

The interaction between public and private antitrust enforcement in Russian Federation

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LEGAL GROUNDS OF PRIVATE ENFORCEMENT

- l Art. 37 of Federal law «On protection of competition» allows persons whose right have been infringed by antitrust infringement, to appeal with claims to the court for redress of infringed rights, compensation of losses, including missed profit, compensation for harm caused to property;**
- l Art. 15 of Civil Law explains that loss of profit consists of potential profits that could be realized in case of non-infringement situation;**
- l Opt-in class actions are allowed by Chapter 28.2 of the Arbitration Proceeding Code;**
- l Members of cartel are always jointly liable for losses of the particular consumers;**
- l The Supreme Court of Russia stated that the damage claim should not be rejected if the person didn't bring the evidence of the exact amount of losses but brought the evidence of the existing cause effect relation between the infringement and the damage;**
- l Drafted Guidelines of the FAS «Quantifying harm in actions for damages»**

PRIVATE ENFORCEMENT: PERSPECTIVES

- l Practically impossible to find evidence without administrative proceedings at FAS (dawn raids and leniency work better than claims to the courts);**
- l Usually potential complainant doesn't know about the existence of cartel before the investigation of FAS;**
- l The legal practical system of cartel detecting always based on administrative investigation (FAS's a decision maker)**

CONFIDENTIAL POLICY

- l** During investigation and before official accusation (statement of objections) nobody including suspects have no access to file;
- l** Participants of cartel investigation (defendants) after official accusation (published statement of objections) have an access to file even to confidential information which was initiatively brought by any defendants (*art. 45.2 of the Law «On protection of competition»*);
- l** Competition authority is obliged not to disclose confidential information which was brought upon its request without agreement with right holder (*art. 25 of the Law «On protection of competition»*);
- l** Leniency applications and linked materials by applicants, evidence received from the Police couldn't be disclosed by competition authority during administrative proceedings but could be disclosed upon the request of the Court during closed court hearings;
- l** Final decision of the FAS can be published on the official web site without the description of the confidential evidence

HOW TO MAKE IT SUCCESSFUL?

- l Civil plaintiff is allowed to participate in official cartel investigation to have an access to file - be initiative !;**
- l In cartel cases Competition authority can verify and include in its final decision the total amount of illegal revenue of damage caused by cartel to verify that such infringement is also a criminal offence to pass it to the Police for further criminal investigation against guilty individuals;**
- l Civil plaintiff has three years to sue a damage claim at Court using the final decision of FAS which verified the existence of cartel infringement and the available evidence;**
- l Civil plaintiff or a Court can initiate the participation of the Competition authority in private enforcement and a Court can request a case files**

HOW IT WORKS BRIEFLY

ADMINISTRATIVE INVESTIGATION

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graph TD; A[ADMINISTRATIVE INVESTIGATION] --> B[DAMAGE CLAIM (STAND-ALONE OR CLASS)]; B --> C[SUCCESS];
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DAMAGE CLAIM (STAND-ALONE OR CLASS)

SUCCESS

FOR DISCUSSION

- l Successful leniency application or settlement with Competition authority doesn't give an immunity against damage claim;**
- l Turnover fine (up to 15%) to company, imprisonment for guilty officials and a compensation to civil plaintiff *could/couldn't* be too much double penalty for cartelist;**
- l Final decision of FAS is not a per se guaranty of successful damage claim without direct effect relation between the infringement and the damage**

THANK YOU
FOR YOUR
ATTENTION!

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