

Some Features of the legal Status of Entities Engaged in Business Activities Related to the Transportation of Oil and Petroleum Products through Trunk Pipelines

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Abstract

This article is devoted to the issue of the legal status of entities engaged in business activities related to the transportation of oil and petroleum products through trunk pipelines (hereinafter referred to as the TP). The authors attempt to disclose their legal features as the subjects, operating in the conditions of natural monopoly, to identify features of their legal personality, as well as the content of their rights and obligations. Due to the "natural monopoly" of the laws governing the transportation of petroleum products, it is less relevant to the legal requirements in this regard. In their study, they concluded that the law on the transportation of petroleum products should focus on five points: the requirement to submit the reports on their current activities in a certain time and manner, review 10 of the Federal Law "On Protection of Competition", the legal acts approved the standards and basic criteria for the information disclosure by the natural monopoly, the inadmissibility of free pricing and the obligatory use by the subjects of marginal tariffs established by law, adhere the subject to the contractual form of providing oil transportation services that is strictly regulated by law.

Keywords: Legal status; Business entity; Subjects of natural monopolies; Transportation of oil and petroleum products through trunk pipelines; Business activities.



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1. Introduction

Considering the important role of oil and gas transfer in oil and gas industry projects and their vital role in international and regional economic situation, it is imperative to examine the legal and contractual aspects of the pipeline. Today, the oil industry in the world is facing a number of challenges, including access to new reserves, the maintenance and upgrading of technical knowledge with regard to the retirement of experienced human resources and operations in the regions. On the other hand, it is clear to all the growth and expansion of urbanization and industrial units, and the need to provide energy for these sectors, such as oil and gas, and the importance of its transfer. Because it is typically a long way from the location of fossil fuels to consumable units, so the safety of energy transmission lines has long been taken into consideration, which has also given rise to the legal aspect of the transfer.

In the context of modifying the Russian economy, the issues related to the development of the country's energy sector are of particular importance. Thus, according to the Energy Strategy of Russia for the Period up to 2030, one of the main mechanisms for implementing the energy policy is to create a favorable economic environment for the functioning of the fuel and energy complex ([Order of the Government of the Russian Federation, 2009](#)). Moreover, the development of transport infrastructure, including pipeline, to improve the efficiency of oil and petroleum products transportation is assigned to the main objectives of achieving the strategic goals of the oil complex development as one of the central sectors of the fuel and energy complex. In this regard, we believe that the issues we have chosen within the framework of this article are of undoubted interest and relevance both for the practice of application and for the science of business law in general.

2. Methods

This was an analytical study we used the comparative legal and dialectical methods.

3. Results and Discussion

The oil and petroleum products transportation through the trunk pipelines (hereinafter referred to as the TP) is related to the activities of natural monopolies. This provision is also enshrined in the very notion of "transportation of oil and petroleum products through the TP", by which the legislator understands the process of moving oil and petroleum products through the TP made by the natural monopolies according to the list of services approved by the Government of the Russian Federation ([Resolution of the Government of the Russian Federation, 2007](#)).

Since the activities in the field of oil and petroleum products transportation through the TP, on the one hand, are entrepreneurial in nature, and on the other hand, are subject to state control (supervision), this study will examine

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some features of the legal provision arising from a combination of private and public legal principles, features of the legal status of entities engaged in the entrepreneurial activities related to the transportation of oil and petroleum products through the TP.

Despite the fact that the concept of “natural monopoly” is provided by law and above all involves the uncompetitive conduct of activities by its subjects, the goods produced or services rendered are exceptional and irreplaceable, while the demand is minimally affected by the change in the price of goods ([Federal Law No. 135-FZ dated August 17, 1995](#)), there are various teachings regarding the essence of this concept in legal theory.

Thus, S.N. Chukalova notes that “natural monopoly” implies conducting business in the conditions of limited competition, subject to government regulation. At the same time, this provision satisfies the demand in the market as much as possible, while the goods are characterized by their exclusiveness ([Chukalova, 2013](#)).

Thomas Di Lorenzo defines the term “natural monopoly” in a similar way. Moreover, the author connects the occurrence of this state in the commodity market with a decrease in costs by any manufacturer as compared with others ([DiLorenzo, 1996](#)).

The American practice, the analysis of which allows us stating that the stricter is the regulation, the more effective is the activity of the natural monopoly in terms of investment activities and cost reduction (efficiency for consumers), as well as for the production profitability (efficiency for owners), is of great interest ([Brown, 1986](#)).

Henry Carter Adams rightly emphasizes the protective function of natural monopolies and defines the latter as a way of obtaining public benefit, which allows an organization protecting its income, and protects buyers from the violations by its subjects ([Adams, 1980](#)).

Based on the above, the question of the applicability of the category “entrepreneurial activity” to the field related to the transportation of oil and petroleum products through the TP is rightly raised.

It should be noted that this definition is enshrined in the current legislation. Thus, according to Article 2 of the Civil Code of the Russian Federation (hereinafter - the CC RF), the following main features of business activity can be distinguished: independence, systematically gaining profit, risky nature, state registration of its subjects ([Kurbanov, 2015](#)). S.B. Seletskaya and A.N. Shpagobov note also the optional signs: 1) professionalism; 2) innovative nature; 3) property liability of the entrepreneur; 4) proactive nature; 5) commercial orientation ([Stella and Aleksandr, 2016](#)). In this regard, the innovative approach of I. Schumpeter, according to which the entrepreneur's goal is aimed at creating new items and further development ([Filion, 1997](#)), deserves attention. It is necessary to agree with the researchers and that these signs are additional and due to the current stage of development of society and the state.

A comprehensive study of the issues we have identified implies the need to consider the individual signs of business activity.

Thus, the first sign, as noted above, is its independent nature. In this regard, M.V. Bloshenko rightly notes that it is expressed in its economic freedom, since the subject is able to independently make certain decisions in the course of this activity ([Bloshenko, 2011](#)).

On the one hand, the entrepreneurial activity of entities engaged in the transportation of oil and petroleum products through the TP has the signs of organizational and property independence. However, on the other hand, it is limited by law and provides for the conduct of business activities subject to certain requirements.

The next sign of business activity is its risky nature. We should agree with the position of Frank Knight that the risk is a set of future events, the occurrence of which is unknown and the insurance of which is impossible. The peculiarity of the entrepreneur's position is expressed in the desire to carry out activities in the conditions of economic uncertainty ([Knight F.H. Risk, 1921](#)).

The issues related to the risks arising in the field of transportation of oil and petroleum products through the TP are also subject to judicial review. Thus, the ninth Arbitration Court of Appeal of Moscow canceled the decision of the court of first instance and completely dismissed the lawsuit of Transneft. The court decision on case No. A40-3903/17 dated August 30, 2017 established that the claimant should have learned about all the conditions of the appealed transactions even when it received the Risk Declaration, i.e. as of December 18, 2013, since the Risk Declaration explained in detail the economic and legal essence of the appealed transactions and described the risks associated with their conclusion ([Card File of Arbitration Cases, 2017](#)).

Thus, the risky nature of the activities related to the transportation of oil and petroleum products through the TP, in our opinion, manifests itself in the potential possibility of losses incurred by an economic entity.

Let us consider the following sign of entrepreneurship - a systematic profit. It is necessary to agree with Yu.N. Nesterchuk that the transportation process is characterized by continuity ([Nesterchuk, 2012](#)).

The law also provides for such a sign of entrepreneurial activity as the need to register with a specially authorized body, that is, to legalize this activity.

A named sign has its own features in the field of oil transportation, in particular, the Federal Antimonopoly Service forms and maintains a register of natural monopoly subjects ([Resolution of the Government of the Russian Federation, 2004](#)). Thus, its obligation in the specified area of public relations for the further implementation of state regulation and control does not cause the authors to doubt.

Thus, the conducted study allows us making a conclusion that the activities of the natural monopoly subjects in the field of oil and petroleum products transportation through the TP have all signs that fall under the category of “entrepreneurial activity”. In this regard, the business activities related to the oil and petroleum products transportation through the TP, the authors of this article should consider it appropriate to understand the activities of the natural monopoly subjects, characterized by autonomy, riskiness, focus on the systematic extraction of profits from the provision of relevant services, but subject to state regulation and state control by force of law.

Within the framework of the stated problems, we are also interested in the peculiarities of the legal status of the subjects implementing it.

In order to comprehensively examine the question posed, let us turn to the study of the very concept of "legal status". T.K. Primak, K.A. Orlova note that this term is usually used for the legal characteristics of subjects (Primak and Orlova, 2012). O.E. Kutafin and E.I. Kozlov include the following institutions in the composition of this concept: legal personality, guarantees, liability (Lebedev, 2003).

In our opinion, the legal status of entities engaged in the entrepreneurial activities related to the oil and petroleum products transportation through the TP should be understood as their legal features as legal entities operating in a natural monopoly, including legal personality, rights, duties and responsibilities.

4. Conclusions

According to the authors, the following features of the legal status of entities engaged in the entrepreneurial activities related to the oil and petroleum products transportation through the TP can be distinguished.

Since the entity carrying out this activity is a legal entity created in the organizational-legal forms defined by law, included in a special register and operating in the natural monopoly conditions, the legal capacity of subjects in the named field of social relations has certain specificity compared to general legal capacity and is limited by the special bodies exercising state regulation and control.

The rights and obligations of entities engaged in the business activities related to the oil and petroleum products transportation through the TP have also some features enshrined in the legal acts. Moreover, the legislation provides for a significant number of obligations, some of which we consider necessary to mention.

Firstly, the requirement to submit the reports on their current activities, draft plans for capital investments to the authorized state regulation body in a certain time and manner (Resolution of the Federal Energy Commission of the Russian Federation, 2002).

Secondly, the services of entities engaged in the oil and petroleum products transportation are subject to the rules of non-discriminatory access, the main provisions of which are contained in Art. 10 of the Federal Law "On Protection of Competition" (Federal Law No. 135-FZ dated August 17, 1995).

Thirdly, the legal acts approved the standards and basic criteria for the information disclosure by the natural monopoly subjects that provide services for the oil and petroleum products transportation through the TP (GARUBA, 2014).

Fourthly, the inadmissibility of free pricing and the obligatory use by the subjects of marginal tariffs established by law for the services in the specified field of public relations.

Fifthly, the subject shall adhere to the contractual form of providing oil transportation services that is strictly regulated by law. They note the civil-legal nature of such an agreement and point to certain inherent features of the contract of carriage, onerous services provision and storage in the theory of law [21].

5. Summary

Based on the above, the activity in the field of oil and petroleum products transportation through the TP is entrepreneurial and is carried out in a natural monopoly. The peculiarities of the legal status of entities performing it are due to the limited nature of legal personality and are expressed in the possibility of carrying out the civil legal transactions and other legally significant actions only within certain limits and in compliance with the established requirements.

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