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OECD Global Forum on Competition

**EXPERIENCES OF AND NEEDS FOR CAPACITY BUILDING
AND TECHNICAL ASSISTANCE**

-- Session II --

This note is submitted by Mr. Andrey Tsyganov, Deputy-Minister, Russian Ministry for Antimonopoly Policy and Support of Entrepreneurship, for Session II of the second meeting of the Global Forum on Competition, to be held on 14-15 February 2002.

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**“EXPERIENCES OF AND NEEDS FOR CAPACITY BUILDING
AND TECHNICAL ASSISTANCE”**

By
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**RUSSIAN MINISTRY FOR ANTIMONOPOLY POLICY
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Russian competition policy – the history and actual activities

The antimonopoly authorities exist in the Russian Federation since 1991. They were created just at the beginning of the economic reforms in Russia as one of the first market-promoting institutions. The Law of the Russian Federation “On Competition and Limitation of Monopolistic Activities on the Goods Markets”, which was elaborated with the assistance of OECD, adopted in 1991 and modernized during the following years, was one of the first market oriented laws in Russia. While elaborating this Law, the existing foreign experience in this field was taken into consideration.

Now the antimonopoly policy plays an important role both in the macroeconomic state policy and in the creation of the favorable business environment in Russia. This may be explained by the remarkable influence exerted by the antimonopoly law and policy on the economic growth, competitiveness and those on the whole character of the market relations.

In Russia the main responsibility for developing of effective economic competition belonged firstly to the State Committee on Antimonopoly Policy and Support of Entrepreneurship, and then, since 1999 - to the Ministry for the Antimonopoly Policy and Support of Entrepreneurship (MAP).

In the past ten years the Russian competition authorities have contributed to the high extent to successful economic development in Russia, safeguarding transition from the planned-administrative system to the market and creation of sound competition environment. In these years a big experience has been accumulated by MAP both in the development and in the implementation of the competition law. The competition policy, based on this law, is directed at stopping monopolistic activities, prevention of monopolization and promotion of fair competition on the market. The role of MAP is not limited by the antimonopoly policy – it consists also in promoting procompetitive reforms and economic development. MAP plays nowadays a significant role in the processes of deregulation and restructuring of natural monopolies.

In accordance with the Antimonopoly Law MAP undertakes wide-scale activities on promoting the development of goods markets, competition and entrepreneurship. A big attention is paid to develop “competition advocacy” – activity directed at better understanding of the goals and results of competition policy in the society. In the framework of these activities the antimonopoly authorities take part in elaboration and realisation of federal, regional and inter-regional programs and projects directed at development of competition. This work is undertaken in accordance with the Decrees of the President, Governmental Decrees and on the own initiative of the Ministry.

International cooperation and technical assistance (main partners and programs)

The international cooperation and technical assistance on the part of foreign countries and international organizations has played from the beginning and continues to play an extremely important role in developing an effective competition policy in Russia.

The international cooperation and technical assistance to MAP Russia is provided both on multilateral and bilateral levels (see Annex B). Sometimes it is difficult to specify, what kind of relations do you have- international cooperation or technical assistance: MAP Russia is now not just a “recipient” of technical assistance but brings also its own experience for consideration of international institutions and foreign partners.

On the bilateral level we appreciate very much our co-operation and technical assistance provided to MAP Russia in the competition sphere by Republic Korea, France, Germany, Italy, Finland. The regular consultations organised on bilateral level with competition authorities of Finland, Poland, Bulgaria, Rumania, Lithuania and other countries, are also very useful.

A visit to Russia of the President of the Bundeskartellamt and the Head of French competition authority in June 2001 was very productive. The hold meetings and discussions with Russian authorities and business have been extremely useful for further development of competition policy in Russia, for better mutual understanding and further co-operation. We appreciate very much the assistance of the Bundeskartellamt provided for our participation in International Cartell-conference in Berlin in Mai 2001.

Very productive have been also meetings and consultations with experts from Italian and French competition authorities which took part in the framework of the technical assistance programs.

In most cases bilateral co-operation is undertaken on the basis of the interstate Agreements or bilateral programs on co-operation in the field of competition.

On the multilateral level OECD was the first and remains one of the main consultants and sponsors of the technical assistance for Russia in the field of competition policy.

The cooperation between OECD and MAP Russia in the field of competition is organized on the basis of the annual plans of cooperation between OECD and Russia. The assistance, provided by OECD, includes legal advise on basic antimonopoly legislation and its modernization, seminars for staff of the antimonopoly authorities and judges on competition law enforcement, consultations on methodology of competition policy, high-level meetings on the deregulation of natural monopolies.

The provided possibility to participate regularly in sessions of CLP and roundtables is very useful for Russian specialists, enabling them to exchange opinions with highly qualified specialists and to get comprehensive documentation in competition area. The Recommendations, elaborated in OECD in the last years in the field of competition, provide us with excellent guidelines in the process of development of legislative and methodological work.

And of course, the participation in the recently established OECD Global Forum for Competition provides us with a good possibility to be involved in the intensive international dialog on the most actual issues.

Only in 2001 OECD has organized a number of seminars on antitrust enforcement and reform of natural monopolies. On 21 January 2002 in Moscow a high-level meeting on the results of deregulatory

events took part. The summary materials on results of these measures have been submitted to the Government of the Russian Federation.

With a purpose to improve the enforcement mechanism of the antimonopoly law and to raise the efficiency of the prevention and stopping of the monopolistic activity and unfair competition, the Ministry has prepared in 2001 amendments to the Law "On Competition...". The expertise currently provided by OECD on these amendments is extremely useful for our Ministry.

A number of events in the framework of competition policy and regulatory reform was organized in recent years by OECD together with other partners – APEC and USAID. The events, organized together with APEC, covered important issues of regulatory reform and the main aspects of competition policy.

A number of seminars, organized in different regions of the Russian Federation by OECD and USAID on the key elements of the antimonopoly law and enforcement, were very useful for the staff of MAP enabling it to compare current Russian enforcement practices with approaches of foreign competition authorities.

We are very thankful to OECD and to the Fordham Corporate Law Institute (USA) for the provided possibility to participate in 2001 in the Fordham Annual International Antitrust Conference in New York. The materials of this Conference including decision on creation of International Competition Network, presentation of the position of the Russian Federation on polit-economy of antitrust, participation in the debates on actual problems of competition policy were very useful.

A special place in our international cooperation takes a cooperation with the European Commission based on the Agreement on Partnership and Cooperation which took in force in 1997. Article 53 of this Agreement includes the obligations of the Parties in the area of competition and state aid. In addition to this Agreement, obligations on competition were also included into the Russia-EU Agreement on Trade in steel goods. This Agreement provided for the gradual liberalization of trade in steel products under the condition of creation of a proper competition in Russia.

During the last years the Parties have established a good dialog in this area in the framework of the Russia-EU Committee on Cooperation. In 1998-99 in the framework of TACIS a big program of technical assistance to MAP Russia was successfully realized in the sphere of competition. This program contributed to high extent to developing competition in the Russian Federation by means of effective competition law and policy. The program included such important aspects as legal advice, training in European Commission and European competition authorities, forming Information Center in our Ministry, consultations on main problems of antitrust enforcement etc.

In 2001 the Head of DG "Competition" of the European Commission Mr.A.Schaub visited MAP and its regional office in St.Petersbourg. The high-level discussions on main trends of competition policy in European Union and Russia, including regional aspects (on the example of MAP' St.-Petersbourg Regional Office) were very interesting and useful.

The Russian and European experts continued in 2001 consultations in the framework of Russia-EU Committee on Cooperation both in Brussels and Moscow. A big attention was paid during these meetings to expertise of the draft Law "On State Aid" which was elaborated in MAP Russia.

In 2002 we expect the launching of the new TACIS project "Antimonopoly Policy and State Aid", which will concentrate on the modernization of the antimonopoly legislation and creation of the effective system of state aid control in accordance with the Agreement on Partnership and Cooperation.

UNCTAD belongs to our main traditional partners. The contribution made by this organization into the process of developing competition law and policy in Russia in the past decade is difficult to overestimate.

The Russian antimonopoly authorities put into attention, while elaborating its competition legislation, the provisions of the “Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices”, which was adopted by the UN General Assembly in 1980 and which remains the sole multilateral document of the universal character in this area.

MAP is an active user of the documentation published by UNCTAD on competition issues. In particular we will highlight the Model Law which contains the main, most typical elements of different national competition laws.

The representatives of our Ministry participate regularly in the UN Review Conferences on RBP and in the meetings of UNCTAD Intergovernmental Group of Experts on Competition Law and Policy. The exchange of opinions among experts from different countries and high quality documents distributed on these meetings make these events very useful for our work.

One of the big advantages of UNCTAD activity is that the Russian language is used there as a working language both in discussions and publications.

UNCTAD is contributing actively to promotion of regional cooperation between competition authorities in the Commonwealth of Independent States (CIS), regularly assisting in organization and participating in sessions of CIS Antimonopoly Council.

One of the very important elements of the technical assistance from UNCTAD is promoting “competition culture” in Russia and other CIS countries by means of seminars, conferences and publications. A very good example is here the recent publication by UNCTAD of the book “Competition Policy: Law, Regulation, Cooperation” (in Russian) prepared by the Russian expert. This book is widely used in CIS countries as a teaching and informative material in competition sphere.

International cooperation among antimonopoly authorities of CIS countries has strengthened in the last years. This cooperation is mainly undertaken on multilateral basis in the framework of the Interstate Council for Antimonopoly Policy in accordance with the Interstate Treaty about Coordinated Antimonopoly Policy in CIS countries, signed in 1993. In 2000 a new version of the Treaty was signed in Moscow.

In 2001 two sessions of the Interstate Council took place – in Moscow and in Astana (Kazakhstan). The next, XY session is planned to be held in Odessa (Ukraine) in April 2002. The sessions are usually organized and financed by the Governments of CIS member-countries with financial and intellectual assistance of UNCTAD.

The cooperation of CIS countries in competition area plays an extremely important role for development of the harmonized competition policy in these countries. On the sessions of the Council there are considered the most actual issues and taken common decisions of recommendatory character, which are then taken in mind by national authorities while developing their competition law and policy.

The strong and weak points of technical assistance

The current technical assistance to Russian antimonopoly authorities generally corresponds to real needs of the Ministry in the realization of the task to develop effective competition policy.

Very effective and positive are programs of technical cooperation which cover different aspects of competition policy, as for example TACIS projects (EU). This enables MAP to organize activities parallel in many areas, such as study of new trends of foreign antitrust experience, discussion of amendments to legislation, joint consideration and discussion of the most important cases etc.

One of the most effective methods of technical assistance is providing ad-hoc operative legal consultations on draft laws, methodologies and other normative documents or proposals. We appreciate very much such operative legal advice and consultations provided by OECD and EU.

Very useful are such methods of technical assistance which are directed at improvement of enforcement practices, especially in regions. A good example here is organization by OECD/USAID practical seminars in Regional offices of MAP to consider and discuss actual case on special articles of the law (cartels, abuse of dominance or mergers). This enables to bring together key specialist in the concrete area of competition law and make high professional comparative discussions. A very strong point of such methods is an advance distribution of the relevant materials among the participant in Russian language.

At the moment, when CIS countries have to the high extent the same tasks in developing their competition policies, it is very productive to use the synergy effect while providing technical assistance to these countries. Such approach is traditionally practiced by UNCTAD, which is sponsoring integration events of CIS antimonopoly authorities contributing thus to harmonization of their competition law and practices in accordance with international principles. As it was mentioned earlier, the usage of the Russian language is also a big advantage of this assistance.

Taking in mind the remaining lack of the literature on competition law and policy in Russian, the antimonopoly authorities in Russia and other CIS countries have a big need in publications in Russian in this area. We appreciate very much the technical assistance in this regard from UNCTAD and EU, but still the requirements are here much more than provided assistance, and we stress again the importance of technical cooperation directed at competition advocacy in transitional countries, which may be realized by means of publications.

This task may be also achieved by organization of different kinds of round tables and press conferences with participation of governmental officials, society and business. The sending of Recommendations to the Government is also very useful for support of the competition policy in the country. These methods are actively used by OECD while providing technical assistance.

I would like to stress also that from the point of view of competition advocacy the visits to the Russian Federation of the leaders of competition authorities such as Mr. Bernard J. Phillips, Mr. Phillippe Brusick, Mr. Alexandr Schaub play an extremely important role.

Now, after ten years of existing competition policy, we have accumulated rather rich experience in this field. We think that we could also share our experience with less developed countries, which are in the process of creation and modernizing their competition policy. The example, when UNCTAD and German Foundation for International Development invited in 2000 specialists from our Ministry to Vietnam to share our experience on the seminar on competition issues, is new, successful and very interesting in this regard.

It is not very convenient for me to speak about the weak points of technical assistance, because we are really very thankful to everybody who provides such assistance which plays a very important role in developing competition policy in Russia. Nevertheless I will mention some difficulties which we meet in the process of technical assistance.

One of the main weak points of the provided technical assistance is a high bureaucracy. Sometimes a very long period is needed from the getting of principal decision to provide the technical assistance till the beginning of the project.

Sometimes in case of technical assistance for short term events a recipient is requested to provide a sponsor with a lot of calculations and data what makes a big additional pressure on the staff taking in mind very limited human and technical resources in antimonopoly structures in transitional countries.

The specificity of the Russian Antimonopoly Ministry as a recipient of foreign technical assistance (as well as other CIS antimonopoly structures) is that very few people still speak foreign languages there. This fact creates high barriers for exchange of information and consultations. In these circumstances we need very much inclusion of translatory works in technical assistance and, especially – further organization of courses for Business English for the staff of our Ministry.

In some cases sponsors' assistance for the participation of MAP specialists in the events held abroad is limited to the accommodation expenses. For Russia and other CIS countries it is a very actual need that technical assistance for these purposes covers also transport expenses. Otherwise, due to limited financial resources, the participation in very important international events becomes impossible. This is evident also here – the most CIS antimonopoly authorities (which exist in all CIS countries) still remain outside international competition dialog.

We would be glad to make more intensive our bilateral contacts and receive replies on our requests for technical assistance from the countries which have rich experience in antitrust policy. I mean first of all the Ministry of Justice and Federal Trade Commission of USA whose theoretical and practical experience in antitrust is very interesting for us.

Actual tasks of international cooperation

In our understanding technical assistance is very important but only one of the various forms of international cooperation. That is why we consider as an actual task the strengthening of other forms of international cooperation. For us it means first of all active participation in elaborating common approaches for competition policy and in cooperation on concrete cases with other antimonopoly authorities.

The competition authorities' interaction by investigations of concrete cases is extremely important from the point of view of harmonised approaches, reduction of administrative barriers and cutting budget expenses. Till now we have a limited practice of such co-operation - only with CIS' competition authorities. Unfortunately with other countries such practice is still not developed, due to the lack of corresponding inter-state agreements and rather limited volumes of transnational operations. But the significance of such interaction between competition authorities seems to grow, and the regulation of the procedure of such interaction shall be specified in the bilateral agreements.

Very important is also another form of international co-operation – it is the common elaboration of new approaches to competition policy' methods. The economic realities are raising quite new problems before competition authorities, and it is impossible to solve them along. In this case we are speaking not

only about transmission of experience from one group of countries to others – the new economic situations require new decisions, which are possible to elaborate only through common efforts, taking into account specificity of different groups of countries.

So, for example, to our opinion, the problem of determination of relevant market in the conditions of global economy and internet-technologies is very important. The reduction of trade-and economic transborder barriers, the growth of international production are leading to higher integrity of national economics. While determining a relevant geographical market it is not more possible to orient on national borders – the markets became regional or international characters. The harmonised approach of competition authorities is here needed.

The rapid development of internet-technologies is also raising new problems before competition authorities, which may be solved also through international co-operation. This was stressed in particular on the X Cartellconference in Berlin in May 2001.

Another important issue, which needs common solution, is the elaboration of new criterion for considering effects of economic concentration. Shall this or another transaction be prohibited or allowed? In the conditions of growing markets and keen international competition it is difficult to find exact reply to this question.

Another new form of international co-operation may be organisation of international dialog between state authorities and business community.

Competition law is now one of the most difficult branches of law, and the lack of transparency may constitute a significant administrative barrier for business. In the circumstances when transnational economic relations are raising, this problem may not be regarded as a pure national: being too complicated and not homogenous, competition regulations may become a hamper of international economic integration.

In these conditions the competition authorities shall initiate a permanent international dialog with business, seeking maximum transparency of competition regulation, its simplification and harmonisation.

The current forms of international support are very useful but not sufficient for effective regulation of competition in international scale. The effective regulation is to our opinion possible only on the basis of multilateral agreed mechanisms. The issue of elaboration of the international Agreement on competition in the WTO is widely discussed for the long time and may become reality in the future.

We fully support the creation and activities of the Global Forum for Competition as well as International Competition Network and may presume that international co-operation between competition authorities from different countries will become more effective in the framework of these initiatives and may provide a good basis for the future international competition rules in WTO.

In the last time there are arising new arguments towards creation of such rules. Even when national competition legislation is very effective, it covers only acts and actions of companies and sometimes – regulatory bodies, but it does not touch the international activity of governments, which may also have anti-competitive character. The competition authorities are often not involved in the process of such decisions –making and thus may not influence such processes. Sometimes competition authorities are even not informed about them.

In December 2001 the negotiations on Multilateral Steel Agreement have started in the framework of OECD on the initiative of the United States. The goal of such agreement shall be limitation

of production and introducing international delivery' quotas. As we know, mostly trade authorities were participating in these negotiations – competition authorities have been not involved. The fact, that the proclaimed goal of this agreement is the stabilisation of the corresponding market, may not hide the anticompetitive nature of such agreement which constitute in fact international legal cartel. But if cartels limiting production and introducing delivery' quotas are prohibited by competition legislation in main countries, why such cartels shall be allowed on the intergovernmental level? We are convinced that this problem shall be discussed only with the participation of competition authorities and suggest that next OECD negotiations shall be undertaken jointly by Trade and Competition structures of OECD. We think that this problem shall be in the center of international co-operation of competition authorities and suggest to consider it on the Global Forum.