

Meeting of the APEC
Competition Policy and Law Group (CPLG)
Moscow, Russia
February 12 - 13, 2012

Effects of competition policy and antitrust enforcement in Russia

Andrey Shastitko

Professor, Doctor of Economics

Moscow Lomonossov State University, Laboratory for Competition and Competition Policy
Russian Presidential Academy of National Economy and Public Administration, Center for
Competition and Economic Regulation Studies

<http://www.lccp.econ.msu.ru/>

Plan of Presentation

- History, legal and administrative environment of antitrust enforcement in Russia
- Economic effects of antitrust enforcement in Russia
- Controversial issues of antitrust legislation and enforcement

Brief History of Antitrust Legislation and Enforcement

- Antitrust authorities have been established in 1990, the first competition law was adopted in 1991
- Federal system of antitrust authorities: Federal antimonopoly service (FAS) and regional subdivisions of FAS in every subject of the Russian Federation (about 80)
- Till 2006 antitrust enforcement had been distorted, because of:
 - Absence of effective fines. Maximum penalties have not reached 15 thousand Euro
 - Prevalence of ex-ante merger control in the activity of antitrust authorities due to low threshold

Changes of antitrust legislation and enforcement in 2006-2010

- Law 'On Protection of Competition' (2006), *many changes, including*
 - Modernized definition of economic concentration deal
 - Sharply increased threshold of economic concentration eligible for ex-ante control
- New system of penalties (2007-2009)
 - Penalty up to 4% of company's turnover
 - Criminal liability of persons involved in restrictions of competition
- Elements of Leniency program for companies and individuals (2007-2010)
- New instruments of investigation (2009-2010)
 - Agreements on the forms of secret investigations with the Ministry of Internal Affairs

From administrative control to active investigation activity and increasing deterrence

Environment of Antitrust Legislation and Enforcement

- Poor traditions of competition
- Strong traditions of cooperation between 'competitors' (+effects of Williamson fundamental transformation with transaction specific assets use)
- Underestimate of positive impact of competition on welfare both by citizens and public officials unlike privatization
- High concentration in many Russian markets
- Relatively high entry barriers

Legal Environment of Antitrust Legislation and Enforcement

- Antitrust legislation and enforcement substitute several important instruments, including:
 - Competition-promoting legislation in network industries
 - Legislation on public procurement
- As well as underdeveloped framework of conflict resolution, including:
 - Conflicts between food suppliers and grocery retail chains
- Easy access to court litigation: very low cost of appeal in the court

Economic Effects of Antitrust Enforcement: Collusion

- Art. 11 of the law «On competition enforcement»
- Typical collusion agreements are established in the framework of business (trade) associations' activities
- 2008-2009: Trade association of alcohol producers in Kemerovo region: fixing of price floor on vodka, rule on certification by association as a condition of supply of vodka
- Many other associations: realtors, textile producers' ...
- Antitrust enforcement succeeded to prevent explicit agreement on flour prices and specific entry barriers
- 2007 -2008- massive applications for leniency (art.14.32 Administrative Violations Code)

Economic Effects of Antitrust Enforcement: Abuse of Dominance (1)

- Art. 10 of the law «On competition protection»
- More than 2/3 cases on Abuse of Dominance is against regulated companies in network industries
- Substitute of conflict resolution (quasi-court procedures) with comparative advantages and some failure risks

Economic Effects of Antitrust Enforcement: Abuse of Dominance (2)

- Number of decisions on interconnection and access issues
- Transneft (operator of oil pipeline network), 2000-2001
 - Discrimination of small independent oil producers *vis-à-vis* large suppliers in terms of oil transportations
 - Substantial improvement of contract terms to small producers in spite of lost case for FAS
- Moscow United Energy Network Company (operator of electric energy network in Moscow), 2010-2011
 - Excess price of interconnection for new customers that includes compensation of investment in element of local electric power transmission
 - Disputes on ‘economically reasonable’ cost of interconnection
- Enforcement on abuse of dominance in regulated industries helps to prevent extraction of monopoly profit and decrease entry barriers

Economic Effects of Antitrust Enforcement: Mergers Control (1)

- Trade-off between *need for restructuring and enhancing of competitiveness* and *need for protection of competition in domestic market*
- Federal antitrust services tries to balance restructuring and protection of competition by merger remedies
- In addition to merger remedies, FAS initiates decrease in specific entry barriers for new competitors (especially import tariffs)

Economic Effects of Antitrust Enforcement: Mergers Control (2)

- *Example 1. Merger Rusal+Sual+Glenkor*
 - 100% in domestic market of aluminum
 - at the same time – rapid increase of competitiveness, from 4th to 1st world supplier of aluminum
 - decrease of import duties on aluminum in 2007
- *Example 2. Merger of Eurocement company + number of cement producing enterprises*
 - up to 80-90% in regional markets of cement
 - at the same time – investments in regional cement companies
 - decrease of import duties on cement in 2008
 - as a result, domestic price of cement decreased substantially (effect net of impact of 2008 crisis)

Economic Effects of Antitrust Enforcement: Restriction of competition by public authorities

- Highly specific area of antitrust enforcement in Russia
- Large number of cases (up to 3 thousand annually)
- Many of cases are about transfer of executive authority to the business companies
- Some of cases are about establishing preferential rights of some group of entrepreneurs (for instance, regional producers) or even to one specific company
- Important (though imperfect) way to prevent corruption and rent-seeking

Effects of antitrust enforcement are visible and valuable, even if they are not easily measurable

Deterrence of restriction of competition *at least in most dangerous forms*

Standards of behavior which does not restrict competition are known to companies

Only ten years ago according to one of the surveys $\frac{1}{4}$ of general directors of the Russian enterprises believed that naked price collusion *is completely legal*

Controversial issues of antitrust legislation and enforcement

- Regulation of terms of contracts between food suppliers and grocery retail chains
 - Number of rules aimed at prevention of redistribution of profit from manufacturers to retail companies. Is public intervention into contracting justified?
- Rules on public procurement
 - Tendency to ‘simplification’ of public procurement procedures (for instance, max weight of reputation and quality – 50% in overall ranking in bid assessment). Are quality and reputation considerations really not important?
- Procedures of initiating antitrust investigation
 - Many antitrust cases are initiated by the complaints of companies. Not in all cases ‘abuse of law’ is excluded

Conclusion

In spite of relatively long history of antitrust legislation in Russia modern enforcement accounts for only five-six years

Within this short period a lot of important results had been reached

In most cases antitrust enforcement brings both public and private benefits

However, there are still controversial issues in antitrust enforcement

Many of controversies are explained by specific institutional environment, not directly related to antitrust policy

Thank you for your attention!