

УДК 658.115.31

A. Y. Shliakhta, O.G. Ostapenko

sass5@ukr.net, ostapenkold77@gmail.com

*Simon Kuznets Kharkiv National University of Economics, Kharkiv*

## **Legal regulation of monopolistic formations in Ukraine**

Monopoly recognizes the dominant position of an entity that enables it to restrict competition on the market of a particular product (works, services) on its own or with other entities (Economic Code, art. 27, p.1) [1]. The market in which the monopoly operates is called a monopoly market. The monopolist fully meets the needs of the market for a particular product. It occurs where there are barriers to entry. The products are homogeneous and have no close substitutes. The price for monopoly products is economically unreasonable (high). To consider another way of designation, it can be said that monopoly is defined as a branch, as it takes place in a whole economical market and it is holistic and indivisible.

Sources of monopoly power (factors of monopolization), creating high entry barriers to potential competitors and to stay only enterprise in the industry for some period of time may be: 1) economies of scale on which the only one company is able to meet industry demand; 2) copyrights, patents for inventions, licenses for their using right; 3) innovations; 4) exclusive rights to conduct any type of activity, received from the state; 5) high import duties; 6) private property of land, creating control over raw materials, unique natural resources, etc. [2].

According to part one of Article 12 of the Law of Ukraine “On Protection of Economic Competition” [3], an economic entity occupies a monopoly (dominant) position in the commodity market if: it has no competitors in this market; does not endure significant competition owing to limited access to other entities for the purchase of raw stuff, materials and sales of goods, barriers to other entities’ access to the market, privileges or other circumstances.

Monopoly (dominant) is considered to be the position of an economic entity whose share in the commodity market exceeds 35 percent, unless it proves to be highly competitive.

Monopoly (dominant) may also be recognized as an entity’s position if its market share is 35 or less percent, but it does not endure significant competition, in particular owing to the relatively small size of market shares held by competitors.

Along with these norms, there are special conditions for establishing the monopoly (dominant) position of each of several economic entities.

According to part 4 of Article 12 of the Law of

Ukraine “On Protection of Economic Competition” it is considered that each of two or more economic entities holds a monopolistic (dominant) position in the market of goods if there is no competition between them or there is little competition between them and, taken together, one of the conditions provided for in part one of this Article.

Monopoly (dominant) is also considered the position of each of several economic entities, provided that the following conditions are fulfilled: a) a cumulative share of no more than three entities that hold the largest market shares in one market exceeds 50 percent; b) a cumulative share of no more than five economic entities holding the largest market shares in one market exceeds 70 percent, without proving that the conditions of part four Article 12 are not fulfilled.

There are different concepts in monopolistic discovery.

According to the Law of Ukraine on April 20, 2000 № 1682-III “On Natural Monopolies” a natural monopoly is a “state of the commodity market in which the demand satisfaction is more efficient if there is no competition due to technological peculiarities of production (in connection with a significant decrease in production costs per unit of goods as production increases), and goods (services) produced by natural monopoly entities cannot be replaced by consumption of other goods (services), and therefore demand for this in the commodity market is less dependent on changes in prices for these goods (services) than the demand for other goods (services)” [4]. Such monopolies exist in different countries, for example, in the field of water, gas, energy supply of cities and regions, in the field of postal services, etc.

Monopolies are called open, in case if their sources of monopoly power cannot provide them with a long-term monopoly position (for example, innovation, unfair competition or lack of awareness of buyers, as a rule, they are provided by temporary monopoly advantages).

Closed monopolies are those that fear less potential competition, more durable and based on more stable barriers (for example, existing ownership of a unique plot of land) [5].

Natural monopoly arises from objective reasons. Firstly, it may occur when the entire volume of a particular product or service is the product of one or

more firms. In this case, competition is either impossible or undesirable (for an example, in energy, metro). Secondly, this form of monopoly arises in agriculture and extractive industries.

Thus, on the one hand, the reason for the existence of a natural monopoly is allegedly legislative, since the state makes it impossible to compete in certain areas of economic activity. However, on the other hand, the legislative granting of exclusive rights and attribution of economic activity to a natural monopoly applies only to those types in which the economic efficiency of concentration of production is observed. Since the economic efficiency of concentration of production is observed in a considerable part of production, and the need to grant exclusive rights, called the natural monopoly, is declared only in cases of undesirable competition from the point of view of society, the reason for the natural monopoly is still legislative in nature [6].

In Ukraine, natural monopoly entities (legal entities) operate in the following areas: transportation of oil, petroleum products, natural gas and other substances by pipeline; transmission and distribution of electricity; use of railway tracks; dispatching services, stations and other infrastructure providing public transport services; air traffic control; public communications; centralized water supply and drainage, heat supply; specialized services for transport terminals, ports and airports [7].

State influence on the activities of natural monopoly entities is carried out through various measures, in particular: licensing of activities in this field and in the public markets; regulation of prices and tariffs and the application of other economic instruments (taxes and fees, depreciation, subsidies, etc.); definition of appropriate obligations for the subjects of natural monopolies, state and public control over their observance; the imposition of liability in the form of fines, the removal of illicit profits, the proceeds and damages. The direct regulation of the activities of natural monopoly entities is carried out by national commissions, which are central executive bodies with special status.

The Antimonopoly Committee of Ukraine is a state body with a special status whose purpose is to provide state protection of competition in business and in the field of public procurement (art. 1) [6].

The main task of the Antimonopoly Committee of Ukraine (according to the Article 3 “On the Antimonopoly Committee of Ukraine”) is to participate in the formation and implementation of competition policy in the part of:

1) exercising state control over compliance with the legislation on protection of economic competition on the basis of equality of economic entities according to the law and priority of consumer rights, prevention, detection and termination of violations of the

legislation on protection of economic competition;

2) control over concentration, coordinated actions of economic entities and regulation of prices (tariffs) for goods produced (sold) by subjects of natural monopoly;

3) promotion of fair competition;

4) methodological support of application of the legislation on protection of economic competition;

5) control over the creation of a competitive environment and the protection of competition in the field of public procurement;

6) monitoring of state aid to economic entities and monitoring the admissibility of such assistance for competition.

The peculiarities of the monopoly that emerge from the analysis confirm the thesis that these structures dominate within the national economy. Monopolies, for the most part, have both economic and political significant impact. In addition, the activities of a large number of monopolies are related to the advocacy of certain oligarchic circles or a certain state policy.

#### Literature:

1. Господарський кодекс України від 16 січня 2003 року № 436-IV [Електронний ресурс]. Доступно: <http://zakon.rada.gov.ua/laws/show/436-15>. Дата звернення: Лют. 28, 2020

2. Бондарь А. В., Воробьев В. А., Сухарева Н.Н. *Микроэкономика: уч. пос.* Минск, Беларусь: БГЭУ, 2007.

3. Про захист економічної конкуренції: Закон України від 11 січня 2001 р, Відомості Верховної Ради України, № 12, Ст. 64, 2001.

4. Про природні монополії: Закон України від 20 квітня 2000 року № 1682-III, Відомості Верховної Ради України, № 30, Ст. 238, 2000.

5. Полуянов В. П. Монополізованість промисловості України і тенденції формування ринкових суб'єктів господарювання, Економіка України: політико-економічний журнал, № 9, с. 36-42, 2001.

6. Лагутін В., Зігліна Ю. Природні монополії і суміжні ринки в Україні: Особливості функціонування та ймовірні сценарії реформування, Актуальні проблеми економіки, № 9, с. 45- 56, 2007.

Юридична енциклопедія: В 6 т. /Редкол.: Ю. С. Шемшученко (голова редкол.) та ін. К.: «Укр. енцикл.», 1998. [Електронний ресурс]. Доступно: <https://cybor.com.ua/content/view/1271/58/1/11/#3360> 5. Дата звернення: Лют. 28, 2020

7. Про Антимонопольний комітет України: Закон України від 02.08. 2017 № 3659-ХІІ, *Відомості Верховної Ради України*, № 50, Ст. 472, 2000.

