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One case that illustrates the role of institutional analysis in overcoming the hostility tradition in antitrust

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Main ideas are presented in...

- **Shastitko A., Golovanova S. (2014)** *Collusion in Markets Characterized by One Large Buyer: Lessons Learned from an Antitrust Case in Russia* // Higher School of Economics Research Paper No. WP BRP 49/EC/2014, downloadable http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2392222
- **Shastitko A., Golovanova S. (2013)** *Competition Issues Regarding Procurements for Large Companies and Suppliers: The Gazprom Case* // CPI Antitrust Chronicle, November 2013 (2)
- **Shastitko A., Golovanova S., Avdasheva S. (2014)** Investigation of Collusion in Procurement of One Russian Large Buyer // World Competition. V.37, N2, P.235-248

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HOSTILITY TRADITION IN ANTITRUST

Hostility tradition in antitrust...

«One important result of this preoccupation with the monopoly problem is that if an economist finds something—a business practice of one sort or other—that he does not understand, he looks for a monopoly explanation. And as in this field we are very ignorant, the number of ununderstandable practices tends to be rather large, and the reliance on a monopoly explanation, frequent»

[Coase, 1972]

...in details

1. Focus: level of **market concentration** and **entry barriers**.
2. **Easy antitrust enforcement** without taking into account of estimates of cases from welfare perspective based on all relevant and meaningful information.
3. Belief that **collusion is easily created and enforced**.
4. **Entry barriers are anticompetitive and antisocial phenomena**
5. The **firm** is adequately described as **production function** with purpose to maximize profit

[Williamson, 1985]

Why it's important?

- This is a source of 1st type errors
- Worsening of monopolistic activity deterrence
- Destroying of socially beneficial cooperation
- Preventing socially beneficial cooperation

**DESCRIPTION OF LDP ANTITRUST
CASE AND ECONOMICS OF
COLLUSION**

Large Diameter Pipes (LDP)



The Case against all biggest Russian LDP producers and “traders” of large diameter pipes (LDP):

CJSC “TD TMK”, OJSC “OMK-Stal”, CJSC
“ChTPZ Group”, CJSC “ITZ”, OJSC “ChTPS”,
CJSC “TD Uraltrubostal”, CJSC “OMK”, and
OJSC “VMZ” **(2011-2013)**.

The main result of Federal Antimonopoly Service of Russia (FAS) sunrise raid:

Schedules of LDP delivery by all Russian producers for OJSC Gazprom projects signed by representatives of all producers

The core of initial accusation by FAS:

Collusion, namely: market sharing where LDP have been produced mainly for large investment projects (Gazprom and Transneft) realization

Comments:

Prohibited by law “On competition protection” (clause 3, part 1, art. 11)

Perspectives for companies and CEOs:

*finances (up to **15% year market turnover** according to art 14.32 of Russian Administrative Code) for company and criminal sanctions (up to **three year imprisonment** according to art. 178 of Russian Criminal Code)*

Arguments of the Russian FAS

- (1) there were *idle capacities*,
- (2) a *small number of market participants* (and no new Russian participants) had appeared in the LDP market in recent years,
- (3) *entry barriers* are considerable,
- (4) the threat by *imports was minimal*,
- (5) **documents** that described the issue of developing and meeting delivery schedules for pipes (volumes, specifications, directions etc.).

Theoretical support in detecting markets with a high risk of cartel formation (correlates with FAS arguments)

- small asymmetry in company capacities
[Compte et.al. 2002];
- stable and growing demand *[Staiger and Wolak 1992; Mendi and Veszteg, 2009];*
- high entry barriers, including import protection *[Sutton, 1991, 1998; Symeonidis, 2002].*

Do we have universal indicators for collusion identification?

- excess capacities [*Davidson and Deneckere, 1990*],
- price-cost margin [*Jans and Rosenbaum, 1996*],
- descriptive statistics for price dynamics [Abrantes-Metz et. al. 2006; von Blanckenburg et al, 2012],
- market-share stability [*Geist and von Blanckenburg, 2011*]...
- *...and results are often unambiguous (comparative analysis of the results of empirical studies, see Porter [2005] and Levenstein and Suslow [2006])*

THE CONTEXT AND INTERPRETATION

...But what has happened before?

- Deal of the century between USSR and Germany: “gas - pipes” (at the edge of 70-ies of the XX century)
- Almost no Russian capacities for LDP production until beginning of XXI century
- Political decision to develop LDP capacities
- Private investments in new sub-industry

Industrial policy measures

- increasing import duties;
- reducing duties on individual types of raw materials and equipment for the metallurgical complex;
- applying the federal law on the regulation of the procedures for goods (services) procurement by natural monopoly entities and state-owned corporations as related to the application of preferences for suppliers of Russian goods to procurement of products for the metallurgical industry;
- directive for OJSC Gazprom representatives concerning organization of tenders: provide for Russian supplies of pipes in proportion to the share of the Russian party in any gas transmission network development projects; and
- order concerning the development of the demand and supply balance for pipes.

According to the minutes of the meeting with the Chairman of the Government of the Russian Federation, No. VP-P9-25pr dd. July 24, 2009 (Magnitogorsk)

Main investment projects in the LDP sector in 2005 -2010

Project	Operator	Implementation (year)	Investments (\$ million)	Annual capacity
Two LDP lines	OMK	2005	310	1,600,000 t
LDP workshop	Severstal	2006	300	600,000 t
VMZ capacity addition	OMK	2008	190	+380,000 t
VTZ capacity addition	TMK	2008	214	+650,000 t
Vysota 239	ChTPZ	2010	900	900,000 t

One large buyer

The procurement process is largely controlled by the OJSC Gazprom group (more than 50% of electric-welded LDPs sold in Russia)

- The existence of a countervailing force creates obstacles to the qualification of the dominant positions of sellers in the market
- The economic nature of collusion in any market should exclude the participation of the buyer given that any agreement goes against its best interests

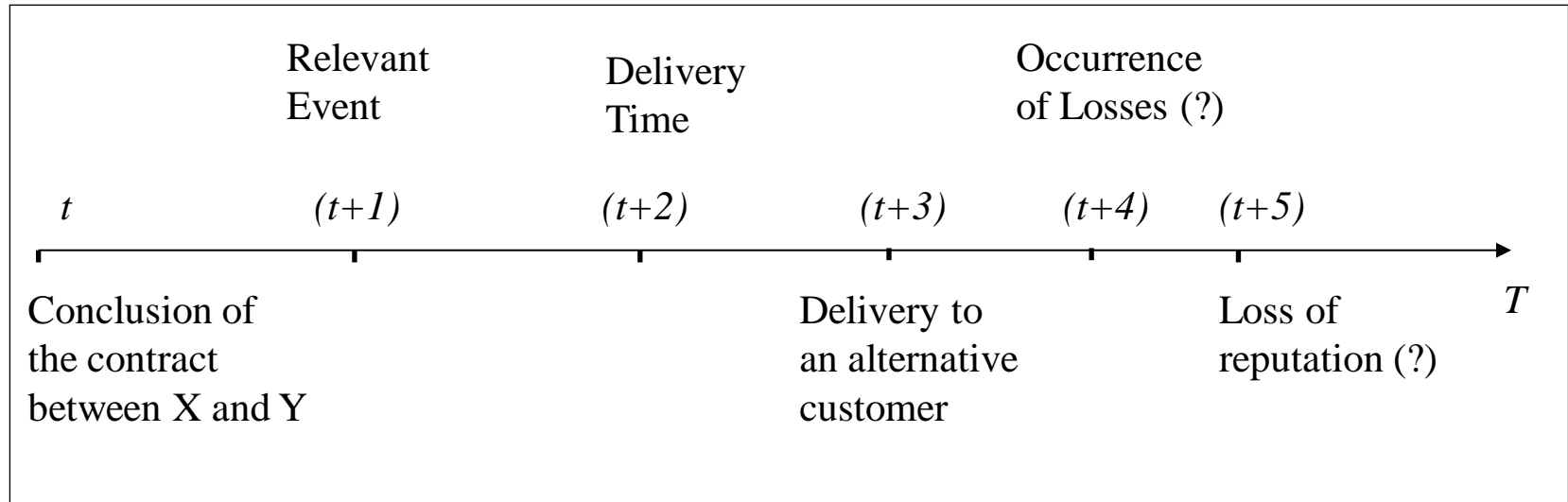
High uncertainty and commercial risks

- The significant duration of the production cycle,
- The high cost of manufacturing products,
- The volatility in both the supply conditions for the materials required to produce LDPs and the demand from the major consumers...
- and ... significant switching costs.

Temporal specificity

- Use of Tender Procedures
- (Non)-Existence of infrastructure that allows to accumulate LDPs in significant quantities

Contracting Timeline

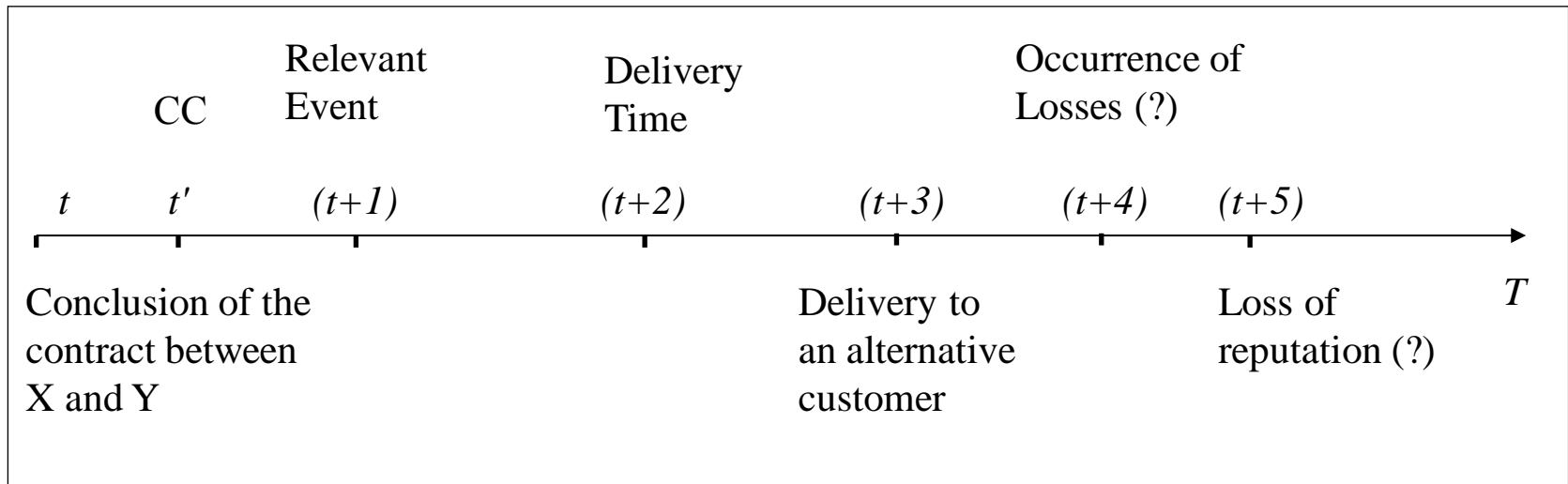


Credible commitments

Alternatives available for the Company X (reminding contracting schemata *Williamson, 2002*):

- Decide against manufacturing product Q;
- Do not take precautions and directly include the company's own risk estimates in the product price;
- Integrate X and Y (i.e., create control relationships);
- Preserve the independence of X and Y (i.e., no control, separate residual rights) but use a **package of contractual precautions** in order to retain the credible commitment for X.

Timeline of Contracting with Credible Commitment



The practical solution to the problem of credible commitments: structural alternatives (1)

- A medium- to long-term indicative planning instrument.
- Procurement and supply procedures for LDPs with an allowance for the strip material order and delivery cycle and production of LDPs from such strip material.
- Long-term negotiated contracts between OJSC Gazprom and LDP manufacturers.

The practical solution to the problem of credible commitments: structural alternatives (2)

- Utilization by LDP manufacturers of financial instruments to insure their risks.
- Direct state regulation.
- Joint venture between pipe manufacturers and consumers in order to develop and commercialize new products

The main idea on the case

- The investigation of the interaction between LDP manufacturers and OJSC Gazprom provides grounds for considering it to be a form of **indicative planning**.
- From this perspective, LDP competition is not being squeezed out, but rather the **partial substitution of the price mechanism** is occurring through alternative methods of organizing the interaction between LDP manufacturers and OJSC Gazprom...
- *hostility tradition - policy instruments dis-coordination – challenge for companies risk management system*

Thank you for attention!

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