COOPERATION WITHIN THE EURASIAN ECONOMIC UNION FOR THE PROTECTION AND DEVELOPMENT OF COMPETITION

The article is devoted to interaction and cooperation of the Eurasian Economic Union member states for the protection and development of competition.

Key words: antimonopoly regulation, Eurasian Economic Union, Eurasian Economic Commission, competition, cooperation principle, Customs Union.

In 2015 the Russian antimonopoly regulation had its 25th anniversary. Although the Russian competition law is relatively young, it has already passed several important development stages: from appearance in 1990 of the first antimonopoly authority — the State Committee of the Russian Federation for Antimonopoly Policy and Support of New Economic Entities — to adoption in 2015 of the “fourth antimonopoly package” which to a certain extent marked liberalization of the Russian antimonopoly laws.

In today’s reality regulation of competition is continuing to develop and improve, and we are witnessing important and interesting developments both at the national and supranational level. One of such developments was the coming into effect on 1 January 2015 of the Eurasian Economic Union Agreement (“EEU Agreement”) signed in Astana on 29 May 2014 by Belarus, Kazakhstan and Russia.

The Eurasian Economic Union (“EEU”) was created on the basis of the Customs Union and the Common Economic Space. The Agreement on the Customs Union of Belarus, Kazakhstan and Russia was signed in 1995. Signing of the Customs Union Agreement formed the basis for subsequent integration of the signatory countries into the Eurasian Economic Community which came into being five years later.

On 6 October 2007 Belarus, Kazakhstan and Russia signed an Agreement on Creation of Common Customs Territory and Formation of the Customs Union which became operative on 1 January 2010. The Customs Union included setting common customs tariffs of the three countries and common classification of foreign economic activity. In July 2010 a Customs Code came into effect in the territory of the Customs Union.
In October 2010 the countries signed an Agreement on Creation of the Eurasian Economic Community for efficient promotion of the process of formation of the Customs Union and the Common Economic Space, and a Court of the Eurasian Economic Community was set up. On 1 January 2012 formation of the Common Economic Space began. It implied free movement of services, capital and workforce, common rules and principles of competition and regulation of natural monopolies.

Since 2 February 2012 the Eurasian Economic Commission (“Commission”) has been functioning. It replaced the Customs Union Commission — a standing supranational regulatory authority of the EEU the key purpose of which was to create conditions for functioning and development of the EEU, to develop proposals regarding further integration. As of today it is the Commission that is in charge of antimonopoly regulation and enforcement of compliance with the rules of competition policy in the EEU.

On 10 October 2014 the Republic of Armenia, and on 23 December 2014 the Kyrgyz Republic signed an EEU Accession Agreement.

It is no secret that market globalization leads to globalization of competition. Globalization of competition requires creation of mechanisms that would prevent unfair competition in the cross-border markets, so the EEU Agreement focuses on support of competition.

The key principles of the EEU functioning set forth in Article 3 of the EEU Agreement include compliance with the market economy and fair competition principles. Matters of regulation of competition and limitation of monopolistic activities as such are addressed in section 18 of the EEU Agreement General Principles and Rules of Competition dealing with the general principles and rules of competition that ensure that anti-competitive practices in the member states and practices that adversely affect competition in cross-border markets are identified and suppressed (pursuant to the general rules, a market qualifies as a cross-border market if geographically a commodity market covers the territories of two or more EEU member states).

Schedule 19 to the EEU Agreement Protocol on General Principles and Rules of Competition defines peculiarities of application of such section 18, penalties for breach of general rules of competition in cross-border markets, the procedure of enforcement by the Commission of compliance with the general rules of competition in the cross-border markets (including interaction with the competent authorities of the member states), interaction between the competent authorities of the member states in enforcement matters, and introduction of the state price regulation and challenging the decisions of the member states on introduction of the same.

The Commission that is in charge of enforcement of compliance with the unified rules of competition in cross-border markets in the territories of the EEU member states has a two-tier system of regulation — the Commission Board (performs general regulation of the integration processes) and the Commission Executive Board (executive body). Since 1 February 2012 Nurlan Shadbekovich Aldabergenov has been the Executive Board member (Minister) responsible for competition and antimonopoly regulation of the Commission.

The Commission to the extent of its authority makes decisions of regulatory nature that are binding upon the member states, issues orders of administrative nature and non-binding recommendations. The decisions of the Commission form part of the EEU law and are to be directly applied in the territory of the EEU member states.

The Commission also has jurisdiction over reviewing complaints regarding a potential breach of general competition rules established by Article 76 of section 18 of the EEU Agreement that affects or may adversely affect the competition in the cross-border markets, and is authorized to conduct the necessary investigations, initiate and review cases regarding breach of the general competition rules and issue decisions...
binding upon the business entities of the member states, including decisions to impose penalties.

The review procedure of applications (materials) on breach of general competition rules in the cross-border markets, the rules pursuant to which such investigations are conducted, and the procedure of review of cases regarding a breach are approved by the Commission. Also, for the purposes of enforcing compliance with the general competition rules in the cross-border markets the Commission approves:

— Competition Status Evaluation Methodology (approved by the Decision of the Commission Board No. 7 dated 30 January 2013);
— Methodology of Determination of Monopolistically High (Low) Prices (approved by the Decision of the Commission Board No. 117 dated 17 December 2012);
— Methodology of Calculation and Imposition of Fines (approved by the Decision of the Commission Board No. 118 dated 17 December 2012);
— Peculiarities of Application of the General Competition Rules in Various Industries (if necessary);
— Procedure of Interaction (Including Information Exchange) between the Commission and Competent Authorities of the Member States (approved by the Decision of the Commission Board No. 96 dated 23 November 2012).

We note that the activity of the Commission does not replace or duplicate the activity of the national antimonopoly authorities, and only complements it in terms of compliance with common principles and rules of competition, by covering “gray zones” in the markets that are not within the jurisdiction of the national authorities. In particular, the “fourth antimonopoly package” establishes that the provisions of the Law of the Russian Federation On the Protection of Competition will not apply to the relations governed by the common rules of competition in the cross-border markets that are enforced by the Commission pursuant to the EEU Agreement.

Cooperation of the national antimonopoly authorities with the Commission is improving and developing and is designated to foster sharing knowledge and discussion of the relevant antimonopoly regulation matters. For example, on 14 April 2016 a meeting of the heads of the antimonopoly authorities of the EEU member states and Mr. Aldabergenov took place in Yerevan. The meeting was devoted to anti-cartel activity, removal of barriers in the international cellular telecommunications, and prevention of anti-competitive practices in various cross-border markets. The participants of the meeting noted that the work jointly conducted by the Commission, the antimonopoly authorities of the EEU member states and cellular operators resulted in a reduction of the prices for the roaming voice services.

Thus, we still have to see what the EEU means as a new economic reality in which we are now living. This, of course, is a totally new level of economic interaction and international cooperation of the bordering states which hopefully will open vast prospects of economic growth, new competitive advantages and additional opportunities in the modern global world for such states.

Bibliography
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