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Competition Policy in Russia: Historical Sources, the Current State, and Evolutionary Perspectives

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I. INTRODUCTION

In structured market systems, state competition policy is an inherent part of the government's activity in the context of competition protection and development and, as such, acts as an essential pillar of an existing, viable market system. The rational observer understands the defense of competition to be the cornerstone of fair competition, not only supporting sustainable conditions for the development of competition but also allowing responsible and fair competitors to strengthen their competitiveness, either directly or indirectly. In transitioning economies such as Russia competition policies gain special importance in economic development and have special interests to global competition practitioners.

Until recently, state competition policy in Russia was construed to mean antimonopoly policy. The antimonopoly trend was justified during the dangerous period of transforming the Soviet-type monopolies into classic market-based monopolies. During this time it was necessary to formulate the components to create a system to counteract monopolistic behavior and protect the principles of market competition that were born from the difficult times of *perestroika*. This antimonopoly trend is prevalent in the competition policy today. However, being concentrated on *protecting competition*, this policy lacks the full measures necessary to stimulate *developing competition*.

In this article, the evolution of views on competition and competition policy will be examined, beginning with historic Soviet views, then taking into account the views on competition from the *perestroika* period, and culminating with current views. Moreover, the directions and tools of modern competition policy in Russia and the prospects of its further evolution will also be considered.

II. EVOLUTION OF COMPETITION POLICY

Competition policy has become a new section of economic state policy in post-Soviet Russia. It is based on the following:

- forming government strategy concerning competition protection and development;
- cultivating and actualizing the norms of competition legislation;
- sustaining the activity of special state bodies in the sphere of directing competition policy;
- sustaining effective enforcement practices; and

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- maintaining in society in general, and among actors in particular, a mentality which facilitates strengthening fair competitive behavior.

It deserves to be mentioned that these areas concerning the evolution of competition policy lacked any perspective during the Soviet period as, according to the Soviet ideology, competition in the USSR was absent.

Typical views on competition in the Soviet period were based on the vulgarities of Marxism-Leninism, which was the theoretical base of power of the Communist Party of the Soviet Union (“CPSU”). Competition was looked at as a tendency attracting only economic and social antagonisms which, in the end, would lead to market economies (capitalism) collapsing and changing to command economies (socialism). A 1929 publication by Joseph Stalin (at the time leader of the Soviet Union) titled *Contest and Enthusiasm for Work by the Masses*, for example, affirmed the following:

A socialist contest and capitalistic competition present two completely different principles. The principle of capitalistic competition: defeat and death of some, victory and the supremacy of others. The principle of the socialist contest: comradesly aid that remained from the side of foremost, in order to attain overall lift. A capitalistic competition says: attain all that which remains, in order to confirm your supremacy. A socialist contest says: some work badly, others work good, the third works better—overtake the best and attain lift overall.²

It is worthy to note an important vulgar Marxist-Leninist hypothesis which took its meaning from official state doctrine: the Soviet economy was characterized by the absence of both competition and monopoly. This “anti competition-anti monopoly syndrome” in the Soviet economy hid what was obvious to even to the simplest observer: the existence of unfair competition on the black market, uncontrollable monopolies of the Soviet economy—state unitary enterprises, and the inefficient production of poor quality goods all controlled by directives stemming from central planning.

The beginning of *perestroika* at the end of the twentieth century included the massive privatization of government enterprises in the real sector,³ which precipitated the real danger of transforming the Soviet type monopolies into market monopolies. In the absence of a sufficient legal base,⁴ a significant part of government property become the private property of a relatively few individuals for artificially cheap prices. By some estimates, in the country at that time there were around twenty to thirty thousand state enterprises that could have fit into the category of monopolists and/or unfair competitors.⁵

It is natural then, in light of the above, that competition policy was defined in an antimonopoly format in the reformed post-Soviet economy. As such, for the first time in Russian

² Stalin I.V. *Sorevnovanie I trudovoy podiem mass. Predislovie k krbzhke E. Mikhulinoy “Sorevnovanie mass”* // Soch. T. 12. M.: Gospolitizdat, 1952. S. 110 (Joseph Stalin. *Contest and Enthusiasm for Work by the Masses*. Foreword to book E. Mikhulina “Contest of the Masses” // *Essays*. Vol. 12. Moscow, 1952. P. 110). In the Soviet Union all public announcements by state leaders were taken as an absolute truth.

³ The beginning of Russia’s transition from planned to market economy is usually associated with “perestroika,” namely with the enactment of a complex of laws which were directed on the reorganization of the national economy from 1987-1988.

⁴ The Law of the Russian Federation *On the Privatization of State and Municipal Enterprises in the Russian Federation* was passed only in July of 1991.

⁵ Journal “Vlast” № 12 (62) of 18.03.1991 (Journal “Authority” № 12 (62) of 18.03.1991).

history, there was an antimonopoly law. This, in turn, has brought about the creation and organization of antimonopoly authorities and subsequent regional subdivisions. Furthermore, an understanding of antimonopoly principles can now be seen in society and consequently in new Russian actors.

In August, 1990, the decree of the Council of Ministers of the USSR, *On Measures on De-monopolizing the National Economy*, defined the basic parameters of government antimonopoly regulations, including measures on de-monopolization in the spheres of directive state management and planning, procurement and trade, scientific and technical development, and other spheres of the economy. The first independent antimonopoly law was titled *On Competition and Limitation of Monopolistic Activity in Commodities Markets*⁶ and was passed in March, 1991 (a lag of more than a hundred years from the U.S. Sherman Law). In 1993, protection of competition was enshrined as a constitutional guarantee in the Russian constitution.

In July, 1990 the State Committee of Russia on Antimonopoly Policy and Support of New Economic Structures was founded.⁷ The committee's basic function was to counteract restrictions of monopolistic activity. During its twenty year history the antimonopoly authority has gone through numerous changes.⁸ The most interesting has been the repeated changing of both its name and the list of its functions, which have been both expanded and reduced. Up to 2008 this organ was the only government body that formed antimonopoly policy for the Russian market.

Moving further chronologically, additional acts orientated towards antimonopoly activity and expanding the 1991 law were passed. For example, in 1994 the Government of the Russian Federation issued the decree *On the Government Program of De-monopolization of the Economy and Development of Competition in the Markets of the Russian Federation*. Moreover, in August 1995 Federal Law №147 *On Natural Monopolies* was passed and in 1999 the law *On The Protection of Competition in the Financial Services Market*⁹ was signed into force. And finally, in July of 2005, the law *On the Procurement of Goods, Works and Services for State and Municipal Needs* was passed.

It is important to emphasize that, during the period, proclaimed state policy simultaneously protected both competition *and* its development. But though the acts actually passed included antimonopoly regulations pertaining to the protection of competition, they did not stimulate competitive development—nor were they intended to. Protection of competition was defined to be counteracting monopolized markets and, as such, the actual beneficiaries of

⁶ The Law of the Russian Soviet Socialist Federative Republic N 948-1 of 22.03.1991.

⁷ The Law of the Russian Soviet Socialist Federative Republic of July 14, 1990 “On Republican Ministries and State Committees of the RSFSR”.

⁸ In March 1997 it was transformed into the State Antimonopoly Committee of the Russian Federation (SAC); in September 1998 into The Ministry of the Russian Federation for Antimonopoly Policy and Support to Entrepreneurship (MAP Russia) which was established in place of SAC, the State Committee of the Russian Federation for Support and Development of Small Entrepreneurship, the Federal Service of the Russian Federation for Regulation of Natural Monopolies in Transportation Sphere and the Federal Service of the Russian Federation for Regulation of Natural Monopolies in the Sphere of Communication, which were abolished; in March 2004 the Ministry (MAP) was abolished, its powers were delegated to other authorities, the functions of the federal antimonopoly body, control over the activity of natural monopolies and observance of the legislation on advertising were delegated to the newly established Federal Antimonopoly Service.

⁹ Federal Law of the Russian Federation of June 23, 1999 № 117-Fz, *On the Protection of Competition in the Financial Services Market*.

antimonopoly practices became consumers, society as a whole, and those actors who refused to act in a monopolistic fashion. Nevertheless, it was they who could have become victims of those who abused dominating and monopolistic positions. Thus, **the principle of protecting competition was understood to be the same as the principle of protecting markets and all of markets beneficiaries.**

In all countries, antimonopoly (anti-trust, anti-cartel) norms are accepted as a means of protecting markets from abuse of dominance. At the heart of antimonopoly policy lies the legitimate interests of consumers and societies as a whole, and also the interests of actors as they realize the right to carry out competitive market-based activity. Another element of market protection which is often part of antimonopoly policy measures is counteracting unfair competition. In itself, the concept of both unfair and conversely fair market behavior is set by norms of legislation and ethics. The beneficiaries of counteracting unfair competition are the same as those that pertain to antimonopoly regulation of the markets; they are consumers, society in whole, and fair competitors.

It can be concluded, then, that Russian antimonopoly legislation of 1991 was based on the concept of simultaneously counteracting monopolization of the markets and unfair competition and, as such, its norms were underpinned by the necessity of protecting legitimate consumer interests, society as a whole, and actors who acted in good faith. So competition protection was actually perceived primarily as market protection and didn't consider protecting the legal interests of individual competitive actors to be a key component of competition policy.

Such restriction doesn't allow combining encouraging fair actors with protecting fair actors from unfair actors. This is, state policy only **protects**; it doesn't **stimulate** competitive behavior. But developing competition should not only be a systematic task of the state, but should also be a core interest to those actors who aspire to achieve market success due to effective modern competitive activity. This approach supports a desired level of competitiveness and strengthens competitive advantages while getting rid of competitive disadvantages.

Fair market behavior is not necessarily competitive and does not necessarily lead to competitive steadiness, even in markets that adhere specifically to antimonopoly rules. On the other hand, the competition policy of the state should not ignore actors' struggle for the top position, as without this struggle for dominance the implicit idea of competition disappears and the variety of products available in the market will diminish, stifling customer choice.

Restrictions of competition policy by both anti-monopoly measures and measures to counteract unfair behavior, without understanding the need to also support competition, inevitably lead to removing the ideas of competitiveness and competitive advantages from competition policy. The legitimate interests of fair competitors in heightening their competitiveness can not be fully realized. Something quite similar is happening in Russia.

Actual actors, realizing their sovereign and constitutional right to compete, have not yet become the main figures of the "protected" segment of a competition policy. Moreover, they also haven't yet become figures in the declared "developing" segment because the "developing" segment couldn't be relevant in the antimonopoly format.

This state policy emphasis on the protection of fair competition from unfair competitors and on market monopolization is characteristic of the activity of the Russian antimonopoly authority. Its main preference has become to protect the rights and legitimate interests of consumers from monopolistic deviations, while maintaining the steadiness of society and the

national economy. In last place, and only in an indirect fashion, is the goal of protecting separate actors from possible domination and, moreover, protecting the competitiveness of businesses. It is not accidental that the first name of the 1990 state committee included the term “new national economic structures” but not, unfortunately, any terms regarding the Russian competitive actors.

Therefore, in the examined period those that developed this policy were not concentrating on the actors trying to develop competition by strengthening their own competitiveness. However, given the quickly reforming Russian economy and the subsequently quickly developing market and new Russians business owners, a government policy of development was vital.

By 2006, despite regularly made changes and additions, the federal laws *On Competition and Limitation of Monopolistic Activity in Commodities Markets* and *On the Protection of Competition in the Financial Services Market*, which were the foundations of the Federal Anti-monopoly Service’s (“FAS”)¹⁰ activities, had become antiquated and stopped answering the needs of developing business. In October of 2006 a new law came into force which had been developed by FAS, titled *On Protection of Competition* (also named “The First Anti-Monopoly Packet”) which created a basis to remove existing legislative discrepancies.

The work and effort put into *On the Protection of Competition* was an example of how government and business could interact to achieve a common good. At all stages of its development discussions were held with entrepreneurs and businessmen comprising all facets of Russian business. The end result is a law which corresponds not only to the interests of consumers, but also to producers and to world standards for competition policy. The new law even has had the effect of changing the makeup and structure of the relevant state organs which implement competition policy.

III. CURRENT COMPETITION POLICY

At the present time, the priorities of the Russian antimonopoly authority (FAS) are to investigate and bring to court, if necessary, violators of antimonopoly legislation. The total number of court cases instigated against companies in 2009 reached 9665; 1.5 times more than in 2008, and three times more than in 2005. In 2008 FAS, through the court systems, levied administrative penalties totaling 13.3 billion rubles and, in 2009, 28.9 billion rubles.¹¹

FAS Russia carries uses empowering legal acts to fulfill its mandate of controlling, supervising, and observing legislation in the sphere of competition in commodity markets, financial services markets, and the activities of subjects of natural monopolies and advertising. Along with these responsibilities, FAS Russia regulates the legislation which controls placing orders for deliveries of goods, performance of works, and rendering of services for state and municipal needs, and also carries out control functions over foreign investments in the Russian Federation.

¹⁰ On March 9, 2004 the Ministry was abolished and its powers were delegated to other authorities. The functions of the federal antimonopoly body, control over the activity of natural monopolies, and observance of the legislation on advertising were delegated to the newly established Federal Antimonopoly Service as provided by Presidential decree. As opposed to other Federal Services which were in that decree, FAS is not under the jurisdiction of the Government of Russian Federation as well as Federal Ministries and as such FAS reports directly to the President of the Russian Federation. This fact, together with its vast authority, give evidence of its special position in the executive structure and make FAS more a ministry and not a service.

¹¹ Report of Mr. Igor Artemiev, the Head of FAS Russia, Moscow, 8-9th June 2010.

Since February 1st, 2010, FAS Russia has also had the mandate of detecting anti-monopolistic behavior on the market, per its authority granted in the Federal law *On the Basic Principles of Regulating Trading Activities in the Russian Federation* (“Law On Trade”).¹² The Law On Trade represents an attempt to unite the norms of antimonopoly law. Furthermore, it attempts to forbid separate types of practice in the mutual relations between suppliers and retail dealers.

Along with FAS is another conductor of state competition policy, though this conductor doesn't act in the “protective” segment, but in the “developing” segment. Created in the summer of 2008, the Department for Competition Development is a part of the central office of the Ministry of Economic Development of the Russian Federation. The declared goals of the department are: (1) maintaining state policy and normative legal regulation in the sphere of development and protection of competition and pricing perfection on commodity markets, (2) placing orders for deliveries of the goods, performance of works, and rendering of services for the state and municipal needs, and (3) continuing administrative reforms of state bodies.

The key direction of the department's activities should be creating the political formation of an effective competitive environment and climate which, in turn, should facilitate the development of competition on specific and regional market markets. However, there are some things which need to be done. First, it is necessary to re-transform the environment and simultaneously dispose of specific factors which interfere with fair competition. According to the Global Competitiveness Report, the most problematic factors for doing business in Russia are: corruption, lack of access to financing, tax regulations, crime and theft, inflation, inefficient government bureaucracy, and tax rates.¹³

In order for the Department for Competition Development to implement its mandate, the following responsibilities are defined:

- Developing state policy and normative legal regulations in the spheres of:
 - developing and protecting competition and perfecting pricing on markets;
 - placing orders for deliveries of goods, performance of works, and rendering of services for state and municipal needs.
- Monitoring and subsequent analysis of the influence of socio-economic processes regarding price formation in commodity markets and competition conditions in social and economic development in the Russian Federation.
- Realizing and controlling the performance of the project “Development of Competitive Markets and Protection of Competition,” which was included in the list of projects of the basic lines of activity of the Government of the Russian Federation for the period until 2012, a confirmed order of the Government of the Russian Federation from November, 17th, 2008, № 1663-p.
- Working out measures on developing competition while taking into account the possible necessity of increasing competitiveness in the Russian economy.

¹² Federal Law of the Russian Federation of December 28, 2009 N 381-FZ «On State Regulation of Commercial Activity in the Russian Federation».

¹³ The Global Competitiveness Report 2010-2011. P.: 285.

- Participating in state policy development in the manufacture of ethyl spirit, alcoholic, and alcoholic-containing products.
- Organizing weekly and monthly price monitoring.
- Bringing about the coordination and methodical maintenance of the activities of the executive branch of the government and the executive branches of the subjects of the Russian federation by implementing administrative reforms.
- Developing offers for and participating in events held by the executive branch of the government for using information technology in the government, including the formation of electronic government in the Russian Federation and developments of an information society.
- Coordinating work on the organization of electronic trading platforms.

By the end of 2008, the Department for Competition Development had developed a specialized document—*The Program on Developing Competition in the Russian Federation from 2009-2012*.¹⁴ Coordination from the Department for the The necessary activities to implement this program has both sector branch and territorial aspects:

First, employees of the Department for Competition Development must work jointly with other departments and representatives of the business sector on a number of the most important ideas regarding competition development in the specific sectors designated in the Program. This work includes developing special measures directed at stimulating development for every concrete area of the economy, as well as eliminating specific administrative barriers and creating hospitable conditions for the entrance of new actors.

In actuality, we are talking here about the following markets: oil products, gas, mineral fertilizers and raw materials for their manufacture (nitro, potash and phosphate fertilizers), agrifood, construction, cement, metallurgical raw materials (coking coal), power coal. It also includes the following industries: railway transportation, aviation fuel sustainability, electric power, the housing and communal services, and retail trade.

Second, while taking into account local region specifics, all Russian Federation regional programs must consider competition elements. Now, when work on a program is finishing,¹⁵ the Department for Competition Development is starting to focus on controlling the implementation of these programs. It is assumed that yearly appraisals of the competitive climate will be made using the methodology of the Department while once every two years World Bank methods will be used. Furthermore, the levels of effective regulatory impact on the condition of the competitive environment from the authorities will also be evaluated. It is also understood that systematically informing the public on the competitive condition of regional markets will be undertaken by the relevant regional and federal authorities.

¹⁴ Affirmed by Government of the Russian Federation Executive Order of May 19, 2009 № 691-r.

¹⁵ InOver the course of 1 one year; the Federal Regions of the Russian Federation should have developed and given to the Ministry of Economic Development of the Russian Federation a report by September 15, 2010. However only 20% percent of the 82 received programs may be called qualitative. In spite of this, 62 programs from among the 82 received were accepted.

IV. COMPETITION POLICY VECTORS

Despite the dynamic evolution of state competition policy, the specific actions planned at developing competition are not yet fully systematized. In order to acquire a systematic character, competition policy should focus on the following mutually connected objects:

- actors as competition participants;
- the competitive environment;
- instruments for adjusting and fine-tuning competitive practice; and
- professional competence of actors in the sphere of competitive behavior.

Direct participants of competition, while objects of competition policy in its "protective" segment, haven't yet become objects in the coherent "developing" segment. In the "protective" segment, thanks to two decades of antimonopoly regulation we are now witnessing the emergence of fair practices and the absence of monopolization claims. Both of these development are leading to a step-by-step formation of a competition policy in which the state looks upon participants equally as competitive market actors regardless of intentions, present and future competitive potential, and public benefit.

However, protecting the rights of *all* actors to participate in fair competition still does not coincide with the presumed measures of coherent government policy directed to various holders of these rights. Like the rest of the world, the Russian state actively influences the streamlining and development of the market by using state orders and tasks, grants, subventions, direct investment, and various preferences, though it should be noted that such actions rarely are justified in the context of their direct influence on competition. This is to say that any action taken by a government which impacts market actors should be based on the understanding that these actions change not only the competitive positions of actors, but also their competitive advantages and disadvantages, level of their competitiveness, and in what way and what level these parameters changes.

When influencing the market, the state always either encourages and motivates one competitor and/or demotivates another. However, when so doing, there are no distinct criteria to determine which is motivating or demotivating. So, the repeated declaration by the supervising authorities that they are both encouraging and supporting competition hasn't yet been found in any legal documentation concerning the carrying out of tenders and other government procedures. The absence of such a legal doctrine is also prevalent in the abovementioned program being carried out by the Department for Competition Development. As a consequence, "the bet on competitive leaders" is the same as stimulating them to heighten their strategic and operative competitiveness while they have yet to become objects of competition policy.

In separate cases that have strategic value for the country, the algorithms of direct control allow for not only the possibility of ignoring the competitive aspect of state influence on the development of the markets, but are also based on it. This occurs in actions concerning the advancement of especially valuable actors (Gazprom, KAMAZ, Rosneft) on the world markets, and also in support of strategically vital sectors of the economy (for example, nanotechnologies) or strategic significant points of growth (the Skolkovo Innograd project). However, specific instances aren't supported by systems of imbedded policies. Neither strategic nor operative

competitiveness is understood in both the sectoral and regional competitive activity of actors in a currently saturated market. As such, they are not imbedded priorities of the government for creating a competition policy.

In the absence of accurate reference points for either motivating/supporting or, conversely, demotivating mutually competing actors, the mission of the Department for competition development is limited as to the measures they can use to counteract negative tendencies and support positive competitive tendencies. By concentrating attention on overcoming the factors which hinder actors' intentions to be competitive, the current competition policy neglects to focus on the instruments which encourage actors to strengthen their competitiveness.

At the same time, competitive policy is still focused on the struggle against unfair competitors and neglects to encourage competitive leaders. Nevertheless, an effective competitive environment should be admitted in those situations when the care of the state will be aimed at both fair actors and competitive actors. Maintaining the competitiveness of a national economy at strategic and operative levels is unreal for a society without the creation of comfortable conditions for implementing competitive actions by those specific actors who, more so than others, aspire to increase the degree of competition within the confines of antimonopoly and fair market practices.

Therefore, along with countering market monopolization, abuse of dominance, unfair competition, and monopolistic practices, a competition policy could concentrate on:¹⁶

- assisting fair competitors in their aspiration to be competitive and competitively active;
- influencing fair actors who do not adequately care for their own competitiveness and competitive activity; and
- counteracting the tendencies which demotivate actors from attaining competitiveness and competitive activity; including the artificial competitive advantages of selected competitors given by government bodies.

The absence of similar or other reference points in "a developing" segment of a competition policy doesn't allow for developing those documents that are necessary to encourage and stimulate competition. As a result, the right of every actor to compete fairly is not sustained by appropriate state guarantees supporting those actors who adhere to the rules of fair behavior and achieve the best level of competitiveness.

A necessary element of a state policy on developing competition which is almost completely absent in Russia is professional training programs concerning the art of competitive behavior. This training could develop the necessary professional competencies which fair actors could use to strengthen and maintain their own competitiveness.

V. CONCLUSIONS

For 20 years the existing state authorities of Russia responsible for carrying out and implementing competition policy have, time and again, changed names and had their authority

¹⁶ Rubin Yuri B. Diskussionnie voprosi sovremennoy teorii konkurentsii // Sovremennaya konkurentsia. № 3. 2010. С.62. (Yuri Rubin. Discussion Questions of Modern Competition Theory // Modern Competition Journal. № 3. 2010. P.62).

both extended and reduced. During this time the Russian economy has traversed an unprecedented path of creating new markets while strengthening competition, a path which hadn't previously existed in the Soviet period. Today, a large number of products are sold on unregulated markets where there is no state directive for an established price level. Many Russian companies not only withstand internal competition, but also globally compete; a testament to their own competitiveness.

According to surveys of businessmen, it has become easier to overcome administrative restrictions on entering the market.¹⁷ Unfortunately, this is not due to state policy or activity, but to the development of the skills of actors in overcoming administrative barriers.

More hopefully, the joint activity of the Federal Antimonopoly Service of Russia and the Ministry of Economic Development of the Russian Federation involving measures directed to support a competitive environment, represents an important and vital step, aimed at, in essence, *activating* competitiveness.

However, for competition in Russia to successfully develop and be protected, it will be important to cultivate a strategic perspective of the evolution of competition policy in order to design a staged process that can be followed to fully implement the strategy of forming a fair and competitive economy.

¹⁷ Global Entrepreneurship Monitoring 2009.