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Global Forum on Competition

COMPETITION, STATE AIDS AND SUBSIDIES

Contribution from Russia

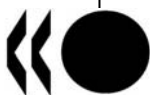
-- Session I --

This contribution is submitted by Russia under session I of the Global Forum on Competition to be held on 18 and 19 February 2010.

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COMPETITION, STATE AIDS AND SUBSIDIES

-- Russia --

1. In order to ensure pro-competitive, transparent and efficient mechanism of state aid granting and control of its use, a special Chapter 5 devoted to the Provision of state or municipal aid was incorporated in the competition legislation with the adoption of the Federal Law no. 135-FZ of 26.07.2006 "On Protection of Competition". This Law defined for the first time the term "state aid" as provision by the state authorities of advantages ensuring to some economic entities more favourable conditions of activity in the relevant market in comparison with the other market participants by means of disposal of property and (or) other objects of civil rights, the right of priority access to information. In general, granting of state or municipal aid is prohibited because as a matter of fact government interventions distort competition. However there is left a room for a number of policy objectives for which state aid can be considered compatible. The Law provides for a number of such objectives that are typically socially and culturally oriented. The Law also contains a detailed procedure of state or municipal aid granting with a number of measures taken in case of misuse of this aid or revealed violation during granting of this aid.

2. Earlier, granting of state or municipal aid was controlled by the Russian antimonopoly authority within the frameworks of control over state authorities provided for in the Federal Law no.948-1 of 22.03.1991 "On competition and restriction of monopolistic activity on commodity markets". It prohibited provision of privileges to the specific economic entity or several economic entities that provides them with preferred position in relation to the positions of other economic entities operating on the same commodity market.

3. The FAS Russia established a special Department on Control over State Authorities to ensure smooth and efficient application of the relevant provisions of control and monitor of the state aid granting.

4. In October 2009 the Federal Law 164-FZ of 17.07.2009 "On introducing of Amendments to the Federal Law on Protection of Competition and Some Legislative Acts of the Russian Federation" introduced some changes to the state aid provisions. The term "state or municipal aid" was replaced by the term "state or municipal preferences" in order to ensure that provision of property advantages is considered as granting of state or municipal preferences (for example: tax, property or rent relief). State or municipal preference is defined as the provision by a state or municipal body or by a body or organisation exercising their functions of advantages to specific economic entities which provides them with better conditions for their activity by means of the transfer of state or municipal property or objects of civil-law rights or by means of the provision of privileges having a property or monetary value. This definition is broader and better complies with the standards of the European competition legislation compared to the definition of "state aid" given before. Moreover, with the purpose of competition advocacy the word "preference" has a more negative perception than "aid".

5. Amendments to the regulation of the procedure of granting of state or municipal preference are aimed at ensuring that there will be no optional enforcement with this regard that may lead to corruption.

6. The provision of preference requires the prior consent of the FAS Russia on the basis of a written notification submitted by the state authorities intending to grant state or municipal preference. Preference

may not be provided for purposes that are not consistent with those stated in the notification for consent. Prior consent is not required for preferences that are provided on the basis of federal, regional or local laws on the budget that define (or specify a procedure for defining) the amount of the preference and those to whom it is to be provided.

7. Numbers of matters addressed under certain Articles of the Law regulating provision of state preferences have been growing steadily since 2007. In 2007, the FAS Russia reviewed 33 notifications on state aid, opened a total of 149 formal cases concerning possible violations (most of these on its own initiative), found a total of 66 violations and issued 59 orders for correction. In 2008, these numbers more than doubled to a total of 89 notifications and a total of 343 formal cases opened, with violations found in 192 instances and 131 orders issued. For 2009 the numbers appear on track to double again, with 178 notifications, 236 formal cases, 171 violations and 142 orders reported for the first half of the year.

8. As a result of financial downturn a number of sectors of economy faced considerable challenges. Governments worldwide elaborated special national support programmes, including state aid granting to recover the mostly damaged sectors. The role of the competition authorities here is to ensure that this support is provided with the less negative effect on competition.

9. In particular, in the first half of 2009 the production in the car industry in Russia decreased for about 60%, sales – for 51% in comparison with January-July 2008. Liquidity shortage, huge debts, temporary stopping of production lines, necessity to reduce the number of employees and a reduction in the demand were the reasons to take certain steps to rescue the sector. These conditions were the reasons for the Government of the Russian Federation to undertake certain actions to rescue this sector (i.e. state preference programmes, concessional lending programme).

10. In order to ensure that state preferences are not granted to one certain company and it does not harm competition in the automobile industry, the FAS Russia succeeded in securing pro-competitive principles that would lead to industry stabilisation. The FAS Russia contributed to extending the list of criteria that allow referring certain cars to the state preferences programmes. As a result, the foreign companies that enter the Russian car industry and build their plants on the Russian territory are also able to participate in the state preferences programme.

11. Besides, the FAS Russia contributed to the considerable extension of the list of cars for concessional lending programme, including increase of the maximum price for cars that can be included into the list.

12. So, there was ensured a level-playing field for all market players that is likely to lead to stabilisation of situation in the car industry and to exert positive influence on the development of national and foreign producers of vehicles.