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OECD Global Forum on Competition

CHALLENGES/OBSTACLES FACED BY COMPETITION AUTHORITIES IN ACHIEVING GREATER ECONOMIC DEVELOPMENT THROUGH THE PROMOTION OF COMPETITION

Contribution from the Russian Federation

-- Session II --

This contribution is submitted by the Russian Federation under Session II of the Global Forum on Competition to be held on 12 and 13 February 2004.

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**CHALLENGES/OBSTACLES FACED BY COMPETITION AUTHORITIES
IN ACHIEVING GREATER ECONOMIC DEVELOPMENT THROUGH
THE PROMOTION OF COMPETITION**

(Ministry for Antimonopoly Policy and Support of Entrepreneurship)

1. The current stage of increasing globalisation process is characterised by the growth of international trade, foreign investments, fast development and integration of financial markets.
2. Competition policy is playing in these processes a substantial role, promoting world economic progress by effecting economic concentration control on a market, suppression of abuses by the companies dominating on market, prohibition of anti competitive agreements of economic entities.
3. The effectiveness of competition law system applied in the country is now used as a criteria for determination of national economy' integration into the world economic system.
4. The world statistics show that the ratio of world foreign direct investments (FDI) inflows to GDP (Gross Domestic Product) increased dramatically in recent years while the ratio of foreign trade to GDP remained the same. Thus the conclusion is made that in the last time the global integration is undertaken rather through FDI than through foreign trade. The decisive role in the growth of FDI belongs to transnational corporations (TNCs) which are considered as the principal drivers of international production. According to the UNCTAD World Investment Report, the foreign affiliates of the top 100 TNCs employ over 6 million persons, and their foreign sales are of the order of \$2 trillion.
5. The economy development of the Russian Federation within the last four years is characterised by the solid growth of the basic macro-economical indicators. GDP's growth last year exceeded 6 per cent. Industrial production, investment activity index, Bank's of Russian reserves have increased. The State debt's indexes have been optimised. All of this contributed into the national currency rate exchange stabilisation, allowed to slow down inflation processes, decrease of percentage in economics, that was favourable in respect to financing industry sector and agriculture, support of liquidity of financial and credit sector. Official statistics also fixe the increase of direct foreign investments.
6. These developments also pose new challenges for Russia's national economic policy in general and its competition policy in particular. Action is needed to make the regulation of competition more effective, to introduce new approaches in light of globalisation, to simplify and simultaneously increase the effectiveness of the system of antimonopoly control, and to move to new forms of international collaboration that will ensure cooperation between competition authorities when investigating breaches of antimonopoly legislation having transnational effects. The attainment of these objectives will require specific changes in the legislative, methodological, enforcement and international activities of Russia's competition authority, the Ministry of the Russian Federation for Antimonopoly Policy and Support for Entrepreneurship (MAP).

7. Last years there was a strong trend in Russian Federation of the very active capital redistribution, especially in the ferrous and non-ferrous metallurgy, chemical and oil-chemical complexes, the machine-building branch, the pulp and paper industry, in the agricultural complex, in particular, in the markets of grain, meat and products of its processing, sugar, etc. The process of concentrations in the aluminium-, copper ore industries through consolidation of shares in the hands of one group of owners could serve as the examples.

8. The aim of the transactions on buying share of the largest plants is formation of large vertically integrated structures.

9. Meanwhile some of the transactions may have negative consequences for competition, for example when a company acquires its competitor creating dominant position on the market or when two or several competitors are merging and such transaction strengthen a market position of the new company.

10. There are only few cases in the Russian antimonopoly practice where MAP rejected the transaction. In 2003 about 100 notifications were rejected including only two with participation of foreign companies. But the most part of consents to the transactions (both national and international) is granted by MAP subject to certain remedies.

11. Among such remedies the following could be mentioned:

- regular informing MAP on volumes of production and sales of the goods with justification of changes in these volumes;
- advance informing MAP on intentions to change the policy on supply and sales, etc.

12. In 2002 the Russian antimonopoly legislation was improved by the adoption of the amendments to the Federal Law on Competition and Restriction of Monopolistic Activity on Commodity Markets (hereon after the Law on Competition), which two times increased the total balance value of assets threshold¹ for transactions and other actions of economic entities, which require preliminary consent of the antimonopoly bodies up to articles 17&18 of the Law on Competition.

13. But the fact is that the total number of notifications last year was still about 10 000 and this cannot be considered to be normal as we are overloaded by revision of the smallest transactions wasting limited resources of 75 Territorial offices acting in 88 subjects of the Russian Federation as well as the central office staff.

14. Further optimisation of the national merger control system is required, which on the one hand prevents the emergence or strengthening of a dominant position of economic entities on product and financial markets leading to restriction of competition and on the other hand supports the policy of reasonable economic concentration to provide stability of Russian companies and competitiveness of their goods on the world market.

15. There are no special provisions in the Russian Antimonopoly Law concerning the control of multinational mergers – the same rules are applied to all companies both national and foreign based on the principle of national treatment.

¹ The threshold was doubled up to 200,000 minimum wages. "Minimum wages" is a unit of measurement in Russia, and its current rate is [100] roubles = 1 minimum wage. Two hundred thousand minimum wages is equivalent to approximately 20,000,000 roubles

16. MAP Russia has no broad experience in that field though the Dealogic's database includes more than 400 largest cross-border Mergers & Acquisitions transactions worldwide. The only case examined in 2003 was the approval of BP-TNK merger.

17. Therefore we appreciate the recommendations on multinational mergers elaborated within the ICN Merger Notification and Procedures Subgroup presented at the Second ICN Conference in Merida.

18. While the recent changes have been welcome, current trends in the development of Russia's economy and antimonopoly standards adopted by the international community mean that Russia must further improve its competition laws in order, among other things, to bring them more closely into line with international principles.

19. One area where competition law can be improved is the regulation and control of agreements or concerted actions of commercial entities that restrict competition. This area is closely monitored by the antimonopoly authorities of developed countries and of international organisations in order to uncover so-called "hard-core cartels", which are regarded as the most damaging form of anticompetitive practice.

20. In Russia, the problem of curbing agreements and concerted actions of commercial entities that restrict competition continues to be extremely complex, not least because of the difficulty of obtaining evidence. Experience shows that anticompetitive agreements are generally found in sectors characterised by a high degree of concentration of capital and production capacity, which include the natural monopolies. Traditionally, many of the complaints considered by antimonopoly authorities involve companies in the fuel and energy sector (for example, the light petroleum products market), where the major violations relate to price fixing. But concerted actions are not limited to a single sector and often extend to the whole production cycle of a product and its sale.

21. While the negative effect of cartel agreements on competition in a given market is understood, the Russian antimonopoly authorities experience considerable difficulties in identifying, curbing and proving the existence of concerted actions. This is because current legislation is incomplete and especially because the powers of the antimonopoly authorities are not wide enough.

22. A number of amendments to the Law on Competition and Restriction of Monopolistic Activities on Commodity Markets were adopted in 2002 in order to tighten control over anticompetitive agreements and make the detection and proof of their existence more effective. For example, the law now imposes a direct ban on the conclusion of agreements between competitors, irrespective of their position in the market, if the implementation of those agreements could lead to the establishment (or maintenance) of price[-fixing], discounts, mark-ups surcharges, the splitting-up of markets along geographical lines, or a refusal to enter into agreements with particular vendors or buyers (clients).

23. The amendments adopted in 2002 also provided for a system of advance monitoring by the antimonopoly authorities of draft agreements to determine whether they might restrict competition if implemented. It should be pointed out that the notification of agreements by commercial entities to the antimonopoly authority is voluntary. At the same time, if an agreement is not submitted in advance to the antimonopoly authority for approval and is subsequently found to restrict competition, the agreement is automatically deemed to be a breach of antimonopoly law, and no account is taken of any positive effect that might arise from its implementation. Consequently, advance notification of agreements allows commercial entities to be certain that their agreements comply with the antimonopoly law and will not be subjected to scrutiny by the antimonopoly authorities in the future. In this respect, Russian legislation is in harmony with that of European countries. However, further improvement of the antimonopoly regulation system is required in order to strengthen the powers of the antimonopoly authorities to investigate, and obtain evidence of, anticompetitive agreements.

24. Yet another aspect of Russia's competition regulatory system that requires improvement is enforcement, which needs to be made more effective by increasing the severity of penalties for violations of antimonopoly law. Penalties are much lower in Russia than in developed countries. The lower penalties in Russia are an obstacle to effective application of antimonopoly regulations, which in turn discourages the inflow of foreign investment and hampers the development of competition in Russia's goods markets.