty on the Functioning of the EU and the difficulty of proving dominance and abuse, both of which require independent empirical verification. T. Knapstad (2023) examines the conditions for applying structural remedies, including unbundling, in the case of systemic violations of gatekeepers and identifies three key factors for assessing the legitimacy of such measures: the recurrence of violations, the type of obligations violated, and the comparative costs and benefits in a specific platform market. R. Podszun (2023) views the Digital Markets Act as a shift from a competition law to a regulatory approach and raises the question of the permissible level of state intervention in the digital sphere, which is also relevant for assessing the reform of Ukrainian competition law in 2023. J. van den Boom (2023) finds that different interpretations of the harmonisation effect of the Digital Markets Act may lead to fragmentation of the internal market, a conclusion that correlates with the observed variability of merger control regimes in the Member States. I. Maher (2024) analyses the institutional design of the implementation of the Digital Markets Act and argues that the Commission operates in a network of actors, rather than under sole control, confirming the thesis of the growth of the decentralised dimension in competition law enforcement. E. Calvano *et al.* (2020) document that algorithmic pricing in digital markets is capable of reproducing cartel equilibria even in the absence of explicit collusion between participants, which raises the question of the limits of applicability of traditional anticompetitive standards and the need to adapt regulatory tools to platform environments.

The established shift of antitrust compliance from an external legal constraint to an internal element of corporate governance is confirmed by foreign studies. L. Huang (2026) introduces the concept of “protective compliance” and, based on materials from the US Sentencing Commission, finds that the presence of compliance programmes reduces the number of indictments filed and the length of probation terms, although the effects remain uneven depending on the administrative and industry context. This is consistent with the two-tier architecture of antitrust compliance, which covers both regulation of the normal operating regime and crisis scenarios of interaction with the regulator. J. Hinlopen *et al.* (2023), systematising theoretical, empirical, and experimental studies of corporate leniency programmes to the occasion of the 25th anniversary of this mechanism in the EU, state that the effectiveness of specific parameters of such programmes remains debatable, which echoes the conclusion about the strengthening of the reactive component of compliance after the modernisation of the corresponding

programme in Ukraine. Y. Law *et al.* (2025) assesses the external validity of laboratory experiments on leniency and establishes that the results require interpretation taking into account knowledge from related disciplines, emphasising the difficulties of directly transferring the conclusions of controlled studies to the practice of specific legal systems.

The analysis of procurement and tenders in the context of the antitrust compliance matrix correlates with the results of empirical studies of cartel practices in public bidding. C. Carbone *et al.* (2024) find that companies participating in bid-rigging cartels are significantly more likely to engage in temporary associations and subcontracting compared to non-cartel firms, using these mechanisms to distribute profits among the colluders, which confirms the feasibility of including analysis of participation patterns in process controls of procurement procedures. H. Wallimann *et al.* (2022) propose a method for detecting incomplete bid-rigging cartels based on machine learning and bid subgroups, which demonstrates higher predictive accuracy compared to previously proposed approaches, which emphasises the value of analytical monitoring of tender documentation along with traditional process controls. R. Signor *et al.* (2024) substantiate a methodology for constructing a reference scenario for detecting collusion in public tenders for infrastructure projects; the findings confirm that early detection of anomalous trading patterns is practically feasible through systematic statistical analysis, not just through ex post enforcement checks.

The findings on the regulatory treatment of sustainability-related agreements are in line with the discussion in the academic literature. J. Malinauskaite & F.B. Erdem (2023) classify the positions of national competition authorities on sustainability into four typologies and find that NCAs play a leading role compared to the Commission, creating risks for the uniform application of competition law in the single market. J. Paha (2024) analyses the first-mover disadvantage in sustainability agreements and argues that differentiation between companies in adopting common standards can undermine the cooperative objectives of such agreements even in the absence of a clear anti-competitive objective, underlining the need for legal certainty on the conditions for the application of the exemption under Article 101(3) of the Treaty on the Functioning of the EU to collective initiatives in the field of sustainability.

The link between antitrust regulation and the distribution of economic benefits established within the framework of social impact analysis corresponds with the work of researchers in the field of competition and inequality. E.A. Posner & C.R. Sunstein (2022) argue that enforcement in industries where spending on basic goods constitutes a higher share of the budget of lower-income households has a greater distributional potential, which coincides with the conclusion that strong market power without appropriate constraints redistributes benefits to the detriment of less resourceful market participants through asymmetries of bargaining power and barriers to entry. J. De Loecker *et al.* (2020) document from macroeconomic data that the rise in market premiums in advanced economies is accompanied by a fall in the share of wages in GDP (Gross Domestic Product), a decrease in investment rates, and a reduction in employment in small businesses. This conclusion establishes a structural link between the concentration of market power and the deterioration of distributional indicators,

independent of direct price effects for consumers, and confirms the validity of an expanded view of the functions of antitrust regulation beyond the consumer welfare standard.

The generalisation of the results of the comparative analysis shows that the identified qualitative shift in the functional nature of antitrust compliance from an external legal restriction to an element of the internal architecture of corporate governance is confirmed by foreign studies and generally does not contradict the key conclusions. The differences are recorded mainly in the degree of confidence in the ability of regulatory reforms to achieve redistributive and social goals beyond the immediate effectiveness of law enforcement, which reflects a broader debate in the scientific community regarding the regulatory foundations and limits of competition policy in the context of the transformation of market structures.

Conclusions

The study found that antitrust legislation performs not only a sanctioning but also a structuring function: through Articles 101-102 of the Treaty on the Functioning of the EU, regulations on the control of concentrations and vertical agreements, as well as updated guidelines on horizontal agreements, it sets the legal parameters of the market as a socio-economic institution. A comparative analysis of EU and Ukrainian law revealed a common architectural logic in both legal systems with significant differences in the thresholds for concentration control: Ukrainian thresholds cover a much wider range of entities, which expands the scope of regulatory screening for medium-sized businesses compared to the European model, which is focused mainly on large-scale transnational agreements. An analysis of the 2023 reform of Ukrainian competition legislation confirmed the consistent convergence of the Ukrainian model with European standards in terms of expanding the inspection powers of the Antimonopoly Committee of Ukraine, modernising the leniency programme, and increasing procedural transparency for parties to administrative proceedings.

At the operational level, it was revealed that the requirements of the Regulation on Vertical Agreements and the European Commission's Horizontal Guidelines transform legal prohibitions into specific procedures for managing contracts, data and intercompany projects, while merger control forms a separate regulatory regime for mergers and acquisitions processes with specific points of legal screening and the obligation to keep assets separate until approval is obtained. The analysis of the social dimension of regulation showed that persistent market power without proper restrictions redistributes economic benefits to the detriment of less resourceful market participants through asymmetries of bargaining power and barriers to entry, and transparency of procedures and documentation of decisions are necessary conditions for trust in law enforcement and the investment climate as a whole.

The conceptual result of the study is the justification of a qualitative shift in the functional nature of antitrust compliance: between 2020 and 2025, it transformed from an external legal restriction into an element of the internal architecture of corporate governance, covering both the normal operating mode and crisis scenarios of interaction with the regulator. The revealed pattern has practical significance both for businesses that form compliance programmes in accordance with the standards of the Organisation for

Economic Cooperation and Development and the International Competition Network, and for regulators that assess the effectiveness within the framework of inspection and supervisory procedures: the degree of integration of antitrust requirements into business processes becomes an independent indicator of the company's organisational maturity and readiness to interact with the competition authority. Promising areas of further research include a comparative analysis of the effectiveness of compliance programmes based on law enforcement data in individual sectors of the economy, studying the impact of digitalisation of business processes on new forms of anti-competitive coordination, and assessing

the practical consequences of the 2023 reform for the institutional capacity of the Antimonopoly Committee of Ukraine based on statistics of completed cases.

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Антимонопольне законодавство як інструмент формування конкурентного середовища: соціальні наслідки для управління бізнес-процесами

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Анотація. Метою дослідження було розкрити механізм, за допомогою якого антимонопольне законодавство трансформує правові заборони у зміни організаційної поведінки компаній, та визначити соціальні наслідки цього процесу для управління бізнес-процесами в умовах реформування конкурентного права ЄС і України. Дослідження здійснювалося на основі нормативно-доктринального аналізу первинних актів конкурентного права, офіційних настанов Єврокомісії та звітів міжнародних організацій за 2020-2025 роки. Встановлено, що антимонопольне законодавство виконує не лише санкційну, а й структуруючу функцію, задаючи юридичні параметри ринку через визначення меж ринкової влади, процедурних гарантій і стандартів доказування. Порівняльний аналіз права ЄС та України виявив спільну архітектурну логіку обох правопорядків при суттєвих відмінностях у порогових значеннях контролю концентрацій: тоді як європейське регулювання орієнтоване переважно на транснаціональні угоди великого масштабу, українські пороги охоплюють значно ширше коло суб'єктів. Виявлено, що вимоги регулювання вертикальних угод і горизонтальних настанов Єврокомісії трансформують правові заборони у конкретні процедури управління контрактами, даними та міжкомпанійними проєктами, тоді як контроль концентрацій формує окремий регуляторний режим для злиттів і поглинань із визначеними точками правового скринінгу. За даними Антимонопольного комітету України за 2024 рік, з 365 розглянутих заяв щодо концентрацій 131 було повернуто без розгляду через процесуальні недоліки. Реформа українського конкурентного законодавства 2023 року підтвердила зближення з європейськими стандартами через розширення інспекційних повноважень і модернізацію механізму звільнення від відповідальності. Дослідження обґрунтувало, що між 2020 і 2025 роками антимонопольний комплаєнс перетворився із зовнішнього правового обмеження на елемент внутрішньої архітектури корпоративного управління. Отримані результати мають практичне значення для компаній, що формують комплаєнс-програми, для регуляторів, що оцінюють їх ефективність, а також для дослідників конкурентного права в контексті порівняльних студій

Ключові слова: комплаєнс; ринкова влада; контроль концентрацій; правозастосування; цифрові ринки; прозорість процедур