



## REPRESENTATION OF THE PRINCIPLE OF FAIRNESS IN DIFFERENT AREAS OF LAW

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**Annotation:** *Fair competition as a legal principle is manifested in the observance of social standards that ensure healthy competition and characterize the main normative quality of competition. In the article, the author tries to answer a number of priority questions related to the improvement of legislation by reflecting the concept and signs of fair competition, the concept of fair competition in competition law. What, in particular, does the concept of unfair competition mean? What are the theoretical views of world scientists on the understanding of fair competition? Issues such as the need to introduce the concept of fair competition into the competition legislation of the Republic of Uzbekistan will be highlighted. The definition of authorship is given to the concept of fair competition.*

**Key words:** *principle of fairness, unfair trade practices, legal category, misinformation, market power, competitive policy, consumer rights, market relations, economic advantage, economic damage.*

The principle of fairness is a general legal category and plays an important role in the regulation of competition law in all branches of law, in particular in civil law relations. In addition, its role will naturally increase in the reform of competition law. This is due to the fact that this principle manifests itself as compliance with social standards which ensure healthy competition and characterize the basic normative quality of competition.

At the same time, the Competition Law widely uses the term-antipode "unfairness" for the understanding of which it is first necessary to study the principle of good faith<sup>14</sup>. A number of Western scholars believe that the application of fairness in competition law is consistent with the goals of efficiency, supporting its expression in which producers and sellers offer the market for the purpose of selling their goods, and comparing free and fair trade relations to reflect the principle of fairness in competition policy.

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<sup>14</sup> Актуальные вопросы правового регулирования конкуренции и осуществления антимонопольного контроля : сб. науч. тр. по матер. II Всерос. науч. конф. студентов и магистрантов, посвящ. 30-летию антимонопольных органов / [под общ. ред. Л.Н. Борисовой, О.Н. Ермоловой] ; ФГБОУ ВО «Саратовская государственная юридическая академия». – Саратов: Изд-во ФГБОУ ВО «Саратовская государственная юридическая академия», 2020. – 116 с.

In this context, issues of fairness are now reflected in the competitive policies of countries around the world. As part of a broader trend characterized by growing international economic localization, political tensions between advocates of open and closed bridges, and debates about fair and free trade, a new approach to rebalancing market equity and efficiency through fair competition into domestic markets has emerged. There is a growing number of scholars and commentators dealing with property inequality, distribution, and inequality in market outcomes in general through the application of competition law.<sup>15</sup>

Anthony Atkinson, a British economist, said that competition policy should reflect, among other factors, a concern for distribution<sup>16</sup>, American economist Joseph Stiglitz has called for tougher and more effective enforcement of competition laws to help eliminate the inequalities created by market power<sup>17</sup>. Similarly, the current European Commissioner for Competition, Margrethe Vestager, has repeatedly stressed the importance of incorporating fairness into competition rules<sup>18</sup>.

Many scholars argue that in assessing the scope of fairness in competition law, the definition of what the term means in practice and the defense of legal and policy developments in competition policy are very unclear. Other scholars argue that evidence that rejects any notion of fairness may ignore legal considerations based on the principle of fairness associated with competition law, while ignoring the various forms of fairness in competition law.

In particular, according to the American lawyer Wolfgang Fikentscher, economics is based on the principles of moderation if markets operate on competitive principles (e.g., price is set according to performance). It has been argued that to compete with the most worthy winner in the market and through this provide new opportunities to market participants is a means of fairness.<sup>19</sup>

The English philosopher John Bordley Rawls also advanced several positions on the competitive role of honesty. According to him, there is an aspect of the principle of fairness that is important for rules concerning dignity or performance. Integrity sets the procedural standard for a particular situation. A conclusion is drawn about fraudulent transactions not because there is no objective fairness in the transactions (e.g., in the sense of clear division of property), but rather because the parties are unfair because they are disrespectful of certain societal rules.

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<sup>15</sup> Jonathan Baker & Steven Salop, Antitrust, Competition Policy, and Inequality 104 GEO. L.J. 1 (2015).

<sup>16</sup> Anthony Atkinson, Inequality: What can be done? (2015).

<sup>17</sup> Joseph E. Stiglitz, The price of inequality: How today's divided society endangers our future 338 (2012).

<sup>18</sup> Margrethe Vestager, How Competition Can Build Trust in Societies, TED Talk (Sep. 21, 2017)

<sup>19</sup> Wolfgang Fikentscher, Philipp Hacker, Rupperecht Podszun. Fair economy. Crises, Culture, Competition and the Role of Law. *S Economic Inequality & the Law eJournal* (2013) pringer Heidelberg New York Dordrecht London.

principle of fairness that is important for rules concerning dignity or performance. Integrity sets the procedural standard for a particular situation. A conclusion is drawn about fraudulent transactions not because there is no objective fairness in the transactions (e.g., in the sense of clear division of property), but rather because the parties are dishonest because they are disrespectful of certain societal rules<sup>20</sup>.

Indeed, respect for and observance of the universal rules of society is a feature of the principle of fairness. It is also necessary that the principle of fairness be the basis of competitive relations to ensure the principles of legality and trust in competition. This is also inherent in the principle of freedom in competition law, both of which combine the roots and mechanisms of competition law. The rules of competition law provide for the general possibility of competition, defining the scope of "freedom". Rules of fairness, on the other hand, set objectives, such as how competitors should compete and who should be rewarded for their performance in competition. The principle of freedom and fairness lies at the heart of a market economy in which healthy competition prevails.

In contrast to civil law relations, the principle of fairness in competition law condemns harm to consumers. According to Wolfgang Fickenscher, the general idea of free and fair competition is to clarify the principle of securing consumer consent. The principle of customer persuasion is understood to mean that the person who convinces the customer of price and quality is rewarded by the contract. The freedom to find original ways of obtaining consent is necessary to ensure consumer consent. The principle of securing consumer consent in competition laws prevents the consumer from using force to achieve an objective. Competitors have a duty to be fair to all who participate in their work, to match one case with another without offending anyone in their work<sup>21</sup>. That is, it is important that competition law, as expressed in the principle of fairness, reflect the relationship between Consumer satisfaction and success with respect to unfair behavior that occurs in a market economy.

Integrity not only provides legitimacy of the System of economic services, which is the main motivator of economic relations and satisfies the most necessary needs of market participants, but also provides stability of relations combined with the principle of freedom and allows to avoid restrictions to meet the needs. For example, in the securities market, traders conclude transactions with the exchange in the order established by the exchange as an expert in the securities market, and make transactions with the exchange on its behalf. In such situations, traders

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<sup>20</sup> Wolfgang Fikentscher, Philipp Hacker, Rupprecht Podszun. Fair economy. Crises, Culture, Competition and the Role of Law. *S Economic Inequality & the Law eJournal* (2013) pringer Heidelberg New York Dordrecht London.

<sup>21</sup> Wolfgang Fikentscher, Philipp Hacker, Rupprecht Podszun. Fair economy. Crises, Culture, Competition and the Role of Law. *S Economic Inequality & the Law eJournal* (2013) pringer Heidelberg New York Dordrecht London.

provide economic services. The circles offering transactions on the exchange must ensure not only the freedom of the trader, but also his fairness.

In explaining the essence of fairness in competition law, it is important to examine its aspects related to the doctrine of market failure (“market failure” doctrine). The doctrine of market failure is the immunity of economics from politics, in which each individual makes the right decision for himself, but those decisions may not be the right decision for society. As a result, market relations have suffered severely. The principle of “fairness” is usually disregarded when the doctrine of market failure is applied.

So how does the doctrine of market failure relate to the application of fairness in competitive relations?

It must be recognized that unfair compliance with the rules of competition cannot hinder action, nor can it lead to the immediate termination of market relations. However, while free market activity may continue for some time without fairness, a lack of fairness will inevitably undermine the legitimacy of the market economy and lead to frustration and uncertainty among market participants. This is because fairness is a long-term investment in market activity. On the other hand, restricting freedom very quickly makes itself felt. Thus, the fight against unfairness as a systemic task is often overlooked because of short-term management.<sup>22</sup>

The unfairness of competition law, on the other hand, is a disrespect for the standard that ensures healthy competition, reviving the doctrine of market failure. This creates an excellent opportunity for fraudulent and deceptive practices to continue in the marketplace. Therefore, it is necessary to prevent instances of bad faith in regulations and legislation embodying the doctrine of long-term market failure, which must be eliminated in the regulation of the economic system.

The principle of fairness is challenged from three points of view through different perspectives. One group of scholars believes that fairness is very difficult to form the basis of competitive relations. According to another scholar, fairness limits freedom. On the other hand, a third type of scholar prioritizes economic efficiency as the basis of the legitimacy of the economic system. We deem it appropriate to consider all these assertions.

According to scholars, it is difficult to apply principles of fairness, such as those of liberty, prosperity, and efficiency, to competition policy. Because it is also difficult to interpret the meaning of these concepts. The definition of such terms will change over time. Their boundaries are judicially defined<sup>23</sup>. It follows that the meaning of

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<sup>22</sup> Wolfgang Fikentscher, Philipp Hacker, Rupprecht Podszun. Fair economy. Crises, Culture, Competition and the Role of Law. *S Economic Inequality & the Law eJournal* (2013) pringer Heidelberg New York Dordrecht London.

<sup>23</sup> Wolfgang Fikentscher, Philipp Hacker, Rupprecht Podszun. Fair economy. Crises, Culture, Competition and the Role of Law. *S Economic Inequality & the Law eJournal* (2013) pringer Heidelberg New York Dordrecht London.

fairness is difficult to interpret, since the features that define its boundaries change over time. However, based on this approach, it is wrong to ignore the importance of fairness in competitive relations. Previously, the rare cases of meaningful application of the concept of fairness did not lead to neutrality in the application of the principle of fairness in competition law. This is due to the fact that the principle of fairness has been successfully applied as a norm in some areas of law.

In particular, Article 3 of the Treaty on the Eurasian Union, signed on May 29, 2014, stipulates that allies must adhere to the principles of market economy and fair competition<sup>24</sup>.

There are also scholars who argue that the principle of fairness can limit freedom. In their view, rules set the boundaries of individual behavior. The decisive factor in establishing market order in competition law is that the rules of systemic regulation, that is, the principle of fairness and the principle of freedom, are limited. Both principles are necessary to ensure market activity, and both complement each other. While the principle of freedom guarantees individuals autonomous decision-making, the principle of fairness guarantees a certain quality of decisions and the legitimacy of the entire market system. The negative impact of free market relations on the transition to a market economy can be prevented by reasonable and unobtrusive fair regulation<sup>25</sup>. However, contrary to the beliefs of this group of scholars, we believe that the principle of fairness does not limit freedom, but that justice regulates an excess of freedom. Because while competition in the marketplace is free, it is also important that it be lawful and harmless.

A third different view of fairness has been expressed by economists Louis Kaplow and Stephen Shavell, who argue that caution should be exercised when applying the concept of fairness to competition law. In their view, only consumer welfare provides legitimacy to the economic system. Ensuring the interests of consumers and meeting their basic needs in competitive relations is the only criterion for lawmaking and is based on the principle of consumer satisfaction. The principle of fairness should not play a decisive role in the creation of competition rules, because it is detrimental to the interests of consumers. Naturally, legislation enriched with the principles of ultimate fairness will cause problems<sup>26</sup>. But we believe that we have the right to speak out against the views of these scientists as well. Because the principle of fairness is very important for customer satisfaction. Only the principle of fairness can be the key tool for protecting the rights and

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<sup>24</sup> Договор о Евразийском экономическом союзе <https://docs.cntd.ru/document/420205962>

<sup>25</sup> Wolfgang Fikentscher, Philipp Hacker, Rupprecht Podszun. Fair economy. Crises, Culture, Competition and the Role of Law. *S Economic Inequality & the Law eJournal* (2013) pringer Heidelberg New York Dordrecht London.

<sup>26</sup> Kaplow, Louis, and Steven Shavell. "Fairness versus welfare: notes on the Pareto principle, preferences, and distributive justice." *The Journal of Legal Studies* 32.1 (2003): 331-362.

interests of the consumer in antitrust law. Removing it from the law is not in the interests of consumers.

The principle of fairness requires social standards that ensure healthy competition. According to Thomas M. Frank, the principle of fairness always requires a sense of community. In other words, it is important to identify the common principles that constitute "fair play" in a team. It is true that community standards are highly valued in sports, commerce, or the judicial system. Everyone agrees that the fastest runner in a cross-country event deserves to win, plus it is considered unfair. The scholar implies that through the concept of "fair trade," which is part of fair competition, all participants in the production chain can be compensated for their services<sup>27</sup>.

Rules on unfair competition and unfair trade practices exist in almost all jurisdictions. Of course, in some countries such rules in competition law cannot be called fair, but such practices are considered illegal. Rules of deception, misleading consumers, or unfair dealing with competitors are found in tort cases in many jurisdictions. This is necessary to ensure healthy competition and compliance with social rules and standards.

Article 10 bis of the Paris Convention, ratified by 173 countries, provides protection against unfair competition, which is defined as "competitive acts contrary to fair practices in industrial or commercial matters. In the European Union, 27 member states adopt legislation on fraudulent trade and misleading advertising, which regulates the signs of fairness between competitors and consumers (B2B and B2C).

Market relations require the principle of fairness. If fairness does not play an important role in these relations, the legitimacy of the market economy will be called into question. The concept of fairness is not difficult to define because it has been debated for centuries and all jurisdictions have rules that can be classified as rules of fairness. The question that needs to be addressed is to define fairness in competitive relations as compliance with social norms that ensure healthy competition. While some scholars do not see the systemic meaning of fairness in considering the definition of fair competition as a legitimate concept as too complex, in the long run they cannot resist the idea that markets that do not support fair competition will fail.

On the basis of the above, we considered it necessary to define the concept of fair competition as follows.

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<sup>27</sup> Wolfgang Fikentscher, Philipp Hacker, Rupprecht Podszun. Fair economy. Crises, Culture, Competition and the Role of Law. *S Economic Inequality & the Law eJournal* (2013) pringer Heidelberg New York Dordrecht London.



Fair competition is an action that is carried out in accordance with the law, the customs of business turnover, ethical norms and provides for the prevention of unfair competition.

Fair competition means taking into account the interests of the state and society, conducting fair competition without unjustified pressure or fraud, avoiding harm to third parties, as well as not harming the competitiveness of market participants.