

State antimonopoly control in the in the water sector Kyrgyz Republic: theoretical aspects

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Abstract: This article deals with the theoretical aspects of state antimonopoly control, doctrinal and legislative definition of the concepts of state control, state antimonopoly control, principles of state antimonopoly control, its types and forms, which are the subject of close attention from the representatives of both economic and legal sciences. Uniform definition of the concept of state antimonopoly control, clear classification of its principles, types and forms is dictated by the need for adequate application of this type of state control in the practical plane, as well as in the training of specialists in this area. By means of comparative-legal analysis and the study of different positions of scientists concerning the highlighted problems, the possibility of finding the most succinct definition of state antimonopoly control, which is presented in a broad and narrow sense, was realized. Using the above methods, a generalized classification of the principles of state antimonopoly control, its types and forms was proposed. Normative enshrining in the antimonopoly legislation of Kyrgyzstan the theoretical provisions proposed in this article, which are directly related to the antimonopoly control, will contribute to improving the economic and legal mechanism of protection and development of competition, civil rights of economic entities and other stakeholders (interested parties) in this area of public relations.

Keywords: State control, water sector, natural resources, antitrust control, antitrust law, principles, form, antimonopoly control.

Introduction

The institute of the state antimonopoly control in the water sector has repeatedly become a subject of scientific analysis by representatives of both economic and legal sciences. It should be said that the legal acts of the Kyrgyz Republic regulating the sphere of antimonopoly relations do not disclose the concept of "state antimonopoly control", and there are no clear definitions of principles, types and forms of the latter. Thus, the Law of KR "On Competition"

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mentions only about the state control over economic concentration and state control over compliance with the antimonopoly legislation on acquisition of shares (interests) in the authorized capital of business entities and other cases, while there is no definition of state control.

The lack of legislative and theoretical definitions of the considered categories determines the existence of the debate process on this issue and determines the risks of inadequate understanding and application of the latter in practice, including in the educational process. In this regard, a thorough study of theoretical aspects of state antimonopoly control seems very relevant.

Materials and Methods

The article used information and analytical materials, normative-legal acts of the current legislation of Kyrgyzstan. By means of comparative legal method and analysis of various sources of direct relevance to the issues under consideration the general key points were deduced, which formed the basis of the author's definitions of the studied concepts, as well as the construction of classification features of principles, types and forms of state antimonopoly control in the water sector .

It should be noted that in the scientific environment and at the legislative level there are differential positions regarding the disclosure of the concept of "state control". Naturally, the search for a generalized scientific-theoretical definition of the concept under study is of particular importance. At the same time in the normative expression state control may reflect the features of a certain type of public administration, i.e. have sectoral nature, based on doctrinal approach.

Different positions of scholars and legislators on the concept of "state control" are presented in Table 1.

Table 1. Different approaches to the disclosure of the concept of "state control" depending on the source and level of abstraction

Source	The definition of "state control"
Y. S. Smorodinova [14]	State control is a special activity expressed in a certain organizational and legal form and aimed at a certain impact on the object of public administration through monitoring and checking the existing deviations, their analysis and disclosure of the causes of such deviations, the formation of proposals to eliminate the latter, which is necessary to manage a particular managed object.
A.V. Lipuntsova [4]	State control is "an element of the mechanism for implementing the functions of the state, which is aimed at ensuring compliance and proper implementation of legislation to streamline and stabilize social relations, ensure the effectiveness and feasibility of protecting the interests of society and the state, protecting the rights and freedoms of citizens".

Law of the Russian Federation of December 26, 2008 № 294 FZ ("On the protection of the rights of legal entities and individual entrepreneurs in the exercise of state control (supervision) and municipal control" (as amended on March 8, 2022) [16]	"State control (supervision) is the activity of authorized public authorities (federal executive authorities and executive authorities of subjects of the Russian Federation) aimed at preventing, detecting and suppressing violations by legal entities, their managers and other officials, individual entrepreneurs, their authorized representatives of the requirements established by this Federal Law, other federal laws and other regulations adopted in accordance with them
N.F. Vorobiev [15]	State control is the activity of public authorities, their officials, of a large-scale nature to monitor the proper state of the object of control, which is carried out on a systematic basis and according to established procedures, and is aimed at ensuring the legality, security in the state and society, as well as the effectiveness of public administration and the stability of order in the state.
N.F. Popova[10]	"State control - the activity of specially authorized state bodies, their officials to monitor the functioning of the controlled object in order to establish its deviations from the specified parameters".

Compiled by the author

As can be seen from Table 1, in scientific-theoretical terms, state control is positioned both as a function of management, and as a system of monitoring and inspection, and as a type of activity of public authorities, and both in correlation. All the above also applies to the state antimonopoly control in the water sector.

For example, from the position of scholar P. V. Samolysov, "state antimonopoly control is a complex control and supervisory function of antimonopoly authorities to protect competition, a set of relevant powers and external control activities of such authorities" [12]

Researcher Koryakina G. K. gives the following definition of the considered concept: "State antimonopoly control - the activity of the antimonopoly authority to assess the compliance of the activities of business entities, administrative and public bodies with the requirements of the antimonopoly legislation, carried out both on its own initiative within the granted powers, and on the application of business entities and other persons, whose rights are violated or in respect of which there is a threat of violation of their rights" [2]

Analysis and comparison of presented in scientific and specialized literature approaches to the definition of state control, antimonopoly control allows us to formulate our own position regarding this concept. In this regard, we believe that state antimonopoly control should also be considered in a broad and narrow sense.

In the broad sense, state antimonopoly control (hereinafter - SAC) is a type of state control, which is a process of ensuring compliance of activities of economic subjects, including state and local authorities, with the goals and target implementations of the state in the economic sphere. [13]

In a narrow sense, we will understand state antimonopoly control as a systematic process of obtaining, consolidation and analysis of information by an authorized state body on the state and functioning of controlled economic entities, state and local authorities to assess and

determine the presence of adverse situations, deviations and violations in their actual activities of the current antimonopoly legislation, other legislation relevant to the competence of authorized state

Results

The basic goals of state antimonopoly control in the water sector in modern economic and political conditions are shown in (Fig. 1).

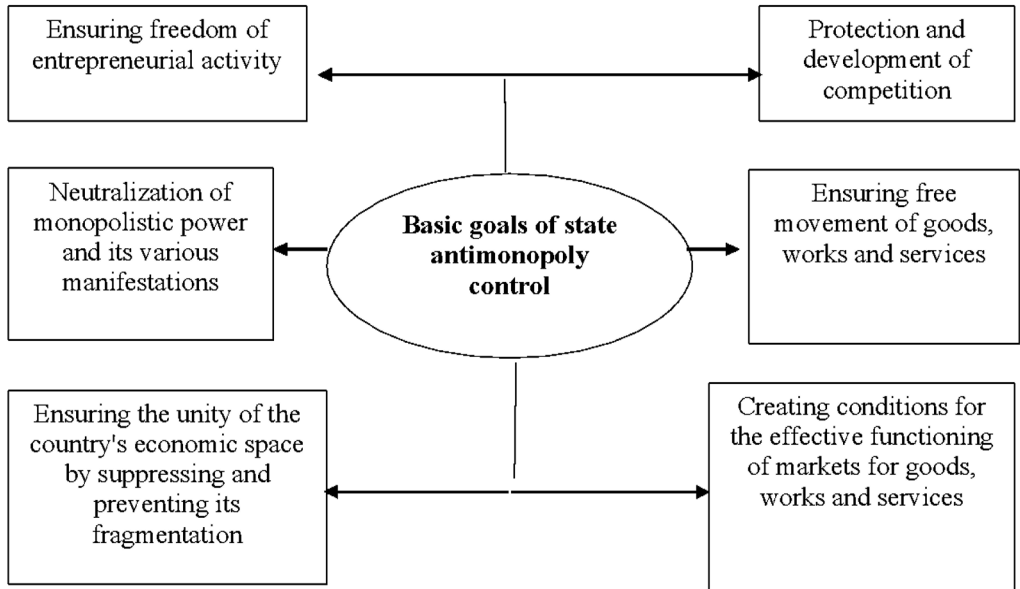


Fig. 1. Basic goals of the state antimonopoly control in the water sector (Compiled by the authors)

Further content of the state antimonopoly control in the water sector is revealed through its tasks and principles of organization and functioning.

Discussion

Basic principles of state control organization in the water sector were formulated in the process of long-term practice of the latter and should be a guideline in managerial activity in every developed and developing state. These principles are stated in "Lima Declaration of Guiding Principles of Control" adopted by the IX Congress of the International Organisation of Supreme Audit Institutions (INTOSAI) in 1977. Such principles as objectivity, independence, transparency and competence are universal. [3]

Let us consider separately those principles that can be attributed to the special principles of antimonopoly control in the water sector.

1. The principle of support of competition. This principle means that the State, based on fundamental provisions about the inadmissibility of economic activities aimed at increasing monopolization and unfair competition, must, by adopting laws on competition, provide support

for fair competition between economic subjects by setting the necessary restrictions (limits) on freedom of entrepreneurship which cannot be uncontrolled. At that, good faith in competition in its negative meaning refers more to unlawfulness of behavior rather than to the assessment by a person of his/her actions and their consequences [11]. In this regard, the Law of the Kyrgyz Republic "On Competition" states that unfair competition is any actions of business entities aimed at obtaining advantages in business activities, which are contrary to the provisions of the legislation of the Kyrgyz Republic, the customs of business turnover, the requirements of good faith, reasonableness, fairness and may cause or have caused losses to other business entities - competitors, or damage their business reputation [5].

2. The principle of preventing the abuse of a dominant position. According to the Law of KR "On Competition" a dominant (monopsony) position is a position of a business entity (group of persons) or several business entities (groups of persons) at a certain product market, which gives such business entity (group of persons) or such business entities (groups of persons) an opportunity to have a decisive influence on general conditions of goods circulation at a certain market and (or) to eliminate other business entities from this market and (or) hinder access to this market for other business entities [5].

The implementation of this principle determines:

- implementation of measures and activities to suppress, limit and prevent the abuse of a dominant position by market entities;
- Creating conditions for the entry of new business entities to the market;
- implementation of measures and activities to suppress, limit and prevent cartel collusion and creation of sustainable cartels;
- ongoing control over the level of economic concentration;
- ongoing monitoring of structural changes on the market and the formation of various trends in the national economy
- development and implementation in the state structures and economic entities of the system of antimonopoly compliance, etc. [1].

3. The principle of deconcentration of antitrust control.

The implementation of the principle of deconcentration can be expressed in:

- in the separation of jurisdictional and rule-making powers;
- differentiation of the powers to conduct antimonopoly control on the basis of sectoral criteria;
- the division of powers in the field of revealing the negative factors affecting competitive relations, as well as respective threats to the economic interests of economic entities;
- the division of powers in the area of control over economic concentration;
- in the distribution of powers to carry out analytical activities in the sphere of antimonopoly control, giving appropriate recommendations and proposals both at the legislative level and in the practice of law enforcement [9].

It should be noted that in Kyrgyzstan the principle of deconcentration of antimonopoly control is practically not implemented.

4. The principle of prevention of unfair competition and the principle of suppression of unfair competition are directly related to the principle of supporting competition and imply the implementation of effective state antimonopoly control both before the economic entity commits an unlawful act, as well as during and after such an act. These principles can be expressed through:

- improvement of measures of administrative and criminal responsibility for unfair competition, including differentiation of the size of the latter depending on the gravity of violations;

- Improvement of the anti-monopoly legislation in terms of defining an exhaustive list of unfair competition forms;
- Intensification of work to suppress, limit and prevent unfair competition;
- popularization of the Rules for communicating with competitors within the business community;
- Ensuring protection of consumer rights;
- introduction of anti-monopoly compliance system, etc.

5. The principle of unity of the process of price formation and control over compliance with prices consists in the fact that the state antimonopoly authority is imposed by law the obligation to control them. Basically, such control applies to products and services of enterprises-monopolists: electricity, gas, oil, public transport services, etc. The Law of KR "On Competition" introduced such concepts as: monopolistically high price; monopolistically low price; monopsony low price; unreasonably high price of financial service; unreasonably low price of financial service [5].

Construction of generalized classification of types of state antimonopoly control has a special scientific, practical and educational significance.

In the economic and legal literature the classification of types and forms of any economic or legal phenomenon is formed depending on certain criteria. If we are talking about state control in general, and state antimonopoly control in particular, in scientific works are given a significant number of criteria of classification of the latter: by content and nature of control activity, by the subject of control, by legal consequences of control, by time and direction of implementation of control measures, etc. At that, it is often possible to encounter confusion when attributing certain criteria to the form or type of antimonopoly control in the water sector.

Moreover, in the scientific community also has not been formed a common position on what acts as forms of state control, including antimonopoly control. We believe that under the form of state antimonopoly control should be defined organizational and legal external expression of control measures and activities, which incorporate certain methods of control carried out for the purpose of practical implementation of tasks. At that, methods of antimonopoly control in the water sector is a totality of special techniques, specific means and methods of investigating compliance with the requirements of antimonopoly legislation and implementation of control measures and measures to achieve the goals and objectives of control

In connection with the above, let us distinguish the following forms of SAC

- imperative form of SAC;
- Non-imperative form of SAC;
- notifications of congruent actions (transactions);
- Petitions for consent to congruent actions (transactions);
- the planned form of the SAC;
- unplanned form of the SAC;
- contact, face-to-face, direct form of the SAC (field trip, inspection, etc.)
- contactless, absentee form of SAC (documentary, monitoring, etc.).

Such forms of SAC as planned and unplanned depend on the external expression of actions of antimonopoly body concerning the sign of planned control measures. The content of the planned and unplanned form of SAC is an inspection of compliance by business entities, state and local authorities with the provisions of antimonopoly legislation, other regulations within the competence of the antimonopoly authority. The grounds for an unscheduled inspection may also be the execution by a controlled subject of an order previously issued by the controlling authority.

The content of the contact, direct form of SAC is an on-site inspection, through which compliance or non-compliance of business organizations, individual entrepreneurs with the

antimonopoly legislation, other regulatory acts within the competence of the antimonopoly authority is established, inspection of buildings, territories, premises and structures, vehicles and equipment etc., which is used by business entities in their activities, inspection of products, goods, works and services is performed.

Analysis of points of view of various scientists and specialists, as well as the current Kyrgyz legislation, allowed in the framework of this work to carry out the author's classification of types of SAC (Table 2).

Table 2. Classification of types of SAC in the water sector

№	Criteria	Type of antimonopoly control
1.	Depending on the groups of offenses and measures to detect, suppress and prevent them	1) control over monopolistic activities; 2) control over unfair competition; 3) control over the functioning of state and municipal authorities (and bodies and organizations equated to them); 4) control over the granting of state and municipal preferences; 5) control over the compliance with the procedure of tenders (including in relatively isolated sectors of the economy) 6) control over economic concentration (including in relatively isolated sectors of the economy); 7) control of the acquisition of shares of the JSC; 8) control of the acquisition of shares in the charter capital of business entities; 9) control of compliance with legislation in the field of consumer protection 10) control of compliance with the legislation on advertising; 11) control over compliance with the requirements of the national legislation in the field of ensuring the uniformity of measurements (metrology), rules for production of the state flag and coat of arms; 12) control over the establishment and reorganization of <u>non-commercial organizations</u>
2.	Depending on the subject composition of the SAC	1) Antimonopoly control in all sectors of the economy, except for the fuel and energy sector and banking services, exercised by the Antimonopoly Regulation Service under the Ministry of Economy and Commerce of the Kyrgyz Republic; 2) Antimonopoly control at the market of banking services, performed by the National Bank of the Kyrgyz Republic 3) Anti-monopoly control in the fuel and energy sector, carried out by the Department for Regulation of the Fuel and Energy Sector under the Ministry of Energy of the Kyrgyz Republic
3.	Regarding the time of implementation of the GAK	1) preliminary control (ex ante) 2) subsequent control (ex post)
		1) antimonopoly control of horizontal concentration; 2) antimonopoly control of vertical concentration;

4.	Regarding types of economic concentration	3) antimonopoly control of conglomerate concentration
5.	Regarding the level of concentration of powers in the field of antimonopoly and competition policy	1) deconcentrated antitrust control; 2) concentrated antitrust control; 3) super concentrated antimonopoly control
6.	Regarding the source of control actions	1) Antimonopoly control on the initiative of the body authorized by the legislation in force; 2) Antimonopoly control on the basis of appeals, applications, complaints of business entities, individuals, other persons whose rights are violated or in respect of whom there is a threat of violation of their rights; 3) Antimonopoly control on the basis of mass media reports

Compiled by the author from an analysis of sources [2.8,12]

It should be noted that at present certain possible types of antimonopoly control in the water sector are not covered by the current legislation of Kyrgyzstan.

Control, as any management process, incorporates a specific content, which is expressed in various forms, each of which is conditioned by specific goals and objectives. At the same time the antimonopoly legislation of the Kyrgyz Republic does not disclose the concepts of forms and methods of state control (supervision) as a category.

The content of non-contact, absentee SAC is the inspection of information contained in the documents used by business entities in the conduct of their activities, and such information must be related to the performance and compliance of such entities with mandatory requirements established by the current antimonopoly legislation, other regulations related to the competence of antimonopoly authority, or to the execution of instructions of relevant authorized bodies.

The implementation of a documentary inspection is appropriate if there is no special need to examine the actual location of the activities of a business organization or other controlled subject. It should be noted that at this point, the State Antimonopoly Service in the water sector does not have the right to demand documentation, other information that is not relevant to the subject of the documentary inspection, as well as information and documents that may be obtained by this body from other state and local authorities [6].

Notifications and petitions act as specific legal forms of antimonopoly control. At the same time normative legal acts establish a list of documents attached to a petition or notification on the implementation of actions subject to state antimonopoly control in the water sector. For example, the list of information (documents) submitted by the applicant to the antimonopoly authority of the Kyrgyz Republic for review of applications and notifications under Article 5 of the Law of KR "On Natural Monopolies in the Kyrgyz Republic" includes: 1) general information about the subject of natural monopoly; 2) information about the persons proposing to make a transaction; 3) purpose of the transaction and justification of the latter; 4) information about the property to be acquired; 5) balance sheet, etc. (Resolution of the KR Government "On Natural Monopolies in the Kyrgyz Republic". [7].

It should be said that an adequate choice of forms and methods of state antimonopoly control in the water sector predetermines the effectiveness and efficiency of the latter, allowing to achieve the intended objectives with the least effort.

Conclusion

Adequate implementation of state antimonopoly control, allowing to avoid and prevent violations and abuses of economic entities, should be based on a clear theoretical knowledge and methodological approaches. Normative consolidation in the antimonopoly legislation of Kyrgyzstan proposed in this article definitions of the considered categories, principles of state antimonopoly control in the water sector, types and forms of the latter will be the starting point for effective implementation of goals and objectives of SAC, contribute to improving the economic and legal mechanism to protect and develop competition, civil rights of business entities and other stakeholders (interested parties) in this area of public relations.

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