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Local Competition Bodies and Antimonopoly Policy Effectiveness in Transition Economies

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I. INTRODUCTION

There is some empirical evidence that the effectiveness of antimonopoly policy (hereinafter referred to as the “EAP”) depends on different aspects of policy design, like engaging in leniency policy and competition authority independence.²

However, these features of competition policy design do not explain how countries can effectively implement competition policy within their internal territories. How can local competition bodies influence the EAP? This has not been researched from a bottom-up perspective, although local policy implementers have expertise and knowledge of the true problems. Therefore, they are in a better position to propose purposeful policy.

To investigate the question³ I chose two transitional countries, Russia and Kazakhstan. The results of the study suggest that the competition authorities can increase the effectiveness of antimonopoly policy through an active stance against significant cases of competition law violation and use of large fines.

II. EXECUTIVE OPINION SURVEY

In transition economies, although territorial offices of antimonopoly authorities are formally subordinated to the central office, they have a great deal of power and, as a result, competition policy in practice is implemented mostly by officials in the regions. For instance, almost 90 percent of violations of competition law in Russia and Kazakhstan are found and investigated by the territorial offices. Russian local antimonopoly authorities in 2010 collected 80 percent of fines, investigated 93 percent of unfair competition cases, 98 percent of abuse of dominant positions, 96 percent of anticompetitive agreements, and 99 percent of anticompetitive behavior of government authorities.⁴

To measure the effectiveness of antimonopoly policy on each local region in two countries, I used a survey of the 151 top officials of 89 local antimonopoly offices in Russia and Kazakhstan.⁵ My respondents were directors and deputy-directors of territorial antimonopoly offices in Russia and Kazakhstan who were chosen because of their experience (the average experience in the competition policy field was 9.9 years) and their official duties (they not only led their offices and made strategic decisions but also took part in daily activity such as investigations, and participating with courts and procurators). The EAP on a local level was

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² See, e.g., J. Borrell & J. Jimenez, *The drivers of antitrust effectiveness*, 185 (2) HACIENDA PÚBLICA ESPAÑOLA, 69-88 (2008).

³ The research was done during my Master course at University College London.

⁴ Available at www.fas.gov.ru, www.azk.gov.kz.

⁵ Respondents represented 89 percent Russian (73) and 100 percent Kazakh (16) regions.

measured by asking participants to rank its effectiveness between 1 and 7. This method was taken from the World Economic Forum Executive Opinion Survey, but instead of country I asked about local regions.

Additionally, the Survey allowed the heads of territorial antimonopoly authorities in Russia and Kazakhstan to provide their own weightings of agency enforcement output among the factors contributing to the effectiveness of antimonopoly policy. Quality of professional staff (average score of 6.91), an active stance against horizontal and vertical anticompetitive agreements (6.66), abuse of dominant or monopoly position (6.65), anticompetitive behavior of governmental authorities (6.64) and support of courts (6.64) are considered across countries as the 5 top factors of antimonopoly policy effectiveness.⁶ The quality of staff as the most important factor was confirmed by 100 percent of Kazakh and 87 percent of Russian respondents with the average score 7.00 and 6.82 accordingly. One notable difference between the two countries' responses in the 5 top factors is that in Russia the courts' support (6.67) was considered the second important factor; while in Kazakhstan it was only sixth (6.61).

The second group of important criteria included the followings factors: investigation of unfair competition (6.50), political independence of the antimonopoly authority (6.46), the budget of the antimonopoly authority (6.36), and competition advocacy (6.29). The remaining factors were considered less important: merger control (5.88), the level of fines administered by the competition regime (5.64), the use of criminal penalties for anticompetitive behavior (5.36), and the use of a Leniency program (5.28).

So, according to the Survey results, local antimonopoly authorities' enforcement outputs such as investigations against anticompetitive agreements, abuse of dominant position, and anticompetitive behavior of governmental authorities are among the most important factors of the EAP.

III. DETERMINANTS OF EFFECTIVENESS OF ANTIMONOPOLY POLICY

For empirical analyses of the factors influencing the EAP I used an ordinary least-squares linear regression across 73 Russian and 16 Kazakh local regions. This empirical examination⁷ showed that the effectiveness of antimonopoly policy in transitional economies was statistically significantly associated with the size of fines administered by antimonopoly authorities, though top officials of local competition bodies did not include it in the group of the most important factors (score of 5.36).⁸ There is evidence in the literature that fines can prevent companies from entering into anticompetitive cartel agreements.⁹ Connecting both results, it seems that the high level of fines has a deterrent effect and decreases the anticompetitive behavior that leads to the increase of the EAP.

⁶ See, A. Aitzhanov, *Determinants of Antimonopoly Policy Effectiveness in Transition Economies* (September 1, 2011). Available at SSRN: <http://ssrn.com/abstract=2038742>.

⁷ The results of empirical analyses and data are available at <http://ssrn.com/abstract=2038742>.

⁸ 5.36 is high enough in a 1 to 7 scale with 1 being not important and 7 being very important. No respondent rates this factor lower than 4.

⁹ See, e.g., J. Connor, *Cartels & antitrust portrayed: private international cartels from 1990 to 2008*, The American Antitrust Institute Working Paper No. 09-06 (2009).

The next factor positively influencing the effectiveness of the policy was the active stance against horizontal and vertical anticompetitive agreements, including cartels. The fight against such violations was also shown by respondents to be the second most important factor of the EAP, after the quality of staff. This finding fits with the present literature in which price-fixing and other forms of horizontal agreements are accepted as the most dangerous for competition and harmful for customers. So, the competition authorities should prioritize the fight against horizontal anticompetitive agreements in order to increase the EAP.

While the active stance against anticompetitive agreements may increase the EAP, the surprising result of the study is that, although the respondents rated the fight against abuse of dominant position as the third important positive factor of the EAP, an increasing number of such violations are negatively associated with the effectiveness of antimonopoly policy. This can be explained, first, by the fact that my measure of the EAP was, in reality, more about its perception than real effectiveness. Therefore, the increasing number of abuses of a dominant position may be perceived not only as the effectiveness of the antimonopoly body's activity but, also, that a low level of competition in the market that can mean ineffectiveness of competition policy.

Second, in comparison with the investigations of abuse of dominant or monopoly positions, the investigation of horizontal and vertical anticompetitive agreements and acts are much harder and more difficult to conduct. In practice, the majority of cases concerning abuse of dominance (and the majority of all cases dealt with by the competition body) have concerned pricing and have been related to the firms included in the Register of the market with shares of 35 percent or more in the specific goods market. This Register is kept by the competition authorities, making it easier to investigate their violations.

On the other hand, there appear to have been few cases concerning agreements overall. Anticompetitive agreements in Kazakhstan and Russia consist of only 11 percent of the total violations against competition law made by firms, while abuses of dominant position constitute 43 percent.¹⁰ In practice it is very difficult to obtain evidence of agreements and the law does not appear to provide the competition authorities with the powers they would need to independently obtain evidence of cartel behavior.

However, this does not mean that antimonopoly authorities should not fight against abuse of dominant or monopoly positions. They should concentrate their attention and spend scarce resources on investigations of not small but significantly large cases of abuse of dominant position, with possible implementation of large fines. In other words, the antimonopoly authorities should try to decrease the number of investigations by choosing only significant cases while increasing the quality of investigations.

According to competition law in Russia and Kazakhstan, competition bodies can act against violations of the law on competition on their own initiatives, on the basis of information received from state bodies, or on a petition or complaint from individuals or firms. The problem here is that the competition authority does not have discretion concerning whether to pursue a violation and may not decline to take action due to the insignificance of an issue or its failure to

¹⁰ *Supra* note 4.

correspond to enforcement priorities. The solution to this problem may be the use of cautions by the antimonopoly body, which can be directed to the officials of firms whose actions can lead to antimonopoly law violation. This idea was initiated by the Federal Antimonopoly Service of Russia in 2011. It would allow sending notifications to the firms dominating the market to not violate the competition law for trivial violations, and open investigations only against significant violations.

Finally, the result of the survey and OLS regression indicate that the quality of the local antimonopoly authority's staff is the most important and significant determinant of the effectiveness of antimonopoly policy. This finding is consistent with previous research.¹¹

IV. CONCLUSION

Antimonopoly authorities in transition economies can increase the effectiveness of antimonopoly policy through active enforcement. But in order to be more effective in enforcement and optimally use their scarce resources, they should concentrate on investigations of anticompetitive agreements, which include the cartels that are the most dangerous and harmful agreements for customers, as well as on high levels of fines for offenders of competition law. These aspects of antimonopoly enforcement are important factors for antimonopoly effectiveness, and may play a deterrent role against anticompetitive actions on the market. On the other hand, the antimonopoly bodies should not increase the number of investigations against insignificant cases of abuse of dominant positions.

In general, a study of antimonopoly policy implementation only on a national level cannot explain what contributes to its effectiveness. Scholars should work to compare competition policy enforcement within countries' internal territories.

¹¹ See, e.g. *International Competition Network Competition Policy (2009) Report on the Agency Effectiveness Project Second Phase – Effectiveness of Decisions*, International Competition Network Competition Policy Implementation Working Group, Zurich, (June 2009).