

DOI: 10.46340/eppd.2021.8.6.10

Svitlana Ozeranska

ORCID ID: <https://orcid.org/0000-0002-6624-3481>

Higher Education Institution «Interregional Academy of Personnel Management», Kyiv, Ukraine

SYSTEMATIZATION OF MONOPOLIES AS A CONDITION FOR EFFECTIVE LEGAL LIMITATION OF MONOPOLISM

Monopoly is harmful to society because it causes an increase in social spending. Studies have shown that monopolies, in contrast to competing firms, have a significant influence on price by regulating output, so that the monopoly can, without undue problems, set the optimal level of output (at which marginal revenue equals marginal cost), push competitors out of the market (for example, setting understated prices for their products). In essence, there are economic, natural, and administrative monopolies. We refer to the first two types of monopolies as those that are objective in nature, and the third to artificial ones, that is, those that are formed due to subjective factors. The most common among natural is an economic monopoly. Administrative monopoly is the result of the actions of purely subjective factors (human factor). It arises as a result of revolutions, riots, administrative actions of state bodies. It is expedient to take a systematic approach to the development of legal support, to develop a mechanism for identifying and recording any illegal activities of economic entities, which violates the generally accepted rules, trade, and other honest customs and practices. The development of this mechanism includes, firstly, bringing the relevant array of legislation on unfair competition in accordance with the current Law of Ukraine "On Protection against Unfair Competition" and international law. Secondly, it is necessary to systematize actions that are considered as unfair competition (discrediting a competitor, buying and selling goods, performing works, providing services with a forced range; comparative advertising; inclination to boycott a business entity, etc.), as well as monitor their presence in the business commercial organizations. Thirdly, this is the accumulation of practice in the cases of the AMCU, court decisions on unfair competition. Fourthly, this is the definition of factors influencing the choice of methods of protection of the enterprise from unfair competition, the formation of the institutional environment for identifying and prosecuting actions that have signs of unfair competition. It is not only about the system of state courts, but also the implementation of non-state proceedings, the launch of the Patent Court (High Court of Intellectual Property).

Keywords: monopoly, competitive firm, economic monopoly, natural monopoly, administrative monopoly, system approach, unfair competition, Patent Court.

Relevance of research. Monopoly is one of the most significant trends in the modern economy of both developed market economies and Ukraine. At the same time in Ukraine this tendency has taken the most ugly and dangerous form. That is why the problems facing the country's antitrust law are particularly complex, requiring the application of a scientific, systematic approach. This determines the relevance of the study, the results of which are presented in this article.

Analysis of recent research and publications. Issues of legal support for the protection of economic competition, legal liability for its violation, the spread of monopolistic activities in one way or another were raised in the works of such scientists as: A.Yu. Atamanova, A.G. Bobkova, R.A. Jabrailov, D.V. Zadykhailo, O.R. Zeldina, P.S. Matveev, V.S. Milash, A.O. Olefir, V.S. Shcherbina and others. Much less attention is paid to issues of organizational and legal support, legal regulation of the bodies that are supposed to protect economic competition, for its violation, the implementation of monopolistic activities. Even fewer authors have a systematic approach to research, in order to link, legally ensure fair competition and combat unfair competition.

The purpose of the article. The purpose of the article is a systematic approach to the definition of types of monopolies, as a condition for the next effective legal restriction of monopoly, as well as research, in order to link, legal support of fair competition and the fight against unfair competition.

Presenting main material. Monopoly is harmful for society, as it causes an increase in public spending. Studies have shown that monopolies, in contrast to competing firms, have significant influence on price by regulating output, so that the monopoly can, without undue problems, set the optimal level of output (at which marginal revenue equals marginal cost), push competitors out of the market (for example, setting understated prices for their products). In essence, there are economic, natural and administrative monopolies. We refer the first two types of monopolies to natural ones, which are objective in nature, and the third to artificial ones, i.e. those that are formed due to subjective factors.

The most common among natural is the economic monopoly. Its appearance is due to economic reasons; it grows on the basis of patterns of economic development. The emergence of this monopoly that the market generates monopolies and monopolistic tendencies in the economic system we are talking about entrepreneurs who have managed to gain a monopoly position in the market. There are two main paths to it. The first is the successful development of the enterprise, the constant growth of its scale through the concentration of capital. The second – much faster – is based on the processes of centralization of capital, i.e. on the voluntary association or acquisition by the winners of the bankrupt. One way or another, or a combination of both, the company reaches such a scale when it begins to dominate the market. It moves to another category of enterprises: from the category of "extras", which do not play a significant role and each in particular can not affect the overall situation, to the category of "soloists", who actually play a market "performance".

It is because of the emergence of economic monopoly and arose the theory of the market of pure monopoly. A pure monopoly market is a type of market construction in which products are offered by one seller. A monopoly company must satisfy all potential buyers of a particular product within a given market, and therefore this company is identified with the industry. In a broad sense, a monopoly is a situation in which sellers (manufacturers) are so few that each of them can affect the total supply and price of products sold¹.

Similar causes of natural monopoly. Natural monopoly also arises due to objective reasons. But here the subjective factors, the human factor, play a greater role. A natural monopoly reflects a situation where the demand for a given good or service is best met by one or more firms. It is based on the features of production technologies and customer service. Here, competition is impossible or undesirable, because when entering the industry of other firms, the cost of manufacturing will increase. The reason is economies of scale – the more products produced, the lower its cost. Examples are energy supply, telephone services, communications, pipeline transport, etc. In these industries there are a limited number, if not a single national enterprise, and therefore, naturally, they have a monopoly position in the market. Elimination or disintegration of such monopolies is economically impractical. The highest efficiency of the industry is provided only if there is one manufacturer or distributor (distributor). Administrative monopoly is the result of the actions of purely subjective factors (human factor). It arises as a result of revolutions, riots, administrative actions of state bodies. On the one hand, it is granting certain structures the exclusive right to perform a certain type of activity. a classic example – when the Dutch and English East India Companies in the early 17-th century the state was granted the exclusive right to trade with India. On the other hand, these are organizational structures for state-owned enterprises, when they are united and subordinated to different regions, local governments or ministries, associations. In the latter case, as a rule, enterprises of one branch are grouped. They act on the market as a single business entity and there is no competition between them. The bright device is, of course, the economy of the former Soviet Union, which was created as a result of the revolution (increasingly called – rebellion). The socialist economy of the USSR was one of the most monopolized in the world. The administrative monopoly was dominant there, first of all the monopoly of omnipotent ministries and departments – the administrative-distributive apparatus. Moreover, there was an absolute state monopoly on the organization and management of the economy, which was based on the dominant state ownership of the means of production. Note that the main elements of the former administrative and distribution apparatus have survived to this day. That is why corruption and oligarchic monopoly flourish. However, this is a separate topic research. Now briefly about the economic and legal support of the restriction of monopoly, ensuring fair competition.

¹ Wikipedia (2021). *Monopoly* <<https://en.wikipedia.org/wiki/Monopoly>> (2021, November, 12).

Economic and legal principles of support and protection of economic competition, restrictions on monopoly in economic activity are contained in the Commercial Code and the above laws. In particular, the Commercial Code of Ukraine deals with the restriction of monopoly provisions of Art. Art. 5 -9 of Chapter 3 "Restriction of monopoly and protection of economic entities and consumers from unfair competition". According to Art. 7 "Restriction of monopoly in the economy" "Monopoly is the dominant position of the business entity, which gives him the opportunity alone or together with other entities to restrict competition in the market of certain goods (works, services)" (paragraph 1).

The position of an economic entity whose share in the market of a certain product exceeds the amount established by law is monopolistic. The position of economic entities on the market of goods may also be recognized as monopolistic in the presence of other conditions specified by law (paragraphs, 3). In case of public necessity and in order to eliminate the negative impact on competition, referred to in paragraph 4 of this article, public authorities shall carry out antitrust measures against existing monopolies in accordance with the law and measures to demonopolize the economy provided by relevant state programs, except for natural monopolies. P. 5 article 7 public authorities and local governments are prohibited from adopting acts or actions aimed at economic strengthening of existing monopolies and the formation of new monopolies without sufficient grounds, as well as to decide on exclusively centralized distribution of goods. At the same time, the results of intellectual creativity, such as inventions, utility models and industrial designs (components of industrial property) – are subject to copyright, exclusive rights. The existence of an exclusive right means that no person other than the one who owns the copyright may use the results of intellectual creative activity without the appropriate permission (license). Inventions, utility models and industrial designs occupy a significant place among the objects of intellectual property. Together with trademarks, service marks, appellations of origin, they are covered by the common name "Objects of industrial property" (Article 1 of the Paris Convention for the Protection of Industrial Property of March 0, 1883). As is well known, according to the Paris Convention, industrial property is understood "in the broadest sense and extends not only to industry and trade in the proper sense of the word, but also to agricultural production and extractive industries, and to all products of industrial or natural origin." The right of industrial property in the objective sense is represented by a number of separate institutions, which include: the Institute of Patent Law, the Institute of Law on Means of Individualization, the Institute of Law on Unfair Competition. Means of individualization of goods and participants in economic circulation (abbreviated as "means of individualization") means a group of intellectual property, in particular: marks for goods and services or trademarks, indications of origin, trade names and industrial designs used to distinguish one product or participant in business from another. Means of individualization are the material expression of such intangible assets of the enterprise as goodwill, business reputation and consumer loyalty. Individualization tools are a key asset in the intellectual property portfolios of enterprises whose activities are based on an active marketing strategy. Regarding the analysis of the effectiveness of the current legal liability of economic entities for violations in the field of industrial property. Analysis of unfair competition law shows that the vast majority of acts of unfair competition are associated with infringement of intellectual property rights, such as inventions, utility models, trademarks, industrial designs, etc.¹ In the last few years, measures have been introduced to protect intellectual products from unfair competition that meet Western standards. But they did not give the desired results due to the high level of unfair competition in the market of intellectual property. This is evidenced by the widespread use of pirated products, unlicensed goods, and lack of tradition in solving such problems. Although it should be noted that the problems of unfair competition in the intellectual sphere are discussed very actively, but only a small number of health initiatives are known. The literature highlights the problems arising from the existence of pirated (unlicensed) products and the peculiarities of these processes in the market of intellectual property. A significant problem is the so-called "patent trolling"². It is proposed to create an effective mechanism for real liability for actions that show signs of unfair competition with the use of intellectual property rights. Competition, especially in the field of innovation development, in the intellectual sphere is not always legal. There is not only the misuse of the name, trade name, trademark, but also "buying brains", industrial espionage, the use of "pirated products", etc.

¹ Прихожанов, В. О. (2016). Компетентностний підхід до визначення змісту юридичної відповідальності суб'єктів господарювання. *Європейська інтеграція України: сучасний стан та перспективи розвитку: Матеріали підсумкової науково-теоретичної конференції, присвяченої Дню науки та 95-річчю НАВС.* (Київ, 22 квітня 2016 р.), 147.

² Охромєєв, Ю. (2015). Патентний тролінг – ахіллесова п'ята системи охорони інтелектуальної власності в Україні. *Юридична газета, 2 лютого 2015.*

Conclusions. It is expedient to take a systematic approach to the development of legal support, to develop a mechanism for identifying and recording any illegal activities of economic entities, which violates the generally accepted rules, trade and other honest customs and practices. The development of this mechanism includes, firstly, bringing the relevant array of legislation on unfair competition in accordance with the current Law of Ukraine "On Protection against Unfair Competition" and international law. Secondly, it is necessary to systematize actions that are considered as unfair competition (discrediting a competitor, buying and selling goods, performing work, providing services with a forced range; comparative advertising; inclination to boycott a business entity, etc.), as well as monitor their presence in the business commercial organizations. This can be done, for example, through consumer protection structures. Despite the fact that the latter some types of violations (actions contrary to trade and other fair customs in economic activity) are not directly related. Thirdly, this is the accumulation of practice in the cases of the AMCU, court decisions on unfair competition. Fourthly, this is the definition of factors influencing the choice of methods of protection of the enterprise from unfair competition, the formation of the institutional environment for identifying and prosecuting actions that have signs of unfair competition. It is not only about the system of state courts, but also the implementation of non-state proceedings, the launch of the Patent Court (High Court of Intellectual Property). Competition, and hence its legal, economic and legal support is the most important formation and functioning of a healthy market environment. This is especially important for Ukraine, which for a long time the introduction and protection of competitive relations should become one of the state priorities. The effectiveness of compliance with competition law, restriction of monopoly, protection of competitive relations, to some extent depends on the systematization of monopolies as a condition for effective legal restriction of monopoly to refrain from actions contrary to trade and other fair practices in business. The degree of formation of the competitive environment also depends on it.

References:

1. Wikipedia (2021). *Monopoly* <<https://en.wikipedia.org/wiki/Monopoly>> (2021, November, 12). [in English].
2. Prikhozhanov, V. O. (2016). Kompetentnostnyy pidkhdid do vyznachennya zmistu yurydychnoyi vidpovidalnosti subyektiv hospodaryuvannya [Competence approach to determining the content of legal liability of business entities]. *Yevropeyska intehtratsiya Ukrayiny: suchasnyy stan ta perspektyvy rozvytku: Materialy pidsumkovoyi naukovo-teoretychnoyi konferentsiyi, prysvyachenoyi Dnyu nauky ta 95-richchyu NAVS* [European integration of Ukraine: current state and prospects of development: Proceedings of the final scientific-theoretical conference dedicated to the Day of Science and the 95th anniversary of the NAVS. (Kyiv, April 22, 2016)], 147. [in Ukrainian].
3. Okhromeyev, Yu. (2015). Patentnyy trolinh – akhillesova pyata systemy okhorony intelektualnoyi vlasnosti v Ukrayini [Patent trolling is the Achilles heel of the intellectual property protection system in Ukraine]. *Yurydychna hazeta, 2 lyutoho 2015* [Legal newspaper, February 2, 2015]. [in Ukrainian].