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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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- Contribution from Kazakhstan****- Session III -****29 November 2018**

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More documentation related to this discussion can be found at: oe.cd/rca.

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Regional Competition Agreements: Benefits and Challenges

-- Kazakhstan --

1. As mentioned in the OECD Secretariat background note, over the past decades, with the increasing globalization and the proliferation of competition laws across the world, regional co-operation has become an important tool for competition authorities to strengthen their enforcement and advocacy activities and to improve the design of competition laws and institutions. It has allowed many jurisdictions to strengthen common interests in the region while at the same time promoting national interests. Regional co-operation can promote convergence in competition laws and instruments in a region and ensure consistency in its application, help ensure effective and efficient enforcement against anti-competitive practices and mergers with anti-competitive effects, reduce enforcement gaps, as well as support a more efficient deployment of scarce resources by minimizing duplicative efforts between member jurisdictions.
2. Moreover, at present, in the context of globalization, there is a trend of cases on restrictive business practices of large multinational companies, which are being investigated by competition authorities around the world.
3. The international cartel collusions would be of particular concern. In modern conditions, cartels lose their local character and become international; their participants are large multinational companies, whose activities are carried out around the world.
4. But, the efforts of one state in fighting cartels and anticompetitive practices of transnational companies would be deficient, the coordinated work of the competition authorities of different countries is required in order to prevent, reveal, investigate and eliminate violation in cross-border markets.
5. Competition authority of the Republic of Kazakhstan, the Committee on Regulation of Natural Monopolies, Protection of Competition and Consumer Rights under the Ministry of National Economy of the Republic of Kazakhstan is a participant of number of agreements: stand-alone competition agreements and agreements, which includes competition issues, as well as Memoranda of Understanding.
6. Considering Regional Competition Agreements, it should be noted the following agreements, which are the most efficient and effective:
 - Treaty on Implementation of the Coordinated Antimonopoly Policy of the CIS;
 - Treaty on the Eurasian Economic Union.

1. Treaty on Implementation of the Coordinated Antimonopoly Policy of the CIS

7. One of the most important general economic tasks of the CIS is the creation of an effective system of anti-monopoly regulation, promoting the development of competitive relations and ensuring reliable protection of consumers - citizens of the CIS Member states.

8. The beginning of co-operation in the field of antimonopoly policy in the CIS was laid by the signing Treaty on Implementation of the Coordinated Antimonopoly Policy on December 23, 1993 by the Heads of Government of all the CIS member states.

9. The main objective of the Treaty is the creation of legal and institutional framework for co-operation in implementation of the coordinated anti-monopoly policy and the development of competition, preventing monopolistic activity and / or unfair competition of market entities. Subsequently, the goals, objectives and mechanisms for implementing the coordinated antimonopoly policy in the CIS, defined by the Treaty, were clarified and complemented in a new version of the Treaty, signed by the Council of Heads of Government of the CIS on January 25, 2000.

10. The Treaty specifies the tasks of the competition authorities to ensure close co-operation in the field of competition policy, provides definitions and general rules of competition regarding the abuse of dominance; restrictive agreements; unfair competition.

11. The Interstate Council for Antimonopoly Policy, the legal framework for the activity of which were established by Treaty, is the basic platform for interaction of the competition authorities of the CIS Countries. It was established in 1993 aiming at coordinating of formation by the Member-Countries of the CIS of the legal and organizational basis for the purposes of prevention, restriction and suppression of anticompetitive practices and unfair competition within the CIS Economic Area.

12. To achieve the effective co-operation which would stimulate even deeper integration of the CIS Member-Countries, the ICAP Members adopted the Regulation on Co-operation of the States in Suppression of the Monopolistic Activity and the Unfair Competition which forms an integral part of the Treaty.

13. The Regulation provides for mechanisms of co-operation of the CIS antimonopoly authorities in investigations of violations of the antimonopoly legislation, of participation in terminating transnational anticompetitive practices and of protection of domestic producers at international and domestic markets.

14. Within the framework of its operations and following the decisions adopted in the course of its sessions, the ICAP performed the analysis of the antimonopoly legislation of the CIS Countries in order to develop the common approaches to the harmonization.

15. At the ICAP sessions, the Participants exchange opinions on recent developments in their national antimonopoly legislation and on the overall economic situation with the subsequent information exchange on the most interesting cases currently considered.

16. In the course of its activity, the ICAP has achieved the following results:

- Decrease of antimonopoly law infringements on the international markets of the CIS Countries;
- Development of competition both in the domestic markets and in external economic activities;
- Elimination of barriers in the movement of goods and services within the CIS Economic Area

17. The work carried out by the ICAP has reached a qualitatively new level. To increase the interaction between the competition authorities of the CIS Countries, the participants of the ICAP made the decision to conduct joint investigations of anticompetitive practices in the CIS transboundary markets. For this purpose, the Headquarters for Joint

Investigations of the Violations of the Antimonopoly Legislation in the CIS Countries was established in 2006.

18. Over the past years, a significant amount of work has been done to improve competition law, to provide methodological support for the activities of competition authorities. The main directions of this work included: an analysis of the developed draft laws that are part of the competition law system, the preparation of recommendations for the improvement of current legislation and law enforcement practice. As a result, over the past few years, the competition legislation of the CIS member states has undergone significant changes due to the need to improve it taking into account modern economic realities and the need to overcome new economic challenges, including the financial and economic crisis of 2009-2010.

19. Thus, in a number of CIS member states, amendments to national competition legislation were adopted, taking into account international norms and rules and best foreign practices in this field, the adoption process of which was accompanied by their coverage and discussion at the ICAP meetings.

20. Since January 1, 2009, the Law of the Republic of Kazakhstan “On Competition” entered into force in the Republic of Kazakhstan, which is a law of direct action and combines the provisions of the Laws of the Republic of Kazakhstan “On competition and restriction of monopolistic activities” and “On unfair competition”. The main innovations stipulated in the Law are:

- Determination of principles of fair competition,
- List of grounds and forms of state participation in business activities,
- Cases of admissibility of agreements or concerted actions of market entities,
- Extraterritoriality,
- Leniency,
- Consideration of a group of persons as a single entity,
- Collegiality in decision-making by the anti-monopoly authority,
- Grounds for the provision of state assistance.

21. The work carried out by the competition authorities of the CIS member states to improve competition legislation is very important for the development of the economies of the CIS states and is aimed primarily at creating favorable conditions for entrepreneurial and investment activities, as well as at fully satisfying the needs of citizens.

22. The most important area of work of the ICAP is the development of practical cooperation between the competition authorities of the CIS member states. The work in this direction is carried out within the framework of the Headquarters for Joint Investigations of the Violations of the Antimonopoly Legislation in the CIS Countries (hereinafter referred to as the Headquarters) established under the ICAP.

23. The objects of the Headquarters research are socially significant markets, the successful functioning of which ensures the creation of infrastructure, which is the basis for the formation of a common economic space within the CIS, and also has a direct impact on the welfare of citizens of the CIS.

24. Thus, on the results of work conducted the reports on state of competition were developed:

- Report on the state of competition in the air transportation market in the CIS countries (2008)
- Report on the state of competition in the telecommunications market in the CIS countries (2010)
- Report on the state of competition in the market for the sale of food products in retail chains in the CIS countries (2012)
- Report on the state of competition in the markets of oil and petroleum products (2014)
- Report on the state of competition in the drug market in the CIS countries (2015).

25. On the results of the above study cases the recommendations on the development of competition in these markets were made.

26. Implementation of the recommendations was reflected in the report on the practical results of ICAP activity, devoted to the 25th anniversary.

27. At present, report on competition policy development in terms of digital economy is on finalizing stage.

28. Another priority of the Headquarters' work is the improvement of methods of fighting cartels.

Box 1. Joint investigation if CIS competition authorities in the roaming services market

In the course of study of the state of competition in the telecommunications market in the CIS countries, signs of violation of competition law were revealed in the formation of tariffs for communication services in roaming. In this connection, competition authorities of a number of CIS countries took antitrust response measures.

Thus, the competition authorities of Russia and Kazakhstan, within the framework of national legislation, conducted joint investigations and initiated cases against the dominant operators. As part of the consideration of cases, Russian and Kazakhstani mobile operators announced a reduction in tariffs for communication services in international roaming in certain areas from 1.5 to 10 times.

In general, it can be stated that the result obtained indicates a high efficiency of the implementation of concerted antitrust response measures. Using of them contributes to the development of competition in the relevant markets, providing consumers with obvious benefits, and also creates a good basis for expanding socio-economic interaction in the CIS countries space.

2. Treaty on the Eurasian Economic Union

29. January 1, the Treaty on the Eurasian Economic Union (EAEU) has become effective. The Treaty confirms the creation of an economic union that provides for free movement of goods, services, capital and labor and pursues coordinated, harmonized and single policy in the sectors determined by the document and international agreements within the Union.

30. The Treaty on the EAEU was signed by the Presidents of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation on May 29, 2014, in Astana. Apart from the three states, the Union members will also include the Republic of Armenia that signed Treaty on Accession to the Union on October 10, 2014 and the Kyrgyz Republic that signed similar Treaty on December 23, 2014.

31. The Eurasian Economic Union is an international organization for regional economic integration. It has international legal personality.

32. The Union is to create an environment for a stable development of the Member-States' economies in order to raise the living standards of their population, as well as to comprehensively upgrade and raise the competitiveness of and co-operation between the national economies in the conditions of the global economy.

33. Governance of the Union is entrusted to the Supreme Eurasian Economic Council (SEEC) comprised of the Heads of the Member-States. The SEEC sessions are held at least once a year. The SEEC structure is formed by the Intergovernmental Council at the level of the Heads of the Governments, the Eurasian Economic Commission and the Court of the Union.

34. Overall the Treaty codified around 70 documents, particularly, on competition policy. The Union Treaty absorbed the Articles on general principles and rules of competition, regulation of natural monopolies in general and in special areas (energy and transport), public (municipal) procurement, industrial subsidies and state support of agriculture.

35. Special provisions of the Union Treaty shaped the architecture of the system of antimonopoly regulation and the directions of EAEU competition policy.

36. This system combines control over meeting competitive conditions within the national jurisdictions on the basis of harmonized laws under the principles formalized in the Union Treaty, and control over observing general rules of competition on the cross-border markets exercised by EEC.

37. General competition principles specified in the Union Treaty include, in particular, the principles of:

- The Laws of EAEU members-states prohibiting agreements between the authorities and economic entities that (have) led or can lead to preventing, restricting, eliminating competition, and prohibiting state or municipal preferences, except particular cases
- Efficient control over economic concentration
- Formalizing penalties and applying fines in EAEU member-states

- Each EAEU member-state having a government body authorized to implement and (or) pursue competition policy with particular powers determined by the Union Treaty
 - Informational openness of competition (antimonopoly) policy carried out by the national antimonopoly bodies of EAEU member-states, particular, through publishing information about their work in mass media and on the Internet
 - Co-operation between the national antimonopoly bodies of EAEU member-states.
38. The Union Treaty clearly determines EEC competence, assigning to it powers to control general competition rules of the economic entities of EAEU member-states on the cross-border markets.
39. General competition rules prohibit abusing market dominance, anticompetitive agreements and unfair competition.
40. The Union Treaty determines specifics of applying general competition rules on the cross-border markets, the procedures for EEC control over their observance, and fines.
41. Also the Union Treaty determines the procedure for co-operation between national antimonopoly bodies of EAEU member-states between themselves and with EEC, describing in detail the grounds for co-operation and its particular forms. The purpose of such co-operation is to enhance efficiency of antimonopoly investigations on both cross-border and national markets.
42. EEC decisions in the field of competition can be appealed to the Union Court, a standing EAEU judicial body. It should be noted, that for EEC decisions on antimonopoly cases there are exceptions from the general procedure for filing claims outlined in the Court Statute.
43. Any dispute is accepted for consideration by the Union Court only after prejudicial settlement in the form of consultations, negotiations or other methods provided for by EAEU Treaty and international treaties within the Union.
44. Appeals against EEC decisions on antimonopoly cases are filed to the Union Court without a preliminary stage of prejudicial settlement.
45. If the Union Court accepts an appeal lodged against an EEC decision on an antimonopoly case, the EEC decision is suspended until the date when the Union Court ruling comes into force.
46. Provisions of the EAEU Treaty on regulating relations in the fields of natural monopolies, public (municipal) procurement are pro-competitive, and determine the directions of Union competition policy.
47. Supporting market pricing and competition development instruments is one of the most important principles of regulating natural monopolies in certain fields, and establishing common markets, for example, energy resources markets and the common market of transportation services.
48. Developing competition, supporting informational openness and transparency of procurement, providing national procurement schemes for EAEU member-states, safeguarding obstacle-free access of potential suppliers from the member-states to procurement organized in the electronic form also are some of essential regulatory principles in public (municipal) procurement formalized by the Union Treaty.

49. To ensure conditions for sustainable, efficient development of EAEU economies and conditions encouraging mutual trade and fair competition between EAEU countries, EAEU member-states have common rules for granting subsidies on industrial commodities and state support to agriculture.

50. The Commission may request all necessary information for ensuring the observance of common competition rules in EAEU markets. Information – also of a confidential nature – is to be supplied by member States' bodies, local executive bodies, other bodies or organizations performing relevant functions, juridical persons and individuals. The EAEU Commission submits an annual report to the Supreme Council on the state of competition in EAEU markets and measures taken to prevent violations of common rules of competition. The approved report and all decisions in cases of violations of common competition rules are published on the official website of the Commission.

Box 2. Case on violation of general rules of competition in trans-boundary market of supplying electrical anisotropic steel

Kentau Transformer Plant JSC complained to the EEC about the presence in the actions of Novolipetsk Metallurgical Combine PJSC and VIZ-Steel LLC (hereinafter NLMK) of signs of violation of the general rules of competition in the cross-border markets of the EAEU.

As a result of the investigation, the EEC found that monthly coefficients of macroeconomic risk in the amount of 5.3% to 23% to the price of electrical steel were applied to consumers from the Republic of Belarus and the Republic of Kazakhstan during the analyzed period from January 1, 2015 to June 30, 2016. The coefficients were paid in addition to the cost of purchased electrical anisotropic steel.

At the same time, consumers of the Russian Federation were not subject to additional coefficients when purchasing electrical anisotropic steel.

The Board of EEC on the results of investigation made a decision on the violation of the general rules of competition and on applying of the penalties from September 26, 2017 N130.

It should be mentioned the decision were appealed by the Russian Federation in order, provided by the EAEU Treaty, to the Eurasian Intragovernmental Council.

In this connection, the decision is still not effective.