

Investigative techniques for anti-competitive practices:

CARTEL INVESTIGATION PROCEDURE

Moscow, Russia 2013

INVESTIGATION BY A COMPETITION AUTHORITY

INVESTIGATION PROCEDURE – a set of measures by a Competition Authority from the first information received on signs of competition law violation and up to enforcement of the court order and paying fines.

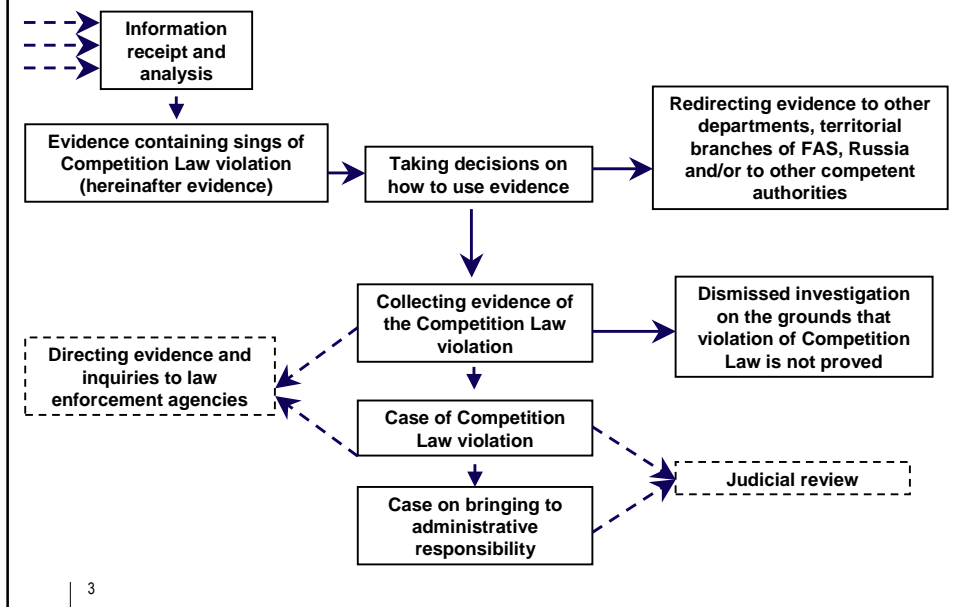
INVESTIGATION PROCEDURE INCLUDES :

1. Organization of the team to carry out investigation;
2. Planning;
3. Regular reporting.

THE OUTCOME PRODUCED BY INVESTIGATION PROCEDURE IS:

- completion of the Competition Authority decision on infringement of Competition Law;
- administrative fines paid;
- papers of the case are filed with law enforcement agencies.

INVESTIGATION BY COMPETITION AUTHORITY



INFORMATION RECEIPT AND ANALYSIS

SOURCES OF INFORMATION :

1. Complaints, applications officially received by FAS;
2. Information received from law enforcement agencies;
3. Informants (insiders);
4. Leniency applications;
5. Media monitoring;
6. Monitoring of oligopoly markets and of dominant undertakings;
7. Monitoring of associations of undertakings.

OUTCOME :

Information is examined and processed to take a decision.

HOW TO PROVE CARTEL?

While proving cartel Competition Authorities deal with TWO KINDS OF EVIDENCE:

DIRECT – directly denote the facts of violation of the Law – documents (contracts, agreements, protocols, statements, letters etc.) and testimony from witnesses;

CIRCUMSTANTIAL – denote implicit facts which are in cause-and effect relationship or in other relationship with violation of the Law (company behavior, market research, mathematical expertise).

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DIRECT EVIDENCE «EVOLUTION»

1. The content of the document is obvious (setting up a Cartel)
2. The name of the undertaking is obvious
3. The document is signed (and sealed)

1. The content of the document is obvious (setting up a Cartel)
2. The name of the undertaking is obvious
3. The document is not signed

1. The content of the document is ciphered
2. The name of the undertaking is ciphered
3. The document is not signed

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REVIEW

INSPECTION – is a package of actions with the aim to collect and secure evidence that prove violation of the Anti-Monopoly Law. **Inspections are scheduled and out of schedule (dawn raids).**

TO FIGHT CARTELS THE MOST EFFICIENT ARE DAWN RAIDS ONLY!

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AN «IDEAL» DAWN RAID

- preliminary «reconnaissance» is conducted;
- surprise effect is reached;
- countermeasures to oppose «dawn raid» failed;
- all measures provided for are taken (including searches), the results are documented in a due way;
- copies of necessary documents and information including digital information are received duly certified;
- officials are interviewed;
- video recording was taking place during the «dawn raid».

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LENIENCY PROGRAM

1. Any person willingly applying to Competition Authorities and providing it with the information about agreements or concerted practice is granted an immunity from administrative liability (the member of the Cartel «surrendering himself» to the Competition Authority does not bear any responsibility) provided that the following conditions are met:

- At the time of the application, the Competition Authority did not have sufficient information and documents about alleged administrative offence;
- The person has terminated its participation in the agreement or has terminated its any possible participation in future or waived concerted practice or any possible concerted practice in future;
- Information and documents provided are sufficient to establish the fact of the administrative offence committed.

2. The immunity from administrative liability is granted to a person who is the first to qualify.

LENIENCY SCHEMES

The Russian legislation provides for Leniency schemes as well.

Among mitigating circumstances there are:

1. The person involved in the administrative offence ends up its involvement in illegal behavior voluntary;
2. The person involved in the administrative offence provides the Competition Authority authorized to carry out administrative proceedings with all relevant information about illegal actions;
3. The person involved in the administrative offence renders all possible assistance to the Competition Authority in establishing the facts of administrative offence;
4. The person involved in the administrative offence prevents harmful consequence of the administrative offence;
5. The person involved in administrative offence reimburses voluntary damages caused or eliminates the cause of damages;
6. The person involved in administrative offence executes the order to eliminate the offence before judgement in the administrative case is issued;
7. The person involved in administrative offence is not a ringleader of the competition restraining agreement or concerted practice and/or received binding instructions to take part in those actions;
8. The person involved in administrative offence did not commenced to execute the anti-competitive agreement concluded.

LENIENCY SCHEMES

Any mitigating circumstance is taken into account when the administrative fine is calculated.

The person under administrative proceedings can therefore take actions to qualify for leniency and to be fined at minimum rate (up to 1 per cent of total earnings of the offender but not less than RUB100 thousand).

The above statutory provision is used by the Competition Authority. A number of offenders have applied for the Leniency program.

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THE BEST PRACTICE the cases investigated by FAS Russia, 2011 – 2012

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«CLASSIC» CARTELS

ALKALI CARTEL

Qualified: Violated Clauses 1, 3, and 4 of Part 1 Article 11 of the Competition Law.

Case summary: Chemical enterprises organized a cartel in 2005 to fix prices and to share the market of fluid hydrate of sodium (NaOH). The Integrated Trade Company was a ringleader and coordinator of the cartel. The number of participating companies ran up to 23 undertakings (including Sajanskchimplast, Sibur, Eurochim, Kaustic (Sterlitamak City) Kaustic (Volgograd City), Renovaorgsintez.

Fines: total RUB 1,6 bn (53 mn USD).

Comments: This is a «classic» cartel. The evidence was taken in the course of the «dawn raid» (more than 10 in 7 regions of RF), economic analysis played a great role as well. A criminal case in accordance with Part 2, Article 178 of the Criminal Code of RF was initiated following the FAS decision, tax authorities assessed additional tax totaling RUB1 418 000 000, inspections are being planned for 2013. The Court supported the FAS decision. After this decision of FAS (December, 2011) the cartel practically ceased to exist.

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«CLASSIC» CARTELS

ALASKA POLLACK CARTEL

Qualified: Violated Clauses 1, 4 of Part 1 Article 11 of the Competition Law.

Case summary: Enterprises catching Alaska Pollack in the Far East organized a cartel in 2006 to fix prices and to restrict catches of the fish and volumes of the fish products to be sold in the market. Some foreign (PRC) undertakings pertained to this. To run the cartel the Association of Alaska pollac catchers (APC) was organized. 52 undertakings were defendants in the case and 26 of them were proved guilty. APC was proved guilty for illegal coordination of economic agents' activities.

Administrative liability: total RUB 150 mn (5 mn USD).

Comments: This is a «classic» Cartel. The investigation commenced by instructions of the Government simultaneously investigation of violation of strategic investment legislation. The main evidence was obtained in the course of «dawn raids» made by FSS RF. Conduct of the proceeding and decisions of the Government Commission led to breakdown of the Cartel and to the most significant restructuring of harvesting bioresources market in Russia. The case files are forwarded to FSS RF, MIA RF and to tax and customs authorities.

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BID RIGGING

FOODSTUFFS FOR DEFENCE AND LAW ENFORCEMENT AGENCIES

Qualified: Violated Clauses 2 of Part 1 Article 11 of the Competition Law.

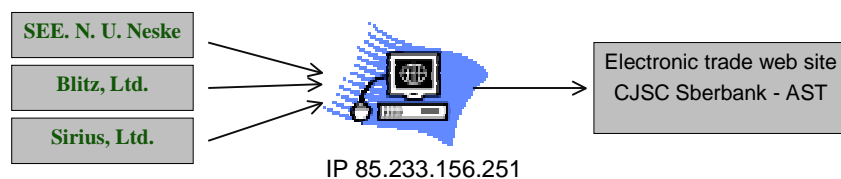
Case summary: The members of the cartel (Self-employed entrepreneur N. U. Neske, Sirius, Ltd. and Blitz, Ltd.) used a particular mode of conduct while taking part in the electronic auction. This mode of conduct is nicknamed a «battering ram» by those involved in public tenders and auctions. The core of the mode is as follows: two members of illegal anti – competitive agreement in the course of the auction are pretending to engage in active bargaining bringing the price down (up to 90 per cent of the initial price of the contract). In such a case bona fide participants of the auction are losing interest in continuing to bid. The third member of the Cartel at the last moment gives the bid slightly lower than the bid of bona fide participant or than initial (maximum) price. At the end of the story two companies at the top of the list are waving the contract and the contract goes to the third member of the Cartel with the next lower bid slightly different from initial price.

Administrative liability: Two proceedings against legal persons were initiated. The fines exceeded RUB 3,5 mn (117 thous USD).

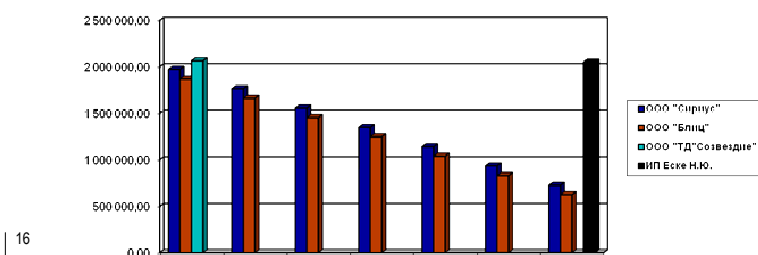
Comments: It was one of the first bid rigging during electronic auctions in Russia with the aim of price fixing. The decision is adopted after analysis was made of all the auctions where the above defendants took part. The Court supported the FAS decision. A criminal case was initiated (Part 2 Art. 178 of the CC RF).

FOODSTUFFS FOR DEFENCE AND LAW ENFORCEMENT AGENCIES: SOME EVIDENCE

Entering Electronic Trade web site in the course of auction, all actions of the Defendants in connection with posting and changing the documents on the web site as well as bidding at auctions and tenders, were regularly made from the same IP - address



Bids Analysis at the open electronic auction



«The priority for FAS, Russia during 2 – 4 forthcoming years are struggling cartels.»



I. J. Artemiev

Head of Federal Anti – Monopoly Service (a speech at extended meeting of the Board of FAS, Russia, 15.02.2012)

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**THANK YOU FOR YOUR
ATTENTION !**

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