

An Adolescent Competition Law

We speak of market economy and a capitalist economy as if they were the same, but I think it makes sense to demarcate the one from the other. In my conception the difference between a capitalist economy and a market economy consists in the conditions of competition. Market economy is a system where the democratic leaders of a country make sure that the markets function by creating the conditions for civilized competition. Most importantly, this requires a fight against monopolies and all sorts of abuse of dominant market positions. In a capitalist economy, as the name says, there are no restrictions on accumulation of capital and market share, and whoever creates a monopoly for himself is the winner at the expense of the consumer. In fact, I think that the U.S.S.R. was the archetypal monopolist capitalist system, where all assets were concentrated in the hands of one owner. In the West capitalism has never been able to develop so far, but from time to time various fields of business have become monopolized, and the result is always the same: inefficiencies, bad quality and finally the ruin of that part of the economy. Few recognize the ingenuity and importance of the U.S. Sherman Antitrust Act of 1890, which was the first major statute to limit cartels and monopolies and formed the basis of contemporary competition law. The Sherman Act combined democracy with active efforts to create a civilized competitive economy.

Russia has had a competition law since the dawn of the market reforms in the early 1990s, but it is only in the recent few years that it has started to take effect. Recently the law has undergone new amendments aimed at making it a more efficient tool for increasing competition. The changes go largely in the right direction, but all in all the Russian Competition Law remains an adolescent tool, if not a game. And hereby the law is a perfect measure of the legal, social and administrative culture at large: a lot of good intentions are pronounced and enacted in the form of laws, but the product remains immature. The biggest problem is that the Russians have not yet been able to overcome their love affair with bureaucratic regulations and red tape. It is as if the Russian authorities still tried to run the country by making sure in advance that nothing unsanctioned will ever take place, to catch everyone before the deed, whereas in Western countries the idea is to set out the rules, aim at dealing in advance only with the major cases, and deter wrongdoings by punishing those that are caught. As this principle is the opposite in Russia all the emphasis has been on formal competition laws, forcing companies to file for approvals and notify of deals in absurdly petty cases. A couple of years ago the thresholds for filing for approvals were raised above the level of absurdity for the first time (with a slight increase in thresholds again this year) but still largely remaining nonsensical. For example, preliminary consent for a transaction is required when the combined value of the balances of parties involved exceeds 7 billion rubles (\$237 million); the total sales volumes of the parties involved exceed 10 billion rubles (\$339 million) or when the sales volume of the target company exceeds 250 million rubles (\$8.5 million). Effectively this means that almost all transactions by midsized companies require prior consent. Moreover, even smaller deals require a notification to be filed. Even the lease of normal business premises requires filing for approval under these thresholds. However, each case requires the same worldwide documentation as if in reality a serious investigation would have to be made. And now, as nobody can cope with such a wave of filings, the competition authority was granted the right to reject filings if not all the necessary documentation is in place, whereas earlier they had to request for additional information. At the same time there are serious sanctions for not filing in time. This is precisely the administrative culture that has to be reformed. Russia needs a Code of Good Administrative Practice to tame the arbitrary power of the bureaucrats to cause huge problems by rejecting filings based on minor details that are blown out of proportion. Ironically, they have an Administrative Code of Punishments for punishing the citizen who fails to keep time to the bureaucratic dance. A Code of Good Administrative Practice should show that it takes two to tango!

Apart from this formal nightmare, the amendments to the Competition Law are taking aim at real regulation of the market, which plays an important part in fighting inflation and creating an attractive business climate. But there is not much hope that this material side of the law will work before the formal side is reformed.