



Russian Federation ❖

The Russian Federation is the largest country in the world, spanning 11 time zones. The landscape varies widely, from vast open tracts in the European heartlands and the Taiga and Tundra of Siberia, to mountainous terrain. Agriculture is largely confined to the European regions and the southern belt of Siberia. Further north, the main industries are forestry and extraction of energy and minerals. The main communications across the country are by air, and the Trans-Siberian railway. The road system is not well developed countrywide. Russia's great rivers also play an important part in transportation as well as in hydroelectric power generation.

In September 1988, Russia became the first Soviet Republic, outside the Baltic, to declare national sovereignty. This was recognised by Moscow in 1991, following the collapse of the former Soviet Union, of which it had formed a part since 1922. Like the Soviet Union before it, the Russian Federation is a collection of diverse territories at vastly different stages of development.

In 2010, the Federal Antimonopoly Service (FAS) Russia was nominated by the Global Competition Review as one of the three best competition authorities in Europe.

Economy

After the collapse of the Russian economy in 1998, the IMF provided US\$22.5bn in a largely unsuccessful attempt to bring stability in the country. In August 1998, the Russian government announced a devaluation of the rouble, debt defaults and a bank bailout. The reforms boosted Russia's trade competitiveness, whilst high prices for oil and gas (the country's two main exports) saw GDP rise after plunging in the early 1990s. In 2002, some western private-equity investors began returning to Russia.

Growth was strong in 2002 and 2003, but Russia's economy is heavily dependent on oil, and much of its assets are controlled by a handful of oligarchs.

The Russian economy, however, was one of the hardest hit by the 2008-09 global economic crisis as oil prices plummeted and the foreign credits that Russian banks and

PROFILE	
Population:	141.9 million***
GDP (Current US\$):	1.858 trillion***
Per Capita Income: (Current US\$)	10,400 (Atlas method)*** 14,561 (at PPP)**
Surface Area:	17.1 million sq. km
Life Expectancy:	69 years**
Literacy (%):	99.6 (of ages 15 and above)**
HDI Rank:	66***
<i>Sources:</i> - World Development Indicators Database, World Bank, 2011 - Human Development Report Statistics, UNDP, 2011 (**) For the year 2010 (***) For the year 2011	

firms relied on dried up. The economic decline bottomed out in mid-2009 and the economy began to grow in the third quarter of 2009. In 2011, Russia became the world's leading oil producer, surpassing Saudi Arabia; Russia is the second-largest producer of natural gas; Russia holds the world's largest natural gas reserves, the second-largest coal reserves, and the eighth-largest crude oil reserves.

President, Vladimir Putin, who wanted more economic reform, has done a good job managing Russia's (shrinking) foreign debt. The US designated Russia a market economy, and the EU dropped its long-standing objections to Russia joining the WTO, both of which should ease Russia's path to the membership in the near future.

Russia has reduced unemployment since 2009 and made progress on reducing inflation since 2010. Russia's long-term challenges include a shrinking workforce, a high level of corruption, difficulty in accessing capital for smaller, non-energy companies, and poor infrastructure in need of large investments.

The economy is dominated by large industrial enterprises, with SMEs, which have acted as an important source of

❖ This paper has been written (2006-07) by Dmitry Yanin and updated (December 2012) by Vladimir Kachalin.

growth in other transition economies, remaining underdeveloped. SMEs account for only 10-15 percent of Russian GDP, compared with typically 50 percent or more in developed market economies and the more advanced transition countries. Small enterprises and start-ups in Russia are held back by stifling taxes and regulations, as well as the strong position of incumbent industrial enterprises, which often exploit their ties to the local bureaucracy to keep weaker competitors at bay.

Competition Evolution and Environment

In 1990, the first Russian competition authority was created – the Ministry for Antimonopoly Policy and the Support of New Economic Structures (herein after referred to as the MAP) – and the Law “On Competition and the Restriction of Monopolistic Activity on Goods Markets”, (hereinafter referred to as the Law on Competition) was passed in 1991. Support for competition was also expressed in the 1993 Constitution, as well as in other fundamental legislations, for example the Civil Code 1994.

The Law on Competition then contained relatively mild sanctions for most violations, preferring cease and desist orders and disgorgement of improperly received income to direct fines or the punishment of individuals. This was consistent with expectations that the worst potential problems would be controlled by regulation and also reflected aimless concerns about the complete unfamiliarity of competition law concepts and a desire to allow the new rules to become known before severe sanctions were applied.

A long history of planning and coordination, as well as a lack of familiarity with methods used to govern and regulate markets, led to expectations that various state bodies would attempt to continue to control economic activity. To counter this, the Law on Competition included provisions prohibiting such behaviour. Likewise, the expectation of a need to divide large enterprises or associations was reflected in the inclusion of an article specifically authorising such division after repeated violation of the law.

The early creation of a competition authority contributed to the creation of the necessary environment for competitive markets, both through enforcement actions and through participation in policy formation and legislative drafting efforts. These include a substantial reduction of direct barriers to the movement of goods and services within the country, and the creation of basic legislative frameworks for consumer protection, advertising regulation and other tasks that are necessary to allow markets to function in a reasonable manner.

The then competition authority also played a central role in regulatory reform efforts directed at natural monopoly sectors. It led the initial drafting effort for the law on natural monopolies.

However, some serious structural and legal problems have interfered with the ability of the Russian competition authority to be efficient in its enforcement efforts and to undertake focused competition advocacy.

In 2003, the OECD undertook a detailed assessment of Russia’s decade of experience with competition law and policy. The assessment report concludes that, despite early legislation on the issue and strong expressions of support for competition in laws, the creation and protection of competition on domestic markets has not been a policy priority of Russia. Emphasis on rapid privatisation limited the scope of pre-privatisation restructuring to promote competition, and the competition authority has been expected to serve as a general regulator of behaviour in markets; assigned to fill legislative gaps; and to enforce against a variety of undesirable practices in markets. Overly broad responsibilities and a lack of credible sanctions have significantly limited the impact of the competition laws.¹

The initial conception of the competition authority, as broadly responsible for civilising markets, as well as protecting public interest and weaker parties, resulted in task overload, with duties in the areas of consumer protection; advertising regulation; supervision of commodity exchanges; and protection of small business. All these areas require different skill sets and procedures, limiting the effectiveness of the agency. This has been aggravated by the regular addition of enforcement responsibilities under the rubric of competition law.

Competition Law and Policy²

The Law on the Protection of Competition came into effect in the Russian Federation on October 26, 2006. The stated aims for establishment of the law were to bring the Russian Federation in line with the general trend of regulated competition within Europe. Beyond western European competition laws against dominance, the Competition Law in Russia expressly presumes the existence of dominance by defining thresholds. The law also places restrictions on aids from and public procurement policies of federal, provincial or municipal governments that otherwise would encourage anti-competition.

With the adoption of the new Law “On Protection of Competition”, on October 26, 2006 the FAS enforcement activities became more focussed on antitrust enforcement issues, although the agency continued to enforce a considerable part of the consumer protection, as well, especially those related to deceptive advertisement. The Law provided for the introduction of the sensitive turnover based fines, as well as criminal penalty for individuals engaged in organisation of cartels. A special anti-cartel department has been created in the FAS to counter cartels as the most dangerous type of antitrust violations. The introduction of more severe penalties led to greater incentive for compliance with the antitrust law for the businesses, on the one hand. On the other hand, more and

more agency decisions have been challenged in courts by the alleged violators.

Unlike many other competition authorities FAS has powers to cease the anticompetitive actions of federal and local government bodies and violations conducted by the government bodies which account for more than a half of 4000 cases considered by the agency annually. Additionally, FAS has powers to cease and decess antitrust abuses by natural monopolies.

FAS has a flat structure and more than 2/3 of its personnel work in the territorial offices that are mostly engaged in countering antitrust abuses (including those by government and natural monopolies) region-wide in 80 Russian provinces. Over 700 people work in the central office that is structured by sectors of economy like, agricultural goods and chemistry, pharmaceuticals, heavy industry, energy sector etc., such that the case handlers combine sector specific and antitrust enforcement skills.

In January 2012, significant amendments to the Russian competition legislation (Federal law No. 401-FZ of December 06, 2011) took effect. It was dubbed the ‘Third Antimonopoly Package’ among the lawyers practicing in competition law and affected the essential sources of the Russian legislation concerning cartel prohibition:

- the core federal law ‘On Protection of Competition’ No. 135-FZ, dated 26 July 2006 (the Competition Law);
- the Code on Administrative Offences of the Russian Federation, dated December 30, 2001, No. 195-FZ (the Administrative Code); and
- the Criminal Code of the Russian Federation, dated June 13, 1996, No. 63-FZ (the Criminal Code).

One of the important achievements of this reform is introducing the definition of a cartel that is now, in accordance with article 11(1) of the Competition Law, a horizontal agreement between the competitors that leads or may lead to:

- the fixing or maintaining of prices, discounts, bonus payments or surcharges;
- division of market by territory, volume of sales and purchases, assortment of goods and services, or range of sellers or purchasers;
- the reduction or termination of production of goods;
- refusal to enter into a contract with a particular customer or seller; or
- the increasing, reducing or maintaining of prices on tenders.

By 2002, the acquisition wave had moved beyond the industrial sector, with conglomerates buying into insurance, retail and agriculture. Ownership structures are opaque, but according to some estimates, 20 large conglomerates now account for up to 70 percent of Russian GDP.

Many amendments to the Law on Competition were adopted in 2002. The amendments were adopted to tighten the control over anticompetitive agreements, and make the detection and proof of their existence more effective. For example, the Law now imposes a direct ban on the conclusion of agreements between competitors, irrespective of their position in the market, if the implementation of those agreements could lead to the establishment of price (fixing), discounts, mark-ups surcharges, the splitting up of markets along geographical lines or a refusal to enter into agreements with particular vendors or buyers.

In 2004, by a Decree of the President of the Russian Federation “About the system and structure of federal executive power bodies”, the Ministry for Antimonopoly Policy and the Support of MAP was abolished. Instead, a FAS was established, which inherited the functions of the abolished State Committee, excluding the duties on state support of small business and consumer rights’ protection.

Box 1: Power sales company unlawfully restricted supply of electric power

Kostroma Regional Arbitration Court dismissed the claim of ‘Kostroma Sales Company’ OJSC (‘KSK’ OJSC) regarding the decision of the Office of the Federal Antimonopoly Service in the Kostroma Region (Kostroma OFAS Russia).

The antimonopoly case was initiated upon a petition of the Prosecutor of Mezhevsky District, the Kostroma Region, reporting unlawful restrictions of electric power supply in June 2011 to the facilities operated by ‘Kommunalschik’ Ltd. due to payment arrears.

“As a result of the restrictions, customers, including members of general public, were denied water supply, which infringed their rights for timely quality water supply. It also infringed the interests of ‘Kommunalschik’ Ltd. that was unable to render water supply services to consumers”, commented the Head of Kostroma OFAS Russia, Oleg Reveltsev.

On May 30, 2012, the Commission of Kostroma OFAS Russia found that ‘KSK’ OJSC abused its market dominance (Part 1 Article 10 of the Federal Law “On Protection of Competition”).

‘Kostroma Sales Company’ OJSC disagreed with the decision of the antimonopoly body and in November 2012 approached Kostroma Regional Arbitration Court. The claim, however, was dismissed.

Source: <http://en.fas.gov.ru>, December 14, 2012

Regulatory Framework

*Electricity Sector*³

Russia, in 2003, embarked on the restructuring of its electricity sector. The reform introduced competition into electricity production and supply. It, however, left dispatch, transmission and distribution (T&D) as regulated natural monopolies with non-discriminatory third-party access to the networks. This is built on recent experiences in the OECD and other countries.

The principles and goals of the state's electricity policy and the institutional structure of the sector are contained in the Federal Law on the Electricity Industry (the Electricity Law), dated March 26, 2003. Besides the Electricity Law, special federal laws regulate the establishment of electricity and heat power tariffs, natural monopolies, power saving, power-supply contracts and insolvency of natural monopolies in the fuel-energy sector.

The Federal Law on the Usage of Nuclear Energy, dated November 21, 1995, governs the work of nuclear power plants, which remain property of the federal state and managed by the state concern Rosenergoatom. The new Federal Law, dated February 05, 2007, stipulates the reorganisation of these undertakings into joint stock companies, with transfer of shares to one holding company, whose shares should be held by the federal state.

The ultimate aim of the reform is to ensure that supply continues to meet the growing demand by creating conditions for encouraging both investment in new capacity, and greater efficiency of both production and consumption. This will allow prices to rise to fully cost-reflective levels, ending cross subsidies, and allowing markets to operate where possible.

The Federal Tariff Service (FTS) is a federal executive body which regulates tariffs of natural monopolies, and in particular tariffs in the electricity, oil and gas sectors. The FTS reports directly to the government. It was established in its current form in 2004, replacing the former Federal Energy Commission.

The FTS does not have regional offices, however there are regulatory governmental agencies (Regional Energy Commissions or RECs) that operate on a regional level and apply rules and methodology guidelines issued by FTS.

The FAS is the federal-level executive governmental body which controls the execution of the competition laws and related areas. It was established by the Decree of President of Russia No. 314 of March 09, 2004. The FAS is responsible for settling disputes that may arise from access denial, whereas FTS and RECs are responsible, respectively, for those related to tariffs on transmission lines (UNS) and regional distribution networks.

Broadly speaking, Russia's electricity reform strategy reflects an approach to utility restructuring similar to that implemented in many other countries over the last decade or two. Its core elements include:

- breaking up the vertically integrated monopoly of production, T&D, and separating the potentially contestable activities from those that have a substantial element of natural monopoly;
- introducing competition into those activities where it is feasible, such as generation and supply; and
- setting regulated tariffs for T&D, which are natural monopolies, in such a way as to encourage efficiency and not merely cover costs.

*Telecommunications Sector*⁴

The most important measure to improve the telecom sector's state regulation in Russia has been the adoption of a new version of the *Communications Law*. This law is compliant with the requirements of the WTO; relevant EU directives; recommendations of the OECD and the International Telecommunications Union (ITU), specifically as regards the proposed universal service mechanism.

It is also significant that the Law stipulates that telecom operators shall be reimbursed for economically feasible costs and, given the feasible rate of return on capital applicable to the provisioning of services, if the tariffs on these services are set by the State. Nonetheless, State regulation still does not provide equal conditions for all market participants and does not cope with the problems of distributing the social load, cross-subsidisation and non-efficiency of tariff regulation. All this allows alternative operators to expand at the expense of incumbents.

The Ministry of Communications and Mass Media of the Russian Federation (Short title: Ministry of Communications of Russia) was founded by the Presidential Decree 724 on May 12, 2008.

Ministry of Communications of Russia serves as the postal, and communications administrator of the Russian Federation in international activities in the field of communications.

The Ministry coordinates and controls the activities of subordinate Federal Service for Supervision in the Sphere of Mass Communications, the Federal Communications Agency, the Federal Agency for Press and Mass Communications.

Box 2: Russia signed new version of the International Telecommunication Regulations

The outcome of the World Conference on International Telecommunications 2012 held in UAE was the signing of more than 100 member countries a compromise version of the International Telecommunication Regulations (ITRs), which is a binding international agreement at the global level. The new edition offers the Member States to develop their respective positions on international issues related to the internet technical, development and public policy in the framework of the mandate of the ITU.

The new version of the ITRs was adopted on December 12, 2012 at a general vote of the participating countries of ITU.

Source: <http://minsvyaz.ru/ru/news>, 14 December 2012

Anticompetitive Business Practices

In Russia, anticompetitive agreements are generally found in sectors characterised by a high degree of concentration of capital and production capacity, which include natural monopolies.

Until 2002, the provisions of the competition law appeared to make any action, which violated the rights of an entrepreneur or enterprise, a violation, even if there was no effect on competition as a result of the violation. The amendments to the Law made in 2002 appeared to resolve this problem, making requirements for an infringement of rights and a restriction of competition cumulative.

Box 3: Abuse of dominance – Fertiliser Production Sector

In September 2010 the Arbitration Court of Moscow region confirmed the FAS Russia decision against OJSC ‘Voskresenskie fertilisers’ and brought the company to administrative liability.

The company was fined by the FAS Russia over 1,5 mln rubles (US\$50000) for abuse of its dominant position on the market of phosphoric acid.

The case against this company was initiated by the FAS Russia under application of OJSC ‘Voskresenski NIYiF’ which claimed that OJSC ‘Voskresenskie fertilizers’ unjustifiably refused to supply it phosphoric acid, created discriminatory conditions and infringed its economic interests in 2008.

Source: <http://en.fas.gov.ru/reports-and-analytics/>

Box 4: Mobile operators fined for abuse of dominance

The FAS Russia jointly with the Kazakhstan Competition Authority completed an investigation against mobile operators that set excessive prices for roaming in the CIS countries. As a result of the investigation the companies significantly reduced their tariffs on roaming in the CIS countries and the largest three Russian mobile operators, the so-called “big three” (MTS, MegaFon and Beeline), were admitted violating the antimonopoly legislation in part of abuse of dominant position and were fined on 38 mln rubles (US\$1,26mn).

Source: <http://minsvyaz.ru/ru/news>, December 14, 2012

Consumer Protection

Consumer protection is promoted in Russia, primarily, by the Inter-republican Confederation of Consumers Societies (KonfOP), in cooperation with the MAP, the Ministry of Justice, and a number of other ministries and agencies. KonfOP is a union of national and regional consumer organisations from six CIS countries. Presently, there are 43 member-organisations. KonfOP was set up in 1989, as the Federation of Consumer Societies of USSR, then in 1991, reorganised into a Confederation. KonfOP operates mainly in the following areas:

Legal Protection of Consumers and Preparation of Law Initiatives

KonfOP specialists helped prepare the following Laws of the Russian Federation:

- Law on Consumer Protection;
- Law on Advertisement;
- Law on Competition;
- Law on Natural Monopolies; and
- Law on Pharmaceutical Goods and Civil Code.

On December 10, 2007, newly adopted amendments to the Russian Consumer Protection Law entered into force. The Law includes provisions aimed at introducing the right of a consumer to return an item of inferior quality to the seller and obtain a full refund.

Since 1992, KonfOP lawyers have won or successfully settled several thousand lawsuits for the protection of individual consumers and an ‘indefinite circle of persons’.

These cases include:

- the first ever Russian lawsuit concerning moral hazard;
- suits against large manufacturers of electronic appliances (Sony, Samsung, Matsushita/Panasonic), for changing the conditions of post-sale service;
- a suit against the Government of Moscow for unlawful evacuation of wrongly parked vehicles, which resulted

- in the abolition of the relevant Government Decree and amendments to the Administrative Law;
- suits defending the rights of depositors to commercial banks; and
 - suits relating to tourism services, housing law, and advertising of pharmaceuticals, amongst others.

Concluding Observations and Future Scenario

The FAS Russia developed the so-called “third antimonopoly package of amendments” aimed at improving the antimonopoly regulation and competition development in the Russian Federation. The Russian Parliament approved the Third Antimonopoly Package on September 09, 2011. The amendments take account of proposals made by business, comments of international competition experts, as well as the OECD Council Recommendations.

The Third Antimonopoly Package (TAP) offers a clearer set of competition law rules for business, especially with regard to the demarcation of prohibited practices and corresponding liability for anticompetitive agreements/actions. The TAP represents a liberal balancing act after the tightening of the antitrust regime by the Second Antimonopoly Package of 2009. At the same time, in certain areas the scope of changes has been more careful than could have been expected. On the positive side, such

careful approach preserves continuity and stability in the antitrust legislation. The key challenge, however, remains the development of enforcement practice.

Key Priorities in Drafting the New Competition Law

- provision of credible sanctions against violators, e.g. substantial fines, high enough to provide a serious deterrence, possibly using the percentage of turnover measure in use in some jurisdictions;
- substantially reducing merger control submissions, strengthening economic analysis and structural remedies;
- increasing the threshold for merger submissions would reduce numbers, allowing more time for the analysis of those that are of greatest concern;
- focusing state action provisions on conduct that restricts competition, rather than any conduct affecting an entrepreneur or enterprise; and
- creating clear legal standards for agreements, and priority enforcement against restrictive agreements.

Due to the fact that a number of further amendments proposed by FAS were not accepted, it is reasonable to expect that these would be improved and proposed as separate amendments to the Competition Law in the near future.

Suggested Readings

OECD Peer Review Report on Russia's Competition Policy and Law, Document CCNM/GF/COMP/WD (2004) 2, retrievable from http://www.fas.gov.ru/files/1571/Global_Forum_Final.doc

OECD (2004), Policy Brief on Competition Law and Policy in the Russian Federation

Endnotes

¹ Based on OECD (2004), Competition Law and Policy in the Russian Federation, Policy Brief, Paris 2004

² www.globalcompetitionreview.com

³ www.oecd.org/document/27/0,2340,en_2649_201185_32473755_1_1_1_1,00.html & www.reegle.info/policy-and-regulatory-overviews/RU

⁴ http://eng.svyazinvest.ru/telecom_industry_overview/#3

[†] *Vladimir Kachalin graduated from the Moscow State University (Economic Faculty) in 1982 and received his “kandidat nauk” (Ph.D.) in economics in 1987. Mr. Kachalin cooperates with the Institute of World Economy and International Relations of the Russian Academy of Sciences since 1985 in current position of senior research associate specializing in international antitrust economics and policies, international accounting and finance and project organization and performance. In 1993-1995 Kachalin won 3 research scholarships in the US and Canada that he successfully completed in the Columbia University (New-York), University of Toronto and Library of the U.S. Congress. He is an author of 35 publications and 4 books on international economics, antitrust law and international accounting.*

^{††} *Since 2004 to date Kachalin performs as an advisor to the Russian Government on international antitrust issues in a capacity of Assistant to the Head of Federal Antimonopoly Service of Russia. Since 2005 Kachalin is assigned to maintain cooperation between FAS and International Competition Network (ICN). Mr. Kachalin has a track record in EU Tacis projects starting from 1993 and participated in 5 Tacis projects in capacity of expert, deputy team leader, team leader and Manager of the EU Contact Point in the South of Russia working for EU consulting companies performing these projects.*