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## Global Forum on Competition

### CRISIS CARTELS

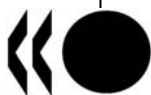
#### Contribution from the Russian Federation

-- Session III --

*This contribution is submitted by the Russian Federation under session III of the Global Forum on Competition to be held on 17 and 18 February 2011.*

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## **CRISIS CARTELS**

### **-- Russian Federation --**

1. With the adoption of the Federal Law of 26.07.2006 No. 135-FZ “On Protection of Competition” (hereinafter referred to as the Law on protection of competition) the Russian Competition Authority received new opportunities and tools to fight against the gravest violations of the antimonopoly legislation – cartels.
2. The Russian competition legislation contains the per se prohibition of the hard core cartels (part 1 Article 11 of the Law on protection of competition). The Law on protection of competition sets forth conditions meeting which prohibited agreements or concerted actions can be admitted as permissible (rule of reason). Moreover, the Law contains a right of the Government of the Russian Federation to introduce block exemptions for agreements and concerted actions that meet certain criteria. A number of Resolutions of the Government were adopted with regard to providing block exemptions to certain types of agreements.
3. Within the frameworks of the administrative proceedings cartelists can be imposed with turnover fine from 1 % till 15 % of the company’s turnover on the relevant product market.
4. In order to enhance detection of cartels the leniency program was introduced.
5. With regard to the procedural aspects the antimonopoly authority has a right to:
  - initiate and consider cases on violation of antimonopoly legislation;
  - issue binding instructions on termination of violation and transfer to the federal budget of profit gained as a result of the violation;
  - conduct inspections of economic entities during which it can make photo, video record, make copies of any documents, as well as require to provide any documents;
  - contact police and prosecutor’s office in order to request them to conduct actions aiming at gathering evidence of cartel activity;
  - bring economic entities and their managers to the administrative liability for their cartel activity.
6. In 2008 the Federal Antimonopoly Service (FAS Russia) created a special Anti-Cartel Department that acts in close cooperation with the other structural Departments of the FAS Russia and police and prosecutor’s office of the Russian Federation.
7. The results of the application of the system approach with regard to the anti-cartel activity clearly showed the necessity to introduce certain amendments to the Law on protection of competition, as well as to the Code of the Russian Federation on Administrative Violations (CoAV) and to the Criminal Code of the Russian Federation, for the purposes of introduction of more clear definitions and more severe sanctions for participation in cartels.

8. Main activity on elaboration of the so-called “second antimonopoly package of laws” coincided with the beginning of the economic downturn. And the amendments were adopted in summer 2009 – during the high point of crisis.

9. These amendments introduced more severe sanctions for cartel activity thus showing governmental support for the strict application of antimonopoly legislation in Russia during the global economic and financial downturn.

10. On July 29, 2009 the President of the Russian Federation signed a law that introduced changes to the Article 178 of the Criminal Code of the Russian Federation that established criminal liability for violation of the antimonopoly legislation.

11. This Article is applied not only with regard to businessmen introducing imprisonment for the cartel activity or repeated abuse of dominance, but also with regard to the officials who conducted anti-competitive actions that resulted in large damage for the citizens or society.

12. With adoption of this Law punishment for violation of competition legislation became more severe that allowed for more effective fight against the hard core violations of the competition legislation.

13. Moreover, in order to increase effectiveness of the anti-cartel activity the amendments envisage exemption of vertical agreements from the prohibited per se, which can be see as liberalization of the incumbent competition regime and at the same time it provided for the more resources of the antimonopoly authority to be devoted to detection of cartels.

14. There were also introduced adjustments to the provisions of the leniency program (now only the first company that applied to the FAS Russia is subject to gaining immunity; collective applications are no longer accepted).

15. Amendments also envisage extension of the powers of the FAS Russia on conduction of inspections of economic entities under the strict regulation of its activity during such inspection.

16. As a result of adopted amendments the number of cases initiated under Article 11 of the Law on protection of competition (agreements and concerted actions) in the first half of 2010 has increased in 1,55 times in comparison with the same period in 2009 – from 179 cases in the first half of 2009 to 277 cases in the first half of 2010.

17. In 2009 there were initiated 738 administrative cases with regard to economic entities that violated competition legislation (92% more than in 2008) and there were imposed about 35 mln euro fines on them.

18. Aiming at increasing effectiveness of competition enforcement the FAS Russia has elaborated the “third antimonopoly package of laws” that, inter alia, includes certain amendments with regard to enhancing anti-cartel activity. The most important of them are the following:

- a) Introduction of a notion of “cartel” in the Law on protection of competition.

Currently one should operate with the more general notion of “anti-competitive agreement”. In the “third antimonopoly package of laws” there is given a precise notion of “cartel”, as well as what characteristics it has and which anticompetitive agreements can be considered as cartel.

- b) Separation of notion of “anticompetitive agreement”, including notion “cartel”, from the notion of “anti-competitive actions”.

There is a strong need for enforcers and market participants to understand where the border between these two notions is.

- c) Exemption of concerted actions from the provision of the Criminal Code of the Russian Federation (subject to separation of notions described above).

Presently Article 178 of the Criminal Code of the Russian Federation envisages criminal liability both for agreements and concerted actions. As agreements are more dangerous than concerted actions therefore it is suggested to exempt concerted actions from the Criminal Code of the Russian Federation.

- d) Joint actions of companies under single management are suggested not to be considered as “cartel”.
- e) Change of basis for calculation of turnover fine for the bid-rigging.

It is planned to introduce amendments to the CoAV, according to which turnover fine for bid-riggers is to be calculated depending on the initial price of the bids (up to 50 % of the initial price of the lot). On the one hand this is more severe deterrence and on the other hand this would simplify calculation of fine by the antimonopoly authority.

- 19. Adoption of the “third antimonopoly package of laws” is expected in 2011.