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Monopoly and Its Varieties: Conceptual Framework for Economic Governance in Law

Abstract: The article explores the concept of monopoly from legal and economic perspectives, and aims to develop a unified analytical framework for assessing monopolistic structures within economic governance systems. The author categorizes monopolies into three types: factual, natural, and legal, analysing their features and interrelations in the context of European and Polish law. Special attention is given to the interaction between legal regulations and economic realities, proposing that the notion of a "monopoly system" integrates these categories. The article provides a conceptual framework aligned with EU law principles, emphasizing the need for compliance with proportionality and internal market rules. Examples from Polish law, such as the currency monopoly and the organization of sports competitions, illustrate the discussion.
Keywords: monopoly, factual monopoly, natural monopoly, legal monopoly, monopoly system, economic regulations, internal market, European Union law, proportionality, Polish law

Introduction

The legal concept of monopoly is not extensively covered in theoretical legal scholarship. The majority of legal works on this topic focus primarily on

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analysing specific cases, and treat the concept of monopoly as a pre-existing concept,[2] often providing only a brief definition or referring to the economic understanding of this concept. This article aims to clarify the terminology concerning monopoly and propose a definition that can be more widely applied in the analysis of legal systems regulating the economy.

The article begins by examining European and national regulations that create a legal framework for understanding monopoly, which will serve as a foundation for further discussion. Next, the paper explores the main contexts in which the term "monopoly" is used, categorizing them into three "adjectival monopolies": factual, natural, and legal. A key aspect of this analysis is integrating both economic and legal perspectives, as legal-economic analyses often require terms that relate to economic phenomena. As such, a clear and precise definitional structure is necessary, one that takes account of the different ways the term "monopoly" is applied in various contexts.

The goal of this paper is to propose a unified conceptual framework that outlines the monopoly system and its relationships with the "adjectival monopolies," offering a clearer understanding of how these terms interact within both legal and economic discussions.

Monopolies in EU Law

EU law applies varying degrees of rigor to fiscal and administrative monopolies, as well as to commercial and service monopolies. Commercial monopolies, which involve exclusive import and export rights, are fundamentally incompatible with the principles of the common market and free trade. Consequently, their reorganization is mandatory.[3] Based on the purpose for which monopolies are established, they can be categorized as fiscal or administrative.[4]

2 An implicitly understood term, present and established in the culture, used in legal texts, typically without a statutory definition, relying instead on its customary understanding.

3 Volker Emmerich, "Monopole i przedsiębiorstwa publiczne," in *Prawo gospodarcze Unii Europejskiej*, ed. Manfred A. Dauses, trans. Anna Rubinowicz (C.H. Beck, 1999), 866–78.

4 Artur Żurawik, "Monopol prawny," in *Wielka Encyklopedia Prawa, vol. XVII: Prawo publiczne gospodarcze*, ed. Roman Hauser (Fundacja „Ubi Societas, Ibi Ius," 2019), 175.

Fiscal monopolies, created to generate additional government revenue, are viewed unequivocally negatively. These monopolies, established in any sector with the primary goal of increasing budgetary income, lack justification in terms of serving a significant public interest. Since revenue generation can be achieved through taxes, excise duties, or other public levies, fiscal monopolies are similarly considered incompatible with the principles of the common market.[5]

Administrative monopolies, by contrast, are established to protect significant public interests[6] and are not prohibited under EU law. However, their operation ought not to be in conflict with the functioning of the internal market as it is regulated by treaty provisions, particularly the fundamental freedoms. These monopolies must adhere to the principle of proportionality, which allows them to operate only when they are intended to achieve significant public objectives and when those objectives cannot be achieved by other means.[7] A special subset of administrative monopolies includes those engaged in activities involving the exercise of public authority or conducted in the general economic interest[8] (Article 106(2) TFEU). Such enterprises are subject to the provisions of the Treaties, including competition rules, insofar as their application does not legally or practically obstruct the fulfillment of their specific public tasks.

If an administrative monopoly in the services sector includes activities classified as commercial services unrelated to the exercise of public authority,[9]

5 Emmerich, "Monopole i przedsiębiorstwa publiczne," 900–01.

6 Cf. Katarzyna Grotkowska, "Paternalizm prawa a hazard," *Państwo i Prawo*, no. 10(2015): 42–56.

7 Emmerich, "Monopole i przedsiębiorstwa publiczne," 886.

8 Agata Jurcewicz-Gomułka and Tomasz Skoczny, "Wspólne reguły konkurencji Unii Europejskiej," in *Prawo Gospodarcze Unii Europejskiej*, ed. Jan Barcz (Instytut Wydawniczy EuroPrawo, 2011), VI–218–24.

9 Stanisław Biernat, "Działalność gospodarcza poddana reglamentacji w świetle orzecznictwa Trybunału Sprawiedliwości (na przykładzie prowadzenia gier hazardowych)," *Przegląd Prawa i Administracji* 114, 2018: 420, https://doi.org/10.19195/0137-1134.114.26; Grzegorz Skowronek, *Reglamentacja obszaru hazardu w krajowym porządku prawnym na tle prawodawstwa Unii Europejskiej* (Wrocław, 2012), 241–42; Marek Szydło, *Swoboda prowadzenia działalności gospodarczej i swoboda świadczenia usług w prawie Unii Europejskiej* (Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora," 2005), 99, 136–38.

the provisions of Article 51(1) TFEU and Article 106(2) TFEU do not apply. Nevertheless, Member States retain the discretion to establish such monopolies provided that the principles of non-discrimination, a legitimate justification based on public interest,[10] and the prevention of abuse of a dominant position by the monopolist are upheld.[11]

The general legal framework for assessing such monopolies is defined by Article 56 TFEU (freedom to provide services) and Article 49 TFEU (freedom of establishment), along with the prohibition of discrimination (Article 18 TFEU) and competition rules (Articles 101–109 TFEU). Furthermore, under Article 106(1) TFEU, there is a prohibition on discriminatory practices and the imposition of other unjustified restrictions.[12]

Monopolies in Polish Law

The Polish Constitution addresses the establishment of monopolies by stipulating a formal requirement: they must be created by statute (Article 216(3)). However, along with the principle of proportionality, material requirements should also be taken into account. These include the implementation of a particularly significant public good, the efficiency of the monopoly in achieving its intended public purpose, and the necessity of this form to achieve the stated objective.[13] Furthermore, domestic legislators must adhere to the principles of EU law outlined above.

10 Skowronek, *Reglamentacja obszaru hazardu w krajowym porządku prawnym na tle prawodawstwa Unii Europejskiej*, 241–43; Kazimierz Strzyczkowski, *Prawo gospodarcze publiczne* (Wolters Kluwer, 2023), 311; S. Biernat, "Działalność gospodarcza poddana reglamentacji w świetle orzecznictwa Trybunału Sprawiedliwości (na przykładzie prowadzenia gier hazardowych)," 418–19.

11 Marek Szydło, *Swobody rynku wewnętrznego a reguły konkurencji. Między konwergencją a dywergencją* (Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora," 2006), 330–33.

12 Dariusz Barwaśny, "Zasady świadczenia usług w zakresie gier hazardowych w prawie Unii Europejskiej," *Folia Iuridica Wratislaviensis* 3, no. 1(2014): 143.

13 M. Szydło, *Swoboda prowadzenia działalności gospodarczej i swoboda świadczenia usług w prawie Unii Europejskiej*, 207–08.

As in EU law, fiscal monopolies are generally prohibited in Poland. The state cannot secure financial resources by restricting the constitutional right of individuals to engage in and conduct business activities. Such monopolies are incompatible with the principle of proportionality. This stance is supported by the doctrine of the "tax state," which asserts that the state can and should fund its public expenditures through taxes, customs duties, fees, and other traditional sources. Nevertheless, fiscal monopolies do exist in practice, and their existence is deemed permissible only in two exceptional cases: when explicitly provided for in the Constitution or when they existed in the legal system before the introduction of norms establishing the freedom of economic activity.[14]

By contrast—and again, in accordance with EU law—administrative monopolies are treated differently. Their establishment is justified by the pursuit of specific, significant public objectives. Such monopolies are permissible if they meet the criteria for restricting rights and freedoms: they must be introduced by statute, be necessary to protect a specific public good, and comply with the principle of proportionality. In Polish law, the framework for regulating monopolies exists only at the constitutional level. The *Law on Entrepreneurs* does not include provisions on monopolies. The establishment of a monopoly is always regulated by specific legislation concerning a particular sector and is not addressed in Chapter 4 of the *Law on Entrepreneurs*, which covers general rules for regulating business activities (such as licenses, permits, or registration in a regulated activity register).

Examples of Monopolized Domains in Contemporary Polish Law[15]:

- issuance of currency: This monopoly is reserved for the National Bank of Poland (NBP),[16]
- issuance and withdrawal of postage stamps and postal stationery: This includes items such as postal cards made of stiff paper with printed

14 A. Żurawik, "Monopol prawny," 175.

15 Zbigniew Ofiarski, "Komentarz do art. 216," in *Konstytucja RP, Vol. 2, Komentarz. Art. 87–243*, ed. Marek Safjan and Leszek Bosek (C.H. Beck, 2016), Legalis.

16 Art. 4 Ustawy z dnia 29 sierpnia 1997 r. o Narodowym Banku Polskim (consolidated text Journal of Laws of 2022, item 2025).

postage stamps, marked with the words "Polska" or "Rzeczpospolita Polska" in any grammatical case, or envelopes with printed postage stamps and the same markings. This monopoly is assigned to the designated postal operator,[17]

– organization and management of sports competitions: This includes competitions for the title of Polish Champion or the Polish Cup in a given sport, the establishment and enforcement of sports, organizational, and disciplinary rules for sports competitions organized by sports associations, the appointment of national teams, and their preparation for such events as the Olympic Games, Paralympic Games, Deaflympics, World Championships, or European Championships. Representation in international sports institutions is also within the purview of Polish sports associations.[18]

These examples illustrate the specific contexts in which monopolies are applied under Polish law, demonstrating their alignment with constitutional and statutory requirements while also reflecting sector-specific needs.

Factual Monopoly

In the realm of economic theory, a factual monopoly is defined as a market structure wherein a single supplier operates exclusively, while the consumer base (in the context of this analysis, consumers of gambling services) is highly atomized. Individual consumers make independent purchasing decisions.[19] The monopolist unilaterally determines the scope of services and their pricing, guided by the profit. The establishment of such a monopoly can function as an administrative barrier to market entry.[20] In the absence of legal

17 Art. 24 Ustawy z dnia 23 listopada 2012 r. Prawo pocztowe (consolidated text Journal of Laws of 2023, item 1640).

18 Art. 13 Ustawy z dnia 25 czerwca 2010 r. o sporcie (consolidated text Journal of Laws of 2022, item 1599 as amended).

19 Marek Dietl, *Proces monopolizacji i niepewność* (Instytut Sobieskiego, 2010), 42.

20 Dietl, *Proces monopolizacji i niepewność*, 43.

constraints, a monopolist freely sets prices and employs a range of pricing strategies.[21]

Economic analyses posit that a monopoly arises when the product offered is unique and lacks substitutes capable of fulfilling consumer needs in a comparable manner. In such circumstances, the product no longer serves as a competitive tool among producers (or sellers). Competitive advantage is inherently derived from the ability to produce this unique good within the specific conditions and structure of the market.

From the standpoint of market structure, a pure monopoly exists under the following conditions:

- Products are either homogeneous or differentiated, with no close substitutes available;
- The market comprises numerous buyers and a single seller (a supply monopoly), or a single buyer and multiple sellers (a demand monopoly);
- Perfect market information is available, implying that a supply monopolist understands the demand for its product, while a demand monopolist understands the supply of the good in question;
- Significant barriers exist that prevent entry into the monopolized activity;
- The monopolist retains full discretion over pricing.

The aforementioned characteristics pertain to a factual monopoly—an already existing market structure (irrespective of its origins) in which a single entity dominates the supply side.

A market under monopoly exhibits a centralized structure.[22] The presence of a monopoly may enhance societal welfare if its formation leads to sufficiently significant cost reductions that outweigh the decline in consumer surplus.[23] In cases where a monopoly is legally sanctioned, the monopolist is exempt

21 Dietl, *Proces monopolizacji i niepewność*, 44–47.

22 Eugeniusz Toczydłowski, *Optymalizacja procesów rynkowych przy ograniczeniach* (Akademicka Oficyna Wydawnicza Exit, 2003), 43.

23 Dietl, *Proces monopolizacji i niepewność*, 55.

from incurring expenses to safeguard its market position. The welfare implications of a monopoly for society can be assessed by examining the combined value of consumer surplus and the profits of the monopolistic entity.[24] It is a widely held principle that societal welfare is generally greater under conditions of competition than in a monopolized market. This assertion provides a critical rationale for regulatory intervention aimed at optimizing monopolistic markets.

However, it is also essential to recognize that in certain scenarios, a monopoly may achieve greater efficiency than alternative market structures.[25] Despite this, as a general rule, monopolization does not boost economic efficiency.[26] Therefore, any evaluation of the economic effects of a factual monopoly must be contextualized within the specific regulatory and market frameworks prevailing in a given jurisdiction and time.

Natural Monopoly

A natural monopoly is typically understood as an economic situation in which it is unprofitable for competitors to enter a market due to the relationship between entry costs and the aggregated expected profits.[27] This phenomenon is often linked to significant barriers to market entry (rendering investment economically unviable) or the monopolist's exclusive or predominant access to scarce resources critical to the relevant activity.[28] The emergence of such market conditions may be influenced by cultural, historical, geographical, or

24 Dietl, *Proces monopolizacji i niepewność*, 57.

25 Bożena Borkowska, *Regulacja monopolu naturalnego w teorii i praktyce* (Wydawnictwo Uniwersytetu Ekonomicznego, 2009), 155–56; Dietl, *Proces monopolizacji i niepewność*, 66.

26 Dietl, *Proces monopolizacji i niepewność*, 71–72.

27 Alfreda Kamińska, "Monopol naturalny i jego regulacja," *Rocznik Naukowy Wydziału Zarządzania w Ciechanowie* 3, no. 1–2(2009): 55.

28 David R. Kamerschen et al., *Ekonomia*, trans. Piotr Kuropatwiński (Fund. Gosp. NSZZ „Solidarność", 1991), 587–88.

political factors.[29] A natural monopoly may, in certain cases, be formalized through the imposition of a legal monopoly.[30]

A contentious issue is whether legal regulations can serve as the source of a natural monopoly. The solution to this question appears to depend on the analytical perspective. A legal-historical approach, which examines the evolution of a given monopoly over time, may conclude that specific legal measures enacted during a particular period led to the creation of a natural monopoly either contemporaneously (e.g., by ensuring exclusive access to particular resources) or subsequently (through their impact on economic and social processes). In economic theory, legal provisions may likewise be identified as the source of a natural monopoly. For instance, granting exclusive legal access to unique raw materials essential for producing certain goods could constitute such a case. In this sense, a legal monopoly may be seen as an external cause of a natural monopoly's development.[31]

However, the existence of a legal monopoly is not a necessary condition for the maintenance of a natural monopoly, especially concerning the provision of services or production of goods subject to such monopolization. Natural monopolies may persist independently of direct legal sanction, as they are often sustained by economic realities inherent to their operation.

Legal Monopoly

According to Żurawik,[32] a legal monopoly arises when a single entity operates as the sole supplier in a market, occupying a monopolistic position, with entry barriers preventing competitors from challenging that position. This occurs through the conferment of exclusive rights by a competent state authority to

29 Borkowska, *Regulacja monopolu naturalnego w teorii i praktyce*, 160–64; Andrzej Powałowski, "Monopolizacja," in *Prawo publiczne gospodarcze*, ed. Andrzej Powałowski (C.H. Beck, 2020), 248.

30 Borkowska, *Regulacja monopolu naturalnego w teorii i praktyce*, 124–27.

31 Dietl, *Proces monopolizacji i niepewność*, 47, 73.

32 Żurawik, "Monopol prawny," 174.

engage in a specific type of economic activity. K. Strzyczkowski offers a complementary view, defining a legal monopoly as the statutory prohibition of engaging in certain types of business activities, which are reserved for the state, a public entity, or a designated private actor, even when other entities could technically engage in those activities.[33] In this framework, legal monopolies are distinct from natural monopolies in scope and character.

A. Powałowski provides a slightly different notion, describing a legal monopoly as the attainment of functional exclusivity (either full or partial) within a given relevant market. This exclusivity may have a statutory origin, arising directly from legislative measures, or it may derive from administrative practices (e.g., licensing policies), even in the absence of explicit regulatory provisions.[34] Powałowski further distinguishes a legal monopoly from a factual monopoly, which arises from the actions of an enterprise without any legal guarantees of monopolistic status. Conversely, a natural monopoly may have legal or factual origins but is inherently tied to the exploitation of environmental features, local resource availability, or specific public utility characteristics. Such conditions render the operation of a competing supplier economically, financially or organizationally irrational in a given area.[35]

While Strzyczkowski's definition suggests a mutual exclusivity between legal and natural monopolies, Powałowski claims that a natural monopoly may arise from either legal or factual monopolies, provided other contributing factors are also present. Notwithstanding these distinctions, the common element in all definitions of a legal monopoly is the presence of a legal norm guaranteeing the monopolist's position. This legal guarantee serves as the defining characteristic of a legal monopoly.

33 Kazimierz Strzyczkowski, *Prawo gospodarcze publiczne* (LexisNexis, 2011), 280; cf. Borkowska, *Regulacja monopolu naturalnego w teorii i praktyce*, 154.

34 Powałowski, "Monopolizacja," 247–48.

35 Powałowski, "Monopolizacja," 248.

The Interrelationship Between Legal, Factual, and Natural Monopolies

Outlining the interrelationship between legal, factual and natural monopolies reveals the complexity of these concepts in the context of regulatory and economic analysis. A legal monopoly arises when specific economic activities are exclusively reserved for a designated entity by statutory provisions, ensuring a monopolistic position through explicit legal guarantees. In contrast, a natural monopoly develops due to the intrinsic characteristics of a market, where economic conditions—rather than legal constraints—render competition economically unviable, often because of inefficiencies or prohibitive entry costs. Meanwhile, a factual monopoly describes a market structure in which a single entity dominates the supply side, regardless of whether this position is supported by formal legal guarantees.

A particularly intricate scenario occurs when a factual monopoly results from exclusive licensing arrangements that grant a single entity the right to operate in a specific sector without a statutory monopoly guarantee. Although such a structure formally retains the characteristics of a licensing regime, it often creates a de facto monopolistic market structure with all its economic and social consequences. If such an arrangement persists over time, and there is no political will to extend similar licensing rights to other entities, it effectively constitutes a monopoly. In these cases, the licensing regime may become symbolic rather than substantive. The fluidity of terminology and the diversity of administrative mechanisms necessitate understanding such situations as monopolistic systems created through licensing techniques. While these do not constitute "legal monopolies" in the strict legislative sense, they function as economic monopolies secured through regulatory practices and administrative interpretation.

The practical significance of these distinctions aligns with the jurisprudence of the Court of Justice of the European Union, which emphasizes the actual market impact of state regulations over their formal legal design when assessing com-

pliance with EU law.[36] Consequently, legal protection for monopolistic positions may arise either explicitly through statutory provisions or implicitly through administrative enforcement and application. A monopoly system may also emerge when legal guarantees reinforce the dominance of natural or factual monopolies. These arrangements often provide political or fiscal advantages, particularly in sectors requiring substantial public oversight, such as gambling, where regulation ensures centralized control and mitigates associated risks.[37]

It is crucial to distinguish between factual monopolies with legal safeguards and those without such protection. While unprotected factual monopolies may maintain dominance over extended periods, their legislative and regulatory treatment fundamentally differs. In sectors such as gambling, the inherently high-risk nature of the activity makes purely factual monopolies without legal guarantees unsustainable. Regulatory oversight is indispensable to managing the social and economic risks associated with such industries, reinforcing the need for legal guarantees in these contexts. Consequently, any meaningful analysis of monopoly structures must consider both the legal framework and its practical application.[38]

Monopolistic arrangements concentrate control within a single entity, which may be a state, public institution, or private actor, conferring exclusive competence over a specific economic activity.[39] This centralization extends beyond organizational forms to encompass strategic decision-making and operational oversight. While monopolists may delegate specific functions to subordinate entities, these entities typically operate under contractual obligations and remain accountable to the monopolist. Ultimately, the monopolist bears the economic

36 E.g. case C49/16, Judgment of the Court of Justice of the European Union (CJEU), *Unibet v. Nemzeti*; cf. Tomasz Skoczny, "Państwowe monopole handlowe w prawie wspólnotowym," *Studia Europejskie*, no. 3(1997): 51.

37 Borkowska, *Regulacja monopolu naturalnego w teorii i praktyce*, 161; Emmerich, "Monopole i przedsiębiorstwa publiczne," 894–95, 900–01.

38 Dietl, *Proces monopolizacji i* niepewność, 82–84.

39 Strzyczkowski, *Prawo gospodarcze publiczne* (2023), 311; Żurawik, "Monopol prawny," 174–75.

and regulatory risks associated with the activity and must ensure compliance with the regulatory framework and objectives defined by public authorities.

This framework offers a systematic approach to analyzing monopolistic structures by clarifying the distinctions and interrelations among legal, factual, and natural monopolies, as well as the overarching concept of monopoly systems. Legal monopolies pertain to exclusive rights enshrined in statutory law, while natural monopolies emerge from market conditions that inherently favor monopolization. Factual monopolies describe market structures dominated by a single entity, regardless of legal or natural factors. The concept of a monopoly system integrates these dimensions, capturing the interplay between economic realities and legal or administrative practices. This integrated approach provides analytical clarity and facilitates nuanced evaluations of monopolistic arrangements, particularly within the context of European Union law. It aligns with the principles established in the EU Treaties and the jurisprudence of the Court of Justice, ensuring compatibility with the regulatory and economic objectives of the Single Market.

Conclusion

In conclusion, this analysis has sought to systematize the concepts of factual, natural, and legal monopolies, as well as the broader notion of a monopoly system, while delineating the relationships between these constructs. A factual monopoly refers to a market structure in which monopolistic conditions are empirically observed, irrespective of the underlying legal or natural origins. Its defining characteristic lies in the existence of a monopolistic structure, rather than its legal status or historical genesis. Factual monopolies may arise due to regulatory interventions or through market dynamics that naturally favor concentration.

A legal monopoly, by contrast, derives its existence from formal legal provisions that guarantee exclusivity to a single supplier. Typically, this ex-

clusivity is enshrined in statutory law, which explicitly precludes competition within a defined market or sector. Natural monopolies, on the other hand, emerge from the inherent characteristics of a market where economic efficiency dictates monopolistic outcomes. These situations often arise in markets with high fixed costs or network effects, where competition becomes structurally unsustainable.

The concept of a monopoly system integrates these perspectives, uniting the legal and economic dimensions of monopolistic structures. A monopoly system may exist where a factual monopoly is explicitly sanctioned through legal mechanisms or sustained through administrative practices. Importantly, the presence of a natural monopoly is neutral to this framework: a monopoly system may legitimize a natural monopoly or, conversely, create monopolistic conditions in markets where no natural monopoly exists.

This conceptual framework provides a coherent basis for analyzing monopolistic structures within a legal-economic context, ensuring clarity and avoiding definitional ambiguities. It also aligns with the principles underpinning European legal frameworks, particularly those enshrined in the EU Treaties and the jurisprudence of the Court of Justice of the European Union. The proposed notion of a monopoly system reflects the complex interplay between economic realities and legal constructs, offering an analytically robust tool for understanding the regulatory and market implications of monopolistic arrangements within the Single European Market.

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CJEU, Case C-49/16, *Unibet v. Nemzeti*.