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**THE OBJECTIVES OF COMPETITION LAW AND POLICY
AND THE OPTIMAL DESIGN OF A COMPETITION AGENCY**

-- RUSSIAN FEDERATION --

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RUSSIAN FEDERATION

THE OBJECTIVES OF COMPETITION LAW AND THE OPTIMAL DESIGN OF A COMPETITION AGENCY WITHIN THE OVERALL GOVERNMENT

In the Russian Federation, according to the Federal Law « On Competition and Restriction of Monopolistic Practices in the Goods Markets » (the Law « On Competition »), the state policy on furtherance of the goods markets' development and promotion of competition, the state control over the antimonopoly law observance, the prevention and suppression of monopolistic practices and unfair competition, is carried out by a federal antimonopoly body - the Ministry of the Russian Federation for Antimonopoly Policy and Support of Entrepreneurship (MAP).

The Ministry is headed by a Minister who is a member of the Government of the Russian Federation. The financing of MAP Russia's activity is carried out by funds allocated from the federal budget.

The control over the MAP' activity is exercised by the President of the Russian Federation who appoints and relieves the Head of the antimonopoly body, along with the Government of the Russian Federation.

MAP has been established by the Decree of the President of the Russian Federation of September, 22, 1998 № 1142 « On the Structure of the Federal Executive Bodies » and is now one of the major agencies in the economic - legal sector of the federal executive bodies.

MAP has succeeded to the functions of the abolished State Antimonopoly Committee (established as far back as in 1990), the State Committee On Support to and Promotion of the Small Entrepreneurship, Federal Service On Regulation of the Natural Monopolies in the Telecommunications Sector. Integration of several bodies of antimonopoly regulation into a single Ministry was carried out with a view of creation of necessary organizational conditions for implementation of a uniform state policy in this sphere.

The primary goals of MAP are determined in the Regulation "On the Ministry of the Russian Federation for Antimonopoly Policy and Support of the Entrepreneurship", which was approved by the Decree of the Government of the Russian Federation of 12.07.1999 №793 and are as follows:

- prevention and suppression of monopolistic activity and unfair competition;
- promotion of market relations on the basis of competition and entrepreneurship;
- carrying out state control of observance of the legislation in spheres of the antimonopoly policy, protection of the consumer rights, advertising;
- implementation of the state policy directed at support of entrepreneurship, as also at formation and consolidation of enterprise sector of the Russian Federation's economy, state regulation, inter-branch and inter-regional coordination in sphere of development and support of small entrepreneurship;

- state regulation of natural monopolies' activity in the field of telecommunications pursuant to the legislation of the Russian Federation.

For performance of the given objectives, the Ministry is vested with the appropriate functions and large powers. Thus, the Ministry has the following main rights:

- to issue within, the limits of its competence, legally binding injunctions on elimination of competition law' infringements and in respect of other conduct as provided for under the relevant legislation;
- to open and conduct cases on administrative offences and to impose penalties as stipulated by the legislation;
- to carry out inspections on observance of the antimonopoly law by economic entities, executive authorities of all levels and local governments;
- to apply, if provided for by the legislation, to a court or an arbitration court and to take part in legal proceedings;
- to establish a fact of a dominant position of legal entities on corresponding markets and to make decisions on inclusion of those into the Register of the economic entities having a share in the market more than 35 %;
- to exercise control over economic concentration (mergers, take-overs, acquisitions of rights allowing to determine the conditions of the entrepreneurial activity);
- to make decisions on compulsory division of the economic entities occupying a dominant position on the market and conducting monopolistic practices;
- to carry out the preliminary control over conclusion of the agreements between economic entities in terms of voluntary pre-notification;
- to apply to natural monopolies methods of the regulation stipulated by the legislation;
- to carry out examinations of the prices and tariffs on the telecommunications services rendered by natural monopolies.

The primary goals of MAP are contained in the antimonopoly legislation and are specified, according to the general aims of development of the State, by the Government of the Russian Federation. The goals for intermediate term and short-term prospect are determined by MAP Russia independently in compliance with its legally fixed responsibilities, the programs of social-economic development, orders by the Government, the general trends of the economic development.

According to the functions and powers, within its competence MAP takes part in formation of the Russian industrial and social policy while rendering its remarks and proposals to the corresponding bodies. MAP enjoys adequate competence, independence and administrative mandate on competition law enforcement. MAP's competence is directly founded on the provisions of the competition law. At the same time MAP's activity towards elaboration of governmental policy on development of the goods markets and promotion of competition is a part of an overall activity of the governmental authorities it is correlated with the general governmental policy on the basis of assigned allocation of the objectives, functions and responsibilities among different governmental bodies.

According to the Law « On Competition » the system of the antimonopoly bodies of the Russian Federation includes, besides the Central Body (i.e. the Ministry itself), territorial bodies of the federal antimonopoly body. At present, there are 75 Regional Offices, carrying out their assigned activities in 88 subjects of the Russian Federation, within MAP Russia's organizational structure. The Regional Offices are subordinated to the federal antimonopoly body and carry out their activities appointed in accordance with the legislation of the Russian Federation and of MAP.

The Regional Offices are financed from the funds of the federal budget and are not included into the system of the executive authorities of the Subjects of the Russian Federation. The Heads of the Regional Offices are appointed and relieved from their positions by the Minister of the Russian Federation for the Antimonopoly Policy. All this ensures their independence, both organizational - structural, and financial, from local authorities and enables them to implement effectively the powers conferred, including, those in the sphere of the control over observance of the antimonopoly law by executive bodies and local governments.

It is of great value for strengthening of the legal force of the Russian antimonopoly body's decisions the fact, that the Constitution of the Russian Federation, on which the antimonopoly law is based, contains provisions (p. 1 of Article 8 and p. 2 of Article 34) according to which support to competition is guaranteed, and the economic activities directed at monopolization as well as an unfair competition are prohibited in the Russian Federation. Thus, the Law «On Competition» legally evolved the constitutional guarantees in the field of economic relations. These factors condition the effective and large-scale control over anticompetitive practices by executive bodies of all levels, regulatory authorities of the Subjects of the Russian Federation and local governments.

The competition legislation is a part of legal foundation of the economy of the Russian Federation. Similarly to the society as a whole, it operates under the conditions of dynamic development. Lawmaking process in the field of the antimonopoly law appears to be perpetual by its nature. So the Law "On Competition" has been initially adopted in 1991 - since then the amendments has been introduced in it eight times (the last redaction was ratified on 09.10.2002).

Competition legislation also comprises the Federal Law "On Protection of Competition on Financial Markets". The Law lads the fundamental legal base for regulation of relations related to the development and protection of competition in the securities market, banking, insurance and other financial services markets.

In the last years, the antimonopoly bodies of Russia have been significantly contributing to the work on reforming the Russian economy. Formation of the competitive environment occurs simultaneously with the demonopolization of economy, its liberalisation and privatisation process.

In the course of time, the modernization of objectives of the antimonopoly body is being conducted. The processes of globalization taking place in the economy recently bring the corrective amendments into the approaches of the antimonopoly body to the solving of arising problems. The discussion and the statement of new objectives take place collectively. Representatives of the executive power bodies, local government, representatives of the business community, and other interested parties take part in the sessions of the MAP' Board. Press conferences on interpretation of the issues, which the Ministry deals with, are held, and other means of informing about MAP activities are used (web-site, mass media).

In new conditions, MAP becomes not only the body detecting and eliminating existing infringements of the law: the Ministry directs its efforts towards prevention of the infringements caused by

imperfection of the market or imperfection of the state policy in individual sectors of economy. It focuses in several trends, including implementation of competition' principles in reforming natural monopolies and introduction of new mechanisms of their regulation, modernization of the legislation with the purpose of debureaucratization of the economic regulation, elimination of administrative barriers, participation in regulation of foreign trade activities.

The activity of MAP Russia in reforming natural monopolies is directed not only at restructuring of traditional participants of the market (for example, Ministry of Railways, "United Energy Systems of Russia", "Gazprom", "Svyazinvest"), but also at creating conditions for activity of independent market participants (particularly, considering the specificity of large, medium and small companies). Thus, the control over observance of the antimonopoly law was incorporated into the programs of reforming, and their realization mechanisms.

MAP has accumulated experience both as a competition authority - about twelve years - and as an independent regulator in the telecommunication sector - four years. The Independent Regulatory Body (IRB) has been founded along with adoption of the Law « On Natural monopolies ». The above-mentioned Draft Law has been earlier developed by the antimonopoly body with participation of the OECD leading experts. In terms of the existing Constitution, IRB is a federal executive body. Its independence is legislatively provided by procedure of joint decision-making by special professionally-based Working Board of IRB. Furthermore, the Law determines procedure of assignment, under the decision of the Government, of members of the Board for not less than for four years, with the subsequent rotation not exceeding 1/3 of its staff. On the results of its activity, IRB is required to submit annually the Report on its activity to the Government of the Russian Federation.

The Russian antimonopoly legislation and the legislation on regulation of natural monopolies as well as practice of their application meet the international standards in sphere of telecommunications where, with a view of development of a competition in the market of telecommunication services, a special weight is given to issues related to ensuring non-discrimination, mutual settlements of telecommunication operators and activity of an independent regulatory body. At that, in Russia independence of IRB, as well as in the EU countries, is ensured via division of functions between IRB and the sectoral Ministry.

At the present stage, the great importance, in the Ministry's efforts overall, is paid to preservation of single economic space of the country. The competition in the market can be limited not only by practices of economic entities, *but also through actions of the state bodies*. Various administrative barriers appreciably created by authorities of all levels affect development of the internal market. Most frequently, such actions are carried out in the form of creation of unreasonable obstacles or, vice versa, of granting of privileges to individual economic entities.

According to its competence, MAP participates actively in legislative work with the purpose of improvement of the antimonopoly law and enforcement practice. Moreover, the Ministry issues official opinions on draft laws and other acts of other federal authorities of executive branch dealing with economic regulation.

MAP performs also function of small entrepreneurship support, which on the one hand promotes competition and on the other hand helps to solve major social-politic problems related to employment and creation of the middle class.

MAP takes an active part in formation of the state policy in the field of the external economic regulation. The analysis of MAP's activity within the Governmental Commission On Protective Measures in Foreign Trade and Customs-Tariff Policy has shown that participation of antimonopoly bodies in this

sphere enables to ensure the pro-competitive character of foreign trade policy of the Russian Federation, taking into consideration the interests both of the producers and the consumers.

Thus, carrying out active cooperation with other governmental bodies MAP participates in improvement of state regulation as a whole, ensuring effective realization of principles of competition.