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Modern Trends In Antitrust Regulation Of State-Owned Enterprises

Turgunova Dilfuzahon Muhammadabdullayevna

Master of 1st stage of antitrust management and competition development

Abstract— *In the context of the formation of strategic economic alliances capable of initiating positive effects for society and consumers, systemic changes in the behavior of market agents, new strategic goals and initiatives of the business community, new institutional principles of modern theory and practice of antitrust regulation, adapted to the transforming processes in economics and denying pre-existing, methodological constructs and regulations.*

Keywords— antitrust regulation, behavior of market agents, positive effects for society and consumers, economic processes and trends.

1. INTRODUCTION

Antimonopoly policy is an important element of the state strategy for modernizing the economy and developing the competitiveness of domestic firms, since it is the conditions of interaction between economic entities and their relative sizes in a modern market economy that predetermine the propensity for innovation.

2. MAIN PART

From a functional point of view, antitrust policy boils down to five main areas:

1) control of economic concentration (in most countries of the world, mergers of large firms are possible only with the permission of the state - see table , graph .

2) suppression of possible violations (abuse of the principle of freedom of contract, denial of access to the market, overpricing) of economic entities dominating the market, incl. natural monopolies;

3) prohibition of coordinated actions of economic entities that worsen competition (fixing prices, dividing the market according to the territorial principle);

4) limitation of anticompetitive actions of the authorities (granting preferences to certain economic entities);

5) limitation of unfair competition (in particular, in advertising).

At the present stage of the development of the world economy, characterized by the formation of global markets and the acceleration of R&D, there is a surge in the interest of states in antitrust policy, comparable to that which took place at the end of the 19th century, at the time of its inception and the formation of legislation that laid the foundations for regulating competition.

First of all, I would like to note that in the context of globalization, there is a transformation of state policy in almost all areas of regulation: harmonization of the main instruments of influence (the world economic space is becoming more homogeneous) and secondary instruments are gaining more development, which are beginning to play a decisive role. Indeed, if we assume the existence of a hierarchy of public policy instruments in terms of the degree of impact on the economy, and at the same time the instruments that have the greatest effect have the same use everywhere, then the final result will depend on “secondary” instruments that have a lesser degree of impact, from which the subject of regulation was previously practically did not depend, since its behavior was completely determined by differences in the use of "primary" tools.

Perhaps that is why in recent years there has been a transformation of antimonopoly policy from an “internal” economic policy into an important element of international economic relations, an integral part of the state foreign economic strategy (see Graph 3).

Antimonopoly policy has long been an equal element of foreign economic relations de jure. Competition agreements were concluded in all major integration groupings:

- EU - there was a chapter on Competition Rules in the Treaty of Rome (Articles 85-94); after the formation of the EU, the key articles of the treaty 85 and 96 became articles 81 and 82 of the Treaty establishing the EU;
- NAFTA - Chapter 15 of the Agreement - "Competition Policy, Monopolies and State Enterprises" (contains a prohibition for monopolies to abuse their position on the territory of another country, a number of prohibitions on the creation of state enterprises, including which are delegated authority);
- APEC - Manila Action Plan (1994);
- MERCOSUR - Protocol for the Protection of Competition in MERCOSUR (1996);

CIS - Intergovernmental Agreement on Conducting a Coordinated Antimonopoly Policy. (the first edition was adopted in 1993, in 2000 - a new edition, supplemented by the "Regulations on interaction").

Antimonopoly policy is also an important element of the activities of the largest international economic organizations. The United Nations Conference on Trade and Development (UNCTAD) in 1980 developed a "Set of Multilaterally Agreed Principles

and Rules for the Control of Restrictive Business Practices", which was adopted by the UN General Assembly (5.12.1980, Resolution 35/63). The Organization for Economic Cooperation and Development (OECD), for the purpose of harmonizing its policy, adopted acts of a recommendatory nature (in 1979, 1995, 1998 and 2005).

However, in the late 1990s, antimonopoly policy became a de facto element of international economic relations, as evidenced by the emergence of bilateral agreements (mainly intergovernmental) on cooperation in the field of competition protection. These agreements no longer only fix general principles, but are also aimed at solving practical issues. Such agreements are currently concluded between the largest developed countries and regions: the USA-EU (on the application of competition law - signed in 1991, entered into force in 1995; on the application of the "positive comity principles" - 1998 .), USA-Japan (1999), EU-Japan (2003). The United States has the widest network of bilateral agreements: the United States-Germany (1976), the United States-Australia (1982, 1999), the United States-Canada (1995, 2004), the United States-Israel (1999).), USA-Brazil (1999), USA-Mexico (2000). In 2005, an agreement was also concluded between Japan and Canada.

In the 1991 agreement between the United States and the EU, for the first time in the world practice of competition regulation, the "principle of mutual courtesy" appeared, which implies that one party can request the other to conduct an investigation and take action (in accordance with the law of the requested party) in the event of a its territory of actions affecting the interests of the requesting party.

The emergence of these agreements was due to the contradiction, predetermined by the formation of global markets. National legislation regulates the national market and the behavior of a large company in the global, global market is a certain problem for antitrust authorities, which are unable to regulate global markets. At the same time, there is no supranational system of global regulation of competition; moreover, there are not even plans or prospects for its creation. The situation is aggravated by the fact that states are interested in promoting their companies to the world market, and here, unlike the case with trade policy (where a “trade war” is possible), there are no obvious gains and “losses” to achieve a balance of interests. In the case under consideration, obvious static gains are, as it were, exchanged for non-obvious dynamic “losses,” and states will never agree to create such a system.

This contradiction is compounded by the fact that antitrust law is extraterritorial in nature. So, for example, the current Russian competition legislation specifically stipulates:

This Law also applies in cases where actions and agreements, respectively, performed or concluded by the said persons outside the territory of the Russian Federation, lead or may lead to restriction of competition or entail other negative consequences on the markets in the Russian Federation.

However, the current law does not recognize the existence of world markets. So, the commodity market is the sphere of circulation of goods ... on the territory of the Russian Federation or part of it, determined based on the economic ability of the purchaser to purchase the goods in the relevant territory and the absence of this opportunity outside of it;

It follows that territories outside the territory of the Russian Federation are not a market from the point of view of the antimonopoly law. Accordingly, the bylaws governing the procedure for conducting market analysis provide, in particular, that: volume of the federal market = production + import - export. In foreign legislation and analysis methods, however, global markets are recognized.

It should be noted that the draft of the new “Law on Competition” prepared by the Federal Antimonopoly Service contains a refined concept of the commodity market, taking into account the specifics of most modern commodity markets as global, transcending state borders and exposed to economic entities operating outside the Russian Federation.

This fundamental contradiction is the need for national antitrust authorities to regulate global markets in the absence of the political will of the world community of states to create a supranational regulatory mechanism (for example, in the image of the WTO or by including antitrust issues in the WTO sphere, as provided for by the Havana Charter for ITO) and explains those main trends in the development of state regulation of competition that are observed today.

There are three main trends in the development of antimonopoly policy observed in the world: 1) the policy acquires a network (decentralized) character; 2) toughening the rules against cartels; 3) the introduction of restrictions for states (government) in terms of the provision of benefits.

As for the first trend - the acquisition of a network (decentralized) nature by the antitrust policy - in 2001 a unique event for international economic relations took place - the International Competition Network (ICN), an international public organization, emerged. It was created by the government agencies of the main developed and developing countries responsible for the protection of competition, for more effective cooperation to improve antitrust regulation. ICN currently has 90 authorities from 80 countries.

The tasks of this organization are to provide the antimonopoly authorities with regular contacts in an informal form, to strengthen cooperation and convergence of the policy pursued. It is the only international body dealing with antitrust enforcement. Membership is voluntary and open to any competition agency. The organization takes a project-oriented approach through the institution of working groups. ICN works closely with OECD, UNCTAD, WTO, civil society organizations.

3. CONCLUSION

In conclusion, it should be emphasized that the classical theory of market competition and monopoly receives a new interpretation, according to which the most important element of competition is competitive actions aimed at achieving a monopoly position by introducing an innovative product and securing intellectual property rights to it. The strategic direction of commercial success and market advantage is the value created and maintained over time for the consumer in the form of a unique product, a set of service programs or systemically obtained benefits. It is the innovative benefits of a product or management system that make it possible to improve the efficiency of market agents, form the most significant block of positive effects for society and consumers, and create conditions for a more flexible and liberal mechanism of antimonopoly regulation.

In cases when decisions of an election commission are declared invalid, the election commission that adopted them shall be obliged to prove the circumstances on which these decisions were based.[9]

Therefore, in order to study corruption, conflicts of interest, it is necessary to analyze a number of official crimes, as well as the areas of service of officials.[10]

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