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IMPROVEMENT OF THE METHODOLOGY FOR THE PROPERTY REGISTRY FORMATION AS A TOOL PREVENTING THE DEVELOPMENT OF HIDDEN MONOPOLIES

В роботі розглядається проблема створення прихованих монополій внаслідок концентрації власності. Об'єктом дослідження є трансформація власності та механізми оцінювання та моніторингу даних змін для уникнення формування прихованих монополій. Трансформування власності розглядається як зміна будь-якої складової права власності: володіння, користування та розпорядження, оскільки зміна будь-якої з цих умов призводить до зміни економічного ефекту власності. Розглядаються особливості функціонування інституту довірчого управління, який ускладнює інформаційну базу про кінцевих бенефіціарних власників діючих реєстрів власності, які в свою чергу, орієнтуються на право володіння майном і зміни власника. Такий підхід провокує додаткову концентрацію власності, яка не відслідковується державними органами влади та несе за собою негативні соціально-економічні наслідки. Запропонований у роботі Загальний реєстр власності передбачає подання інформації про майнові відносини у їх динаміці не лише з врахуванням права володіння, але й користування та розпорядження, що дозволяє охопити інформацію про кінцевих бенефіціарів, яка раніше не завжди була доступною. Запропоновано матричний підхід для формування інформаційної бази самого реєстру, в якому будуть зводитись в єдину базу дані щодо майнових відносин у динаміці як фізичних, так і юридичних осіб. Передбачено, що даний Реєстр повинен формуватися Міністерством юстиції України. Хронологія трансформування власності зможе фіксуватися з моменту реєстрації юридичних осіб та присвоєння коду Єдиного державному реєстру юридичних осіб, фізичних осіб-підприємців та громадських формувань та отриманням фізичними особами ідентифікаційного коду. Інформація Реєстру буде доступною державним органам влади, які беруть участь в процесі планування, розпорядження, контролю та оцінювання зміни всіх форм власності з точки зору державного управління. Очікуються позитивні результати від використання Єдиного реєстру власності.

Ключові слова: *концентрація власності, реєстр власності, довірче управління, кінцевий бенефіціар, приховані монополії.*

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1. Introduction

One of the key economic categories at all levels of economic relations is property. A feature of this category is that the range of its scientific study and practical application is very wide: from philosophical sciences to economics and jurisprudence. Property is valuable for its capabilities and prospects for obtaining economic benefits in the current period or in the future to its owner. However, this category is quite dynamic, since the final result depends on the ownership of it or other operations depending on the transformation of the property itself, namely the change of ownership, terms of use and disposal.

The transformation of ownership is a continuous and cyclical phenomenon [1]. It is it that contributes to the development of new forms of production and innovation, and hence economic development [2]. However, the experience of many countries of the world shows that the process of changing the conditions of ownership requires strict regulation and control by state authorities. The revitalization of the property transformation process provokes an increase in the concentration of ownership, limits the level of competitive rights of all market participants and complicates the emergence of new participants [3]. Monopolies are becoming more common in the world, despite developed antitrust laws. Some countries, such as China, are seeking a balance between state antitrust regulation and state monopolies as key market participants [4]. However, the biggest problem that many countries of the world have faced in recent years is the formation and use of the necessary database, which is becoming an increasingly important factor in the economy [5]. Due to the fact that concentration assessment is carried out only on indicators of ownership, often using data on the use and disposal of property, data on the ultimate beneficiary of the property are not taken into account. This creates an environment conducive to the creation of hidden monopolies. Digitalization processes require new forms of antitrust regulation, which, according to forecasts [6], will change from centralized closed platforms to decentralized open

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innovation networks, including those based on blockchain technologies. In this regard, the study of the control procedure for the processes of property transformation and their improvement is relevant and timely. Thus, *the object of research* is the transformation of ownership and mechanisms for assessing and monitoring these changes in order to avoid the formation of hidden monopolies. And *the aim of research* is to improve the methodology for the formation of the Unified Register of Property, which is form a matrix of data on changes in ownership, use and disposal of property and is a tool to prevent the development of hidden monopolies.

2. Methods of research

The main regulatory authority that exercises state control over the concentration and protection of economic competition [7] is the Antimonopoly Committee of Ukraine. The Antimonopoly Committee of Ukraine or the administrative board of the Antimonopoly Committee of Ukraine grants permission to concentrate if it does not lead to monopolization or a significant restriction of competition in the entire market or in a significant part of it.

However, it uses the methodology for assessing the possible concentration, which is based on the analysis of assets, the volume of sales of goods, works, services, as well as the calculation of total shares in commodity markets [8].

Using the method of analysis and synthesis, as well as the dialectical method in the study of alternative ways to avoid the prohibition of concentration and the role of trust in it, a number of shortcomings of the current legislation are identified. They relate to the additional possibility of obtaining economic benefits from the transformation of property in terms of concentration of assets.

3. Research results and discussion

The concentration of capital on an allowed scale makes it possible to scale up economic activity and develop it. However, it can lead to negative consequences. Especially when it comes to unauthorized concentration of hidden monopolies, which are most often formed as a result of abuse of trust in property, and difficulties in identifying ultimate beneficiaries.

The ultimate beneficial owner (controller) – an individual, regardless of formal ownership, has the ability to exercise a decisive influence on the management or economic activity of a legal entity directly or through other persons. This is done, in particular, by exercising the right to own or use all assets or their significant share, the right to decisively influence the formation of the composition [9].

Despite the requirements of the Antimonopoly Committee, indicate in the statements on the concentration of economic activity of all the ultimate beneficial owners, according to the annual reports of the State Financial Monitoring Service, this requirement is very often violated [10].

Trust property has a number of features:

– anonymity when the ultimate owner of the property remains unknown;

– possibility of joint ownership of property (for example, real estate) by several owners;

– ability of the same person to be a founder and beneficiary, thereby receiving all the benefits from the property;

– distinction between owners, beneficiaries and managers, which make trust relations a convenient mechanism for tax evasion. In some countries, beneficiaries (property users) are not required to report the income of the trust in which the beneficiaries live;

– use of trust for various economic and legal purposes: the inaccessibility of property to creditors, the ability to declare the absence or insufficient amount of available own assets and claim, for example, to use a lower tax rate or to receive assistance from the state;

– possibility of registering/re-registering enterprises as dummies (students, pensioners, socially vulnerable segments of the population, persons registered in the territory not controlled by Ukraine) for a monetary reward [11];

– complication of the ownership structure.

This confirms the need to consider property and its transformation from the perspective of three components: ownership, use and disposal. And although, at first glance, they belong to the categories of law, abandoning them, the understanding of the economic result from further transformations is lost.

The right of ownership presupposes the right of possession, use and disposal. Hence, if the owner owns, uses and disposes of a certain object, then this process can be characterized by the corresponding three components of ownership, which can change and acquire economic significance:

1) ownership – reflects the market value of the property;

2) use – reflects the potential profits that the owner can get as a result of using the object;

3) order – reflects the potential income that the owner may receive as a result of any operations with the object related to its order (sale of his or her part, leasing, etc.).

A change in any of these indicators leads to a change in the economic result from the property itself. So, it is possible to own property, use and dispose of it, but it is possible, for example, rent it out and only own and dispose of it in trust and only own it without using it but not using it. The components of property transformation are constantly changing, because the owner will always look for the optimal solution for optimizing property relations. That is why let's believe that a change in any component of the right of ownership: possession, use or disposal leads to the transformation of the property itself, which let's consider from the perspective of not only ownership [12]. This approach makes it possible to form entire matrices of property transformation, which allow tracking not only the owner's change operations, as in existing registries, but also other operations related to use and disposal.

An important aspect in the activities of state bodies administering in the field of state corporate rights is the creation of prerequisites for an adequate valuation of property, requires the formation of a single assessment base, which is why the creation of a Unified Register of Property is proposed (Fig. 1).

The formation and use of a common unified register of property usually should bring certain results (Table 1). Each of these results of using the proposed tool – a unified register of property – has its own explanation.

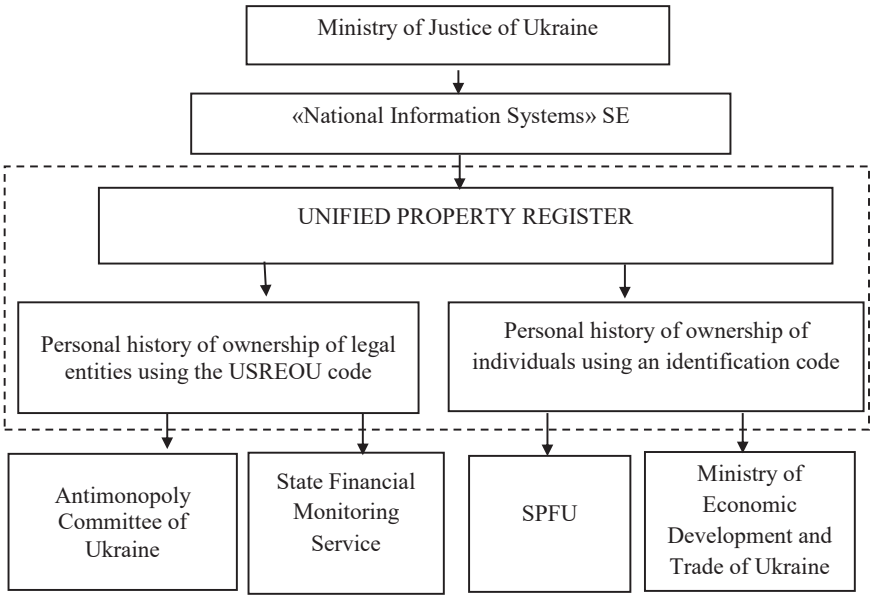

Fig. 1. General unified register of ownership in the system of state property management and control: SE – State Enterprise; USREOU – Unified State Register of Enterprises and Organizations of Ukraine; SPFU – State Property Fund of Ukraine

Table 1

Expected results from using a Unified Property Register

Registry result		
Government bodies	Corporate rights management stages	
	Before privatization	After privatization
State Property Fund of Ukraine	– assessment of the dynamics of the financial results of state enterprises and those preparing for privatization; – determination of the feasibility of rehabilitation of the GP; – comparison of the value of the enterprise, the feasibility of privatization of which is considered with the value of companies in the industry	– assessment of the dynamics of financial results, market value, value added of the enterprise after privatization
Antimonopoly Committee	– assessment and control over the dynamics of concentration of ownership in various sectors of the economy; – identification of warning signals of hostile takeovers through a matrix approach to property transformation, it is proposed to use the Unified Property Register	
State Financial Monitoring Service	– identification of violations that are used to conceal the ultimate beneficial owner	
Ministry of Economic Development and Trade of Ukraine	– assessment of the dynamics of the financial results of enterprises with state corporate rights; – identification of industry imbalances	

In addition to the Antimonopoly Committee and the State Financial Monitoring Service, the Register data would be extremely useful also for the State Property Fund of Ukraine. First of all, it is responsible for the effective implementation of privatization and disposal of state property. On the other hand, it should monitor the privatized property to ensure that investors fulfill their obligations and the socio-economic effect of privatization. So, there are certain contradictions between the extent of privatization of state property [13] and the economic results of property transformation. The transformation of ownership took place through a large-scale and fleeting change in the legal status of state-owned enterprises. Moreover, the development and implementation of the economic mechanism for the sale of enterprises of non-state forms of ownership were pushed into the background [14]. The Ministry of Economic Development and Trade of Ukraine evaluates the effectiveness of property transformation due to the reduction of state corporate rights. There is a large list of successful enterprises, a significant share of the shares of which the state owns. It is for such enterprises that it is important to avoid cases of concentration of ownership through unknown beneficiaries in one structure, violates the principles of transparency and open competition.

4. Conclusions

The study shows that the creation of a single common register of property as the basis for the use of tools for assessing, planning and monitoring the transformation processes of various forms of ownership would allow to adequately monitor property transformations not only in terms of ownership, but also use and disposal. Adequacy of the assessment of property transformations means the uniformity of the provision of certain assessments for the same parameters of property and the conditions for its use in different regions of the country. Ukrainian competition law provides only for the previous form of control over the economic concentration of business entities.

The registry proposed in the work will help formalize the process of property transformation in dynamics, helping to avoid the creation of hidden monopolies. Such an instrument for the assessment, state planning and control

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of corporate rights should become an integral part of the national system of state property management.

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