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IN LIGHT OF THE PRINCIPLES OF
EX POST AND EX ANTE**

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RUSSIAN COMPETITION LAW IN LIGHT OF THE PRINCIPLES OF *EX POST* AND *EX ANTE*²

This article is devoted to the legitimation and application of the standards of *ex post* and *ex ante* by courts and the executive authorities in the sphere of competition regulation. The postulates of *ex post* and *ex ante* are considered as legal principles. The principle of *ex post* is intended solely for judicial and administrative application; it has a deontological framework; it assumes that the legality of the activity of economic entities is assessed only on the basis of positive legal criteria in terms of the subjective rights violated; it is limited to a particular case. The traditional approach to the principle of *ex post* limits the scope of its application on the subjects and excessively expands its objects. The postulate of *ex ante* has a utilitarian basis which assumes the assessment of the application of relevant rules in the future. One of the main aims of the article is to refute the common view of lawyers and economists that a legislator applies principle of *ex ante* not being bound by principle of *ex post*, while it is the other way around for the courts and the executive authorities. The principle of *ex ante* may be applied not only in the process of the creation of new rules but also at the application stage for existing rules on economic competition. This is justified because the arguments of the courts and the executive authorities about a refusal to take into account the consequences of a decision in a particular case are not convincing.

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1.Introduction

Federal Law of 26.07.2006 № 135-FZ “On the Protection of Competition” combines two contradictory trends based on the principles of *ex post* and *ex ante*. The existing contradiction affects the entire practice and implementation of national competition law. This article highlights the constitutional and legal legitimation of these two principles and their application to competition regulation by the courts and executive authorities. One of the aims of this paper is to refute the common view of lawyers and economists that a legislator applies principle of *ex ante* being not bound by principle of *ex post*, while it is the other way around for the courts and the executive authorities. In this article, principles of *ex post* and *ex ante* are considered as legal principles, not only as methodological approaches.

2.The principle of *ex post*

Two major criteria associated with the subjects of application and evaluation standards can be used to distinguish between the principles of *ex post* and *ex ante*. Therefore, in terms of legal and economic doctrines, the principle of *ex post* has the following characteristics. It is intended solely for judicial and administrative application; it has a deontological framework; it assumes that the legality of the activity of an economic entity is assessed only on the basis of positive legal criteria in terms of the subjective rights violated; it is limited to a particular case in contrast to the economic analysis associated with the actual effects⁴. At the same time, it is assumed that the legal consequences and conditions of their occurrence are unequivocally defined by the law which provides the basis for the emergence and protection of subjective rights. Proponents of the traditional interpretation of the *ex post* criterion believe that it allows the automatic application of the original norm on the basis of logical deduction by the competent authorities⁵. Following this approach, any adjustments of the law are possible only at the level of the legislator because the legislator provides legal policy, and the courts should apply only legal rules and principles⁶. By virtue of this approach, the courts are not responsible for the consequences of the implementation of legal provisions, defining the mere fact of their violation

⁴ See Becker G. The Economic Approach to Human Behavior // Foundations of The Economic Approach to Law. Ed. by A.Katz. New York, 1998, pp. 16-17; Eidenmüller H. Effizienz als Rechtsprinzip. 3. Auflage. Tübingen, 2005, S. 1; Musielak H.-J. Grundkurs BGB. 10. Auflage. München, 2007, S.2.

⁵ See Sibony A.-L. Le juge et le raisonnement économique en droit de la concurrence. Paris, 2008, pp. 148, 391, 395.

⁶ See generally Dworkin R. Taking rights seriously. Harvard, 1978, pp. 22, 84; Achterberg N. Rechtsprechung als Staatsfunktion, Rechtsprechungslehre als Wissenschaftsdisziplin // Rechtsprechungslehre. Internationales Symposium (Münster 1984). Köln, 1986, S.20. On this problem see also Hart H.L.A. The Concept of Law. Oxford, 1994, pp.80-81.

and the content of subjective rights but not the actual consequences of the decision taken for the parties of the dispute and for the whole society.

Some arguments lying at the heart of the doctrinal approach to the principle of *ex post* are 1) its validity in terms of the existing legal framework; 2) the rejection of retroactivity, i.e. the rejection of the ascription of legal obligation appearing after the beginning of the dispute to participants,⁷ "...it is unfair for the losing party to suffer because of fresh policy determination";⁸ 3) the minimization of risk for legal stability and the principle of equality; 4) the exclusion of illegal reasons from the legal reasoning; 5) the establishment of the priority of rights of economic entities over the objectives of government economic policy.

Let us analyse the first two of these arguments which are considered to be the most important. Under Russian law, the principle of *ex post* is based on Article 1, 2, Part 2 of Article 15, Articles 17, 18, 55 and Part 1 of Article 120 of the Constitution, as well as Articles 1, 10 and 11 of the Civil Code. In relation to that, in paragraph 2 of its Judgment № 18-P of 08.12.2003, the Constitutional Court specifically emphasized that the rights and freedoms of man and citizen in the Russian Federation "... determine the meaning, the content and application of the law and they are protected by justice".⁹ In turn, in Section 3 of the Ruling of the Constitutional Court № 544-O of 07.12.2006, the principle of subjective civil rights (Articles 1 and 10 of the Civil Code) is considered one of the fundamental principles of civil law. This fact should be taken into account with respect to competition law because, under Part 1 of Article 2 of the Federal Law of 26.07.2006 № 135-FZ "On Protection of Competition", the antitrust law is based on the Civil Code. This is also confirmed in claim 1 of the Resolution of the Plenum of the Superior Court of Arbitration of 30.06.2008 № 30 "On some issues arising in association with the application of competition law by the arbitration courts". With this in mind, the process of the application of legislation should be based on the detection of the right holder and on the establishment of the content (i.e. the borders) of the holder's subjective rights¹⁰. In turn, focusing on these kinds of rights assumes that the analysis of the relevant legal relationship is made (i.e. rights and obligations of the parties of dispute should be analysed). These provisions of the Constitution and the Civil Code, together with their interpretation by the Constitutional Court, are taken into

⁷ See generally Mathis K. Efficiency, sustainability and justice to future generations. Berlin, 2012, pp. 10-11.

⁸ Greenawalt K. Policy, Rights, and Judicial Decision // Ronald Dworkin and Contemporary Jurisprudence. Ed. by M. Cohen. Totowa, 1983, p. 91. See also Dworkin R. Hard Cases // Harvard Law Review, Vol. 88, No. 6 (Apr., 1975), pp. 1061-1062.

⁹ See also claim 2 of the Judgment of the Constitutional Court of 21.01.2010 № 1-P and claim 6 of the Judgment of the Constitutional Court of 26.05.2011 № 10-P.

¹⁰ See claim 2.3 of the Ruling of the Constitutional Court of 22.01.2014 № 77-O; claim 2 of the Ruling of the Constitutional Court of 24.12.2013 № 1957-O; claim 3 of the Ruling of the Constitutional Court of 01.04.2008 № 450-O-O.

account by the arbitration courts in their decisions on individual cases¹¹. For example, Part 2 of Article 15 of the Constitution obliges authorities and citizens to observe the Constitution and laws and to consider the legal positions of the Constitutional Court¹². This norm is used by the arbitration courts for the justification of their decisions in the application of the economic legislation¹³.

In association with the refusal of retroactivity under the principle of *ex post* in Russian judicial practice, this argument was cancelled recently by claim 5 of Part 3 of Article 311 of the Arbitration Procedure Code. This claim allows retroactive interpretations of economic legislation contained in the resolutions of the Plenum or of the Presidium of the Superior Court of Arbitration. There are two restrictions for the implementation of this retroactivity (which includes general legal principles and the direct indication of this rule in the act of the Plenum or of the Presidium of the Superior Court of Arbitration) defined by claim 5 of the Judgment of the Constitutional Court of 21.01.2010 № 1-P. These restrictions, however, are not always observed. Thus, according to claim 4 and 7 of the Resolution of the Plenum of the Superior Court of Arbitration of 14.10.2010 № 52, a retroactive interpretation of the acts of the antimonopoly legislation is allowed. Namely, the antitrust legislation allows the recovery of illegal income, obtained as a result of violations of competition law, from an economic entity into the federal budget. At the same time, it allows an administrative penalty on the basis of the Code of Administrative Offences. From our point of view, however, it contradicts the general legal principle of the application of the law for the future and, consequently, to paragraphs 2 and 4 of claim 5 of Decision of the Constitutional Court of 21.01.2010 № 1-P.

In our opinion, the traditional approach to the principle of *ex post* has two significant drawbacks. Firstly, it unduly limits the scope of its application to the subjects. And, secondly, it excessively expands its objects. What kind of arguments could be put forward against this approach? First of all, the Constitutional Court often applies the principle of *ex post* not only for the analysis of current legal practice but also for assessing the constitutionality of federal laws. For example, in claim 5 of the Decision of the Constitutional Court of 20.07.2011 № 20-P, the federal legislator may not "... apply new regulations retroactively if it affects the legal status of an individual and limits the individual's subjective rights which already exist within the specific legal relationship." In addition, the Constitutional Court considers subjective rights (e.g. the right

¹¹ See Resolution of the Federal Arbitration Court of the Central district of 21.01.2014 on case number A23-840/2013; Resolution of the Federal Arbitration Court of the Volga-Vyatka region of 13.07.2007 on case number A43-35488/2006-9-1173.

¹² See claim 3 of the Ruling of the Constitutional Court of 07.06.2001 № 139-O.

¹³ See Resolution of the Federal Arbitration Court of the Moscow district of 31.10.2001 № KG-A40/6166-01 and Resolution of the Eighteenth Arbitration Appellate Court of 14.10.2009 № 18AP-8670/2009 on case number A76-87s/2008.

of ownership) as objects of constitutional guarantees and protection, as well as a means of providing of "... a certain degree of freedom in the field of economics"¹⁴ for the owners, and at the same time as a way of guaranteeing the "private and public rights and legitimate interests of others."¹⁵ These statements provide a reasonable basis for the application of the principle of *ex post* by a legislator in the design and adoption of the relevant laws and regulations related to the protection of economic competition. Secondly, in its adopted interpretation, the principle of *ex post* considers enforcement as an automatic (programmable) process and all legal norms as being clearly defined¹⁶. In reality, however, there is uncertainty about the rules that courts or administrative bodies apply. This is because of the high degree of abstraction in the formulation of competition law (see, for example, the term "bad faith" in item 9 of Part 1 of Article 4 and Article 14 of the Federal Law of 26.07.2006 № 135-FZ "On Protection of Competition"). At the same time there is a problem with the evaluation criterion of disputes. Thus we have to make a reservation: the presence of vague notions in Russian legislation is not a violation of the constitutional principle of equality¹⁷.

3.The principle of *ex ante* as a tool of the legislator

Failures of the dominant version of the principle of *ex post* have led to difficulties with applications of the principle of *ex ante* in judicial and administrative practice. Unlike the principle of *ex post*, the postulate of *ex ante* has a utilitarian basis which assumes an assessment of the application of relevant rules in the future. Hence, the area of its application has been considered exclusively as a normative activity of legislative and governmental bodies, with such an activity implying an instrumental approach to legislation¹⁸. This principle is used in documents of the Organization for Economic Cooperation and Development (OECD) and the European Parliament¹⁹. It is well known that in 1995 OECD recommended to its members the application of the Regulatory Impact Analysis, based on a "cost-benefit" scheme, as part of the legislative process in the design and adoption of new regulations²⁰. These recommendations are

¹⁴ See claim 2.2 of the Judgment of the Constitutional Court of 20.12.2010 № 22-P.

¹⁵ See claim 2 of the Judgment of the Constitutional Court of 01.04.2003 № 4-P and claim 2 of the Ruling of the Constitutional Court of 07.12.2006 № 544-O.

¹⁶ The approach is subjected to criticism. See generally Achterberg N. Rechtsprechung als Staatsfunktion, Rechtsprechungslehre als Wissenschaftsdisziplin // Rechtsprechungslehre. Internationales Symposium (Münster 1984). Köln, 1986, S.12.

¹⁷ See claims 2, 4 of the Ruling of the Constitutional Court of 01.04.2008 № 450-O-O and Jarass/Pieroth. Grundgesetz für die Bundesrepublik Deutschland. Kommentar. 11.Auflage. München, 2011, S. 513.

¹⁸ See Mader L. Evaluating the effects: a contribution to the quality of legislation // Statute Law Review. 2001. Vol. 22. № 2, p.122.

¹⁹ See article 10 of Decision № 1600/2002/EC of the European Parliament and of the Council of the European Union of 22 July 2002 laying down the Sixth Community Environment Action Programme.

²⁰ See Mathis K. Efficiency, sustainability and justice to future generations. Berlin, 2012, p. 4.

being implemented. For example, the Swiss government has been using the Regulatory Impact Analysis since 2000, and it has been used in Germany since 2005. At the European level, the Regulatory Impact Analysis was officially introduced in 2001. The implementation of existing instruments in these countries suggests the need for and possibility of government regulatory measures and an analysis of their impact on certain social groups and the economy in general. It also suggests the need for and possibility of the identification of alternatives to regulation and an assessment of the appropriateness of their application.

This approach is widespread, mainly because the legitimation of the principle of *ex ante* as a tool of the legislator does not usually cause legal problems and is usually supported by references to constitutional norms. For example, in Switzerland, the constitutional basis for application of the Regulatory Impact Analysis on the basis the "cost-benefit" model is derived from Article 170 of the Swiss Federal Constitution, according to which, Parliament (the Federal Assembly) should ensure control over the effectiveness of the legislative and government actions. In Russian jurisprudence, the Constitutional Court, in item 4.2.2 of its Judgment of 23.01.2007 № 1-P with reference to Article 3 of the Constitution, legitimizes the principle indirectly and defines its place among the other principles for the creation of the federal laws. In this decision, the Constitutional Court assumes that the activities of the public authorities and their officials (both the activities proper and their results) cannot be subject to a private law regulation. At the same time, the exercise of civil rights and obligations cannot predetermine specific solutions and actions of the authorities and officials. In addition, with regard to Russian antimonopoly legislation, the *ex ante* principle follows directly from Part 2 of Article 1 of the Federal Law of 26.07.2006 № 135-FZ "On the Protection of Competition".

4.The principle of *ex ante* as a tool of the courts and the executive authorities

This standard may be applied, however, not only in the process of the creation of new rules but also at the application stage for existing rules on economic competition. This is justified because arguments of the courts about the refusal take into account the consequences of a decision in a particular case are not convincing. In this regard, it is necessary to distinguish between four types of the consequences, namely, 1) the negative consequences of wrongful acts described in the legal norms (for example, in Part 1 of Article 10 of the Federal Law of

26.07.2006 № 135-FZ "On Protection of Competition" in relation to the prevention of the restriction or elimination of competition); 2) the legal consequences of a wrongful act with such consequences provided by the legal regulations (for example, according to Part 2 of Article 14 of the Federal Law of 28.12.2009 № 381-FZ "On the basis of the state regulation of trade in the Russian Federation", transactions violating antitrust requirements for the subjects of trading activity are null and void); 3) the real consequences of a decision for the parties of the dispute (consequences at the micro-level); 4) real consequences of a decision for an indefinite range of other recipients of the relevant rule (consequences at the macro-level)²¹. Reference to the two latter effects (their analysis should be rated on the basis of a pre-selected criteria) is a characteristic of the principle of *ex ante*. In this case, the courts and executive authorities, as well as a legislator, should be responsible for these effects because the application of law assumes the presence of a creative element which does not allow a clear distinction between a purely legal argument and a reference to the principle of *ex ante*. Furthermore, the principle in question complies with methodological transparency, making the court decisions more understandable and accessible for later verification.

The principle of *ex ante* has, however, serious drawbacks, one of which is linked to its operationalization. Indeed, in order to implement this principle in full, the courts and the executive authorities have to determine the dependence between the factors of economic reality in order to apply the principle of *ex ante* for judicial and administrative practice. An example of this issue is the court judgment "United States v. Carroll Towing Co"²² issued in 1947. According to the formula proclaimed in this decision (called Judge Learned Hand's formula or Hand's test within the legal doctrine) responsibility for the negligent infliction of harm should attack only when the probability of the harm being inflicted multiplied by the harm's size is greater than the cost of the prevention of the harm. The approach, however, is unlikely to be regarded as a universal model for usage of the principle of *ex ante* in law enforcement because of the following drawbacks: 1) Hand's formula is drawn within the common law system and therefore, it does not take into account features of other systems of law; 2) the decision comes from the total absence of rules (the widest option of judicial discretion), although, in the continental legal system, the courts often face an ambiguity of the rules (a milder type of discretion); 3) the decision ignores the legal relationships between the parties of the dispute; 4) the formula ignores effects at the macro-level specific to the principle of *ex ante* and only allows

²¹ See also Wälde T.W. Juristische Folgenorientierung. Athenäum, 1979. S.5-6; Mathis K. Efficiency, sustainability and justice to future generations. Berlin, 2012, p. 5.

²² See Gordley J. Foundations of Private Law. Oxford, 2007, p. 135; Becker G. The Economic Approach to Human Behavior // Foundations of The Economic Approach to Law. Ed. by A. Katz. New York, 1998, p. 17; Shavell S. Foundations of economic analysis of law. Harvard, 2004, p.191; Dworkin R. Taking rights seriously. Harvard, 1978, p. 98.

the balancing of competing legal principles²³ (in this sense, the recommendations of OECD or the theory of the weighing of interests, developed in detail in the modern German legal doctrine, are more universal); 5) Hand's formula does not establish priority of the principle of *ex ante* over subjective rights. Indirectly, the inapplicability of this formula for the implementation of competition law is associated with the constituent elements of anticompetitive violations, which should guide the courts and the executive authorities in their activities.

Another weak element of the principle of *ex ante* in the field of judicial and administrative practice is its legitimation as a tool of the courts and the executive authorities for disputes about violations of the rules of economic competition. For example, in the Russian Federation, on the basis of Part 2 of Article 15 and Part 1 of Article 120 of the Constitution, all public authorities are subject to the Constitution and the law. Can the application of the principle of *ex ante* by non-legislative governmental agencies in the implementation of their competence be justified? Several ways of the legitimation could be suggested. First, it could be done in relation to the purposes of the Russian competition law. Thus, under Part 2 of Article 1 and claim 7 of Article 4 of the Federal Law of 26.07.2006 № 135-FZ "On Protection of Competition", its objectives are the protection of competition and the creation of conditions for the effective functioning of the commodity markets. Therefore, the courts and the executive authorities must take these objectives into account in their decisions. It is significant that claim 5 of the Resolution of the Plenum of the Superior Court of Arbitration of 30.06.2008 № 30 "On some issues arising in association with the application of competition law by the arbitration courts" emphasizes the duty of the antimonopoly body to take measures and ensure competitive conditions during the monitoring of compliance with competition law. Similar purposes, i.e. ensuring a competitive environment, are in Part 2 of Article 1 of the Federal Law of 28.12.2009 № 381-FZ "On the basis of the state regulation of trade in the Russian Federation".

Second, according to the direct instructions of the law, the courts and the executive authorities must take into account the results of illegal activities of a business entity and, therefore, should assess the impact of the court decisions about the preclusion of the activities. For example, according to claim 4 of the Resolution of the Plenum of the Superior Court of Arbitration of 30.06.2008 № 30 "On some issues arising in association with the application of competition law by the arbitration courts", the arbitration courts are required to consider the presence (or the threat of occurrence) of any of the competition effects (the prevention,

²³ See Dworkin R. Taking rights seriously. Harvard, 1978, pp. 99-100.

restriction or elimination of competition or the infringement of the interests of other subjects) in order to qualify actions (or inactions) as abuse of the dominant position. Thus, the court, making its decision, must take into account both types of effects of the principle of *ex ante*, i.e. the effects at the macro-level and micro-level.

Third, the basis for the legitimation of the principle of *ex ante* for its subsequent application in the current judicial practice is provided not only by the law but also by the decisions of the Plenum of the Superior Court of Arbitration (for example, the Resolution of the Plenum of the Superior Court of Arbitration of 30.06.2008 № 30 "On some issues arising in association with the application of competition law by the arbitration courts"), which actually contain an abstract interpretation of the rules regarding competition²⁴. A striking example of the legitimization is the adoption and subsequent cancellation of claim 9 of the Resolution of the Plenum of the Superior Court of Arbitration of 30.06.2008 № 30 "On some issues arising in association with the application of competition law by the arbitration courts". In accordance with the principle of non-liability for the same violations of competition law, the claim prohibited the simultaneous recovery into the federal budget of the income received as a result of unlawful anti-competitive activities, and a fine according to the Code of Administrative Offences.

It could be assumed with a high degree of likelihood that the subsequent cancellation of the claim in October 2010 on the basis of claim 4 of the Resolution of the Plenum of the Superior Court of Arbitration of 14.10.2010 № 52, was due, precisely, to the principle of *ex ante*. The cancellation was dictated by the need to strengthen the incentives for obeying the regulatory prohibitions and by the need to ensure the minimization of the negative results of illegal activity. This is evidenced by the reasoning in claim 3 of the Decision of the Constitutional Court of 24.06.2009 № 11-P, which was the basis for the exclusion of the claim 9 of the Resolution of the Plenum of the Superior Court of Arbitration of 30.06.2008 № 30 "On some issues arising in the association with application of competition law by the arbitration courts" from the original text. In that decision, the Constitutional Court states the "compensatory nature"²⁵ of the provisions of the federal antimonopoly authority on the transfer of the revenue resulting from a violation of the competition law into the federal budget. It is assumed that this measure should "compensate for the difficult-to-estimate public expenditure associated with the elimination of negative socio-economic consequences of a violation of the competition law". Hence, the Constitutional Court and the Plenum of the Superior Court of Arbitration not only legitimized the principle of *ex ante* but also emphasized its new function of a meta-rule and outlined the priority of this postulate

²⁴ See claim 7 of Resolution of the Plenum of the Superior Court of Arbitration of 14.10.2010 № 52.

²⁵ See particularly Totyev K.Yu. Order of the antimonopoly body to transfer the illegal income: legal nature and functions // Laws of Russia. 2010. № 8, pp. 40-48.

over the general legal principle of non-liability of the same type for the same violation. There are arguments, however, against the legitimacy of this decision of the Plenum of the Superior Court of Arbitration based on subparagraph 1 of paragraph 1 of Article 113 of Federal Constitutional Law of 28.04.1995 № 1-FKZ "On Arbitration Courts in the Russian Federation".

5. Conclusion

The problem of the legitimation of the principle of *ex ante* is the problem of its place within the hierarchy of legal principles. Especially, as demonstrated by the analysis above, problems with disputes in the sphere of competition law and the uncertainty of legal requirements can be solved by using either an *ex post* or *ex ante* standard. It should be noted, however, that the Constitutional Court has no clear position on this issue. It allows the combined application of the principles of *ex post* and *ex ante* in some cases, giving priority to the latter. For example, claim 4 of the Judgment of the Constitutional Court of 30.07.2001 № 13-P allows the establishment of administrative fines not only within the upper limit depending on the nature of the offense, the size of the damage caused, the degree of culpability, the offender's property and other material circumstances of the case. The claim also provides the requirement that a heavy fine should not be used as a tool for the suppression of economic independence and initiative, contrary to Part 1 of Article 34 and Part 3 of Article 35 of the Constitution²⁶. In other documents (for example, paragraph 10 of item 5.2 of Judgment of the Constitutional Court of 24.02.2004 № 3-P), the Constitutional Court emphasizes the special role of the principle of *ex post* when assessing the economic feasibility of decisions taken by the board of directors and the general meeting of shareholders.

A solution to the problem of the hierarchy of the principles of *ex post* and *ex ante* in law enforcement would be an unequivocal directive of the legislator on this issue. Similar examples are available in domestic civil law on the protection of economic competition (for example, paragraph 2 of item 1 of Article 10 of the Civil Code). It set the evidentiary presumption of the abuse of subjective civil rights for cases where such rights are used to restrict competition or to abuse the dominant position in the commodity market. According to this rule, the legislator sets the priority for the economic consequences of competition over the subjective rights of economic

²⁶ See Resolution of the Federal Arbitration Court of the Volga-Vyatka region of 24.12.2007 on case number A29-3291/2007.

entities and allows the arbitration courts to apply a special measure of the state response, i.e. the court's refusal to protect the subjective rights (paragraph 2 of Article 10 of the Civil Code).

In addition to a weak legitimate foundation, the principle of *ex ante* has a number of serious substantive flaws that need to be taken into account by the courts and executive authorities. One of these shortcomings is the neutrality of the principle of *ex ante* in relation to the beneficial social group of the regulatory action and in relation to the question who would bear the costs of such regulation. This neutrality is observed because it is enough for the implementation of the principle of *ex ante* to have a positive overall balance by comparing all the costs and benefits of economic regulation. For competition law, however, question about the results of the implementation of the beneficiary rules is essential. For example, European competition law is aimed towards the protection of the interests of consumers²⁷.

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²⁷ See Gavalda Ch., Parleani G. Droit des affaires de l'Union européenne. Paris, 2006, p. 260; Rütters/Stadler. Allgemeiner Teil des BGB. 16. Auflage. München, 2009, S. 22.

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