



Heiko Richter (ed): *Competition and Intellectual Property Law in Ukraine*

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Ukraine has been subject to increased attention in the past year, albeit for deeply tragic reasons. Russia's full-scale attack on Ukraine, in continuation of the military aggression going back to 2014, brought about a devastating impact. Ukraine's resolve to follow the European course laid down in the Ukrainian Constitution, however, has only strengthened. By granting Ukraine EU candidate country status in 2022, the European Council acknowledged Ukraine's place in the European family, the Ukrainian state's adherence to the values upon which the EU is founded, and the resilience of Ukraine's institutions guaranteeing democracy, the rule of law and human rights.

Heiko Richter's (ed) *Competition and Intellectual Property Law in Ukraine* is a timely intervention, which illustrates that the abovementioned development in EU-Ukraine relations is by no means accidental. The EU-Ukraine Association Agreement (AA) has been in place since 2014, leading to an extensive approximation of laws in Ukraine with the EU *acquis*. The process continues despite the ongoing aggression against the Ukrainian state and its people. In December 2022, for instance, a new Copyright Act was passed, which marked a major milestone in the modernisation of copyright law in Ukraine.

The circumstances only emphasise the uniqueness of the present book, which is an extraordinary contribution to intellectual property (IP) and competition law scholarship, Ukraine's integration into the EU, and collaboration with Ukrainian researchers. The edited book of 23 chapters is the result of over two years of work, two workshops, including one in Kyiv in the autumn of 2021, and obviously, a lot of coordination. The contributions were finalised in 2022 amid the full-scale invasion and the challenges brought with it.

The book is aimed at a wide range of international researchers, practitioners and policymakers. In the introductory chapter on navigating the competition and IP law

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landscape in Ukraine, editor Heiko Richter offers very helpful “tours” for readers to take throughout the book, pointing the reader to particular chapters on the basis of specific interest. These seven tours are: legal areas, EU approximation, Ukraine’s policies and history, enforcement of laws, areas of particular interest (life sciences, digital markets, etc.), methodology, policy and possible reforms. It is a very welcome guide to navigate the more than 600 pages of the book.

The book’s 23 chapters are divided into three parts: (i) Putting the Legal Framework in Perspective, (ii) Competition Law, and (iii) Policies and Law on Intellectual Property. In the same introductory chapter on navigating the competition and IP law landscape in Ukraine, Heiko Richter presents the reader with the basics of the governance system in Ukraine and the major political events on the way to European integration, offering the reader the necessary background.

The first part of the book, “Putting the Legal Framework in Perspective”, starts with Roman Petrov setting a stage for the EU approximation path, exploring the objectives of the AA, and the fundamental issues of approximation of laws in Ukraine. Among the explored issues are the status of laws, constitutional amendments, the question of a direct effect of norms of the AA, as well as decisions of common institutions. Zvenyslava Opeida, in turn, introduces the reader to trade defence mechanisms and competition policy in Ukrainian law and discusses the need to reconcile the trade approach to regulation with the competition approach. The chapter also introduces new draft laws in the area, exploring their consistency with World Trade Organization (WTO) obligations and proposes amendments to better embrace public interest. Further, Oleg Podtserkovnyi presents instruments of legal support of state economic policies of Ukraine and the implications of Russia’s invasion of Ukraine. The chapter shows how legal support has evolved since the start of Russian aggression in 2014 and discusses the most pressing issues for investment protection and competition policy in Ukraine, such as trust in the judiciary and prospects of long-term planning.

The second part of the book, “Competition Law”, starts with Kseniia Smyrnova taking the reader through the “Europeanisation” of competition law in Ukraine, as evident both before and after the AA coming into force. The chapter illustrates how the spirit of the EU is visible in all the branches of competition law in Ukraine through the active use of Court of Justice of the European Union (CJEU) judgments, and elaborates on the stage of adaptation of Ukrainian law to the requirements under the AA. In the following chapter, Hanna Stakheyeva provides a comparative analysis of resale price maintenance in vertical agreements under the competition laws of Ukraine and the EU. Following a comparison of practices in particular cases, the chapter argues for more detailed guidelines on the application of rules to be developed, similar to the European Commission Guidelines. Anzhelika Gerasymenko and Nataliia Mazaraki then explore the (in)capacity of Ukrainian competition law to meet the challenges of the digital age. To mitigate the identified shortcomings, the authors propose supplementing *ex post* measures with *ex ante* ones, as well as tasking the National Commission for the State Regulation of Electronic Communications, Radiofrequency Spectrum and the Provision of Postal Services (NCEC) with monitoring competition in the markets of information and intermediary services where dominance has been established.

Continuing with competition, Oles Andriychuk argues that Ukraine should be treated as a future EU Member State for transposing the regulation of digital markets based on the changing EU paradigm. The author explores the pressing issues of competition law in Ukraine with respect to the background of the draft Digital Markets Act (since adopted in 2022) as an emerging *sui generis* digital competition tool, identifying the shortcomings due to the past planned economy and outdated policy of non-interventionism. In the following chapter, Olga Gurgula explores the current competition law approach to IP-related practices in the pharmaceutical sector in Ukraine. Access to and affordability of medicine being the priority for Ukraine, the author suggests that the IP-related practices that may delay or block competition in the pharmaceutical market receive closer attention from the regulator. Olga Bakalinska, in turn, provides a comprehensive overview of unfair competition law in Ukraine, implementation of international norms as well as recent cases before the Antimonopoly Committee of Ukraine (ACU), including IP rights, pointing out the need for more defined rules of fair competition. Olha Kronka then brings the reader's attention to protecting IP rights from unfair competition, such as illegal use of designations or comparative advertising, dissemination of misleading information, and violations of trade secrets under Ukrainian law. The author also provides an overview of the key cases in this area and an analysis of the recent 2019 reform of regulation of comparative advertising.

The final part of the book, "Policies and Law on Intellectual Property", starts with Yuriy Kapitsa exploring the problems of approximating IP law under the AA, which stem from a lack of methodology for approximating laws and a lack of outlined commitments. To this end, the author suggests methodological approaches to the approximation of IP legislation based on the form of the country's relation with the EU, taking into account CJEU case law and drawing parallels to the European Economic Area Agreement and the European Free Trade Association Court. In the following chapter, Olena Orliuk provides an overview of the draft National IP Strategy in Ukraine (2020–2030), developed together with World Intellectual Property Organization (WIPO) experts. This comprehensive draft considers WIPO guidelines and the provisions of the AA and is based on, *inter alia*, principles of serving the public interests, transparency and the European vector of development. The author also provides a detailed overview of steps taken to implement the first stage of the strategy, despite the lack of formal approval. Anna Shtefan and Olga Gurgula introduce the recently established IP court in Ukraine, setting its creation against the background of the global trend of judicial specialisation. Although the court is not yet operational, it is believed to become essential to Ukraine's effort to improve IP enforcement. The authors point out the unresolved questions of jurisdiction in particular cases, such as customs-related and tax-related IP disputes.

Moving on to patents, Leonid Tarasenko elaborates on the history and characteristics of the protection of patents, utility models and industrial designs in Ukraine. Special attention is devoted to the recent reform of industrial property laws in 2020 and the role of the National Intellectual Property Authority. Oksana Kashyntseva, in turn, analyses patent law and its recent reform in the context of access to medicines in Ukraine. The chapter points out some issues, such as norms

aimed at protecting public health through IP exemptions remaining declaratory, TRIPS-plus provisions in the AA not being adapted to Ukraine's interests, or problems of evergreening patents. Further, Tetyana Komarova studies the patentability of biotechnological inventions in Ukraine with respect to the obligations under the AA and EU experience. The author addresses the approximation of Ukrainian legislation in the field of biotechnology, suggesting a special legal act on biotechnology to properly address this field.

Continuing with designs and geographical indications (GIs), Anastasiia Kyrylenko looks at the recent reform of design law in Ukraine and the positive impact of harmonisation with the EU *acquis*. The author highlights problems of exporting EU norms to third countries where there is a gap between codified norms and jurisprudence and discusses how norms on design protection under the AA have had a positive impact, as well as the areas for improvement. In the next chapter on GIs, Anastasiia Kyrylenko explores GI protection in Ukraine and the reasons for the low number of Ukrainian GIs protected in the EU following the mutual recognition of GIs under the AA. Forced collectivisation and industrialisation, as well as population resettlement policies during the Soviet occupation of Ukraine, might explain the phenomenon. The author suggests that with the EU's support and the adoption of the new law, this trend might reverse.

Moving on to copyright, Anna Shtefan provides an overview of the particularities of copyright and neighbouring rights protection in Ukraine with a particular focus on limitations and exceptions in place (prior to the adoption of the new Copyright Act in December 2022). The author adopts a critical look at compliance with the AA and argues for the desirability of introducing further exceptions and limitations that would contribute to balancing right holders' and society's interests. Kostiantyn Zerov then considers the different scenarios of the use of works on the internet without the copyright holder's permission and how these might be qualified under Ukrainian law, drawing a comparison with the EU *acquis*. The chapter also reflects on the enforcement mechanisms provided under Ukrainian law and its deficiencies, particularly regarding notice and takedown procedures. In the following chapter, Kateryna Militsyna discusses the protection of output based on AI under copyright laws in Ukraine and with respect to the global debate. The author also discusses at length the novel proposal (since adopted with the new Copyright Act of December 2022) for *sui generis* protection for non-original computer-generated objects in Ukraine. Finally, Liubov Maidanyk explores the current state and potential of collective management of copyright and related rights in Ukraine after the adoption of the Law on Collective Management Organisations in 2018. The author provides a comprehensive overview of the Ukrainian system of collective management of copyright and highlights the recent reform's positive and negative results.

This impressive volume covers the entire spectrum of competition and IP regulation in Ukraine. Combining an overview of policies and regulations in Ukraine with their critical analysis in the light of global discussions and the commitments under the AA is a unique contribution to the field of competition and IP scholarship beyond Ukraine. Not only will the book be of interest to Ukrainian researchers, practitioners and policymakers, but first and foremost to their international colleagues. The book is equally accessible to those interested in the

transformation of regulatory approaches and approximation of laws and to readers interested in the external dimensions of EU law. I congratulate the editor of the book, Heiko Richter, and all the authors on such a great and timely contribution to competition law and IP scholarship and support for the future of (Ukrainian) science!

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