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The impact of cartels on the poor

Introduction

1. Starting from the year 2000 up to the present moment the problem of fighting poverty is one of the key issues discussed on all the governmental platforms. This topic is on the focus of the talk addressed by the President of the Russian Federation to the Federal Assembly. This top-priority objective is directly or indirectly set before them. Therefore, the whole state authority system, including the FAS Russia, as a federal executive authority, aiming at bringing maximum benefits to citizens as major stakeholders, i.e. social welfare in a broad sense.

2. The FAS Russia, as an authority responsible for competition policy and law enforcement is empowered to fight against cartels as one of the most socially and economically damaging evil Clause 3 Part 1 Article 11 of the Federal Law “On Protection of Competition” classifies cartels and prohibits agreements between competitors as economic entities that sell goods on the same market if such agreements lead or can lead to dividing the market under a geographical principle, the volumes of sale or purchasing of goods, the range of goods or the categories of sellers or buyers (customers).

In the period of 2009-2011, in Russia significant steps to strengthen the fight against cartels were taken, as follows: necessary changes in legislation (the Law on Protection of Competition, the Criminal Code of the Russian Federation, the Code of Administrative Offences of the Russian Federation) were adopted, direct administrative liability is introduced in the form of turnover fines for anticompetitive agreements concluded; within the framework of the FAS Russia a special unit to fight against cartels is established, cooperation with law enforcement bodies of the Russian Federation is conducted.

However, the disclosure of the cartels is one the most difficult tasks and it is considered a priority area of the FAS Russia. The Head of the FAS Russia Igor Artemiev in February 2012 said “For the next four years fighting against cartels will

be field of high priority of the FAS Russia”. In 2012 a number of steps was taken to develop cooperation with the police bodies of the Russian Federation

3. Thus, by means of exercising control and fighting against cartels, the FAS Russia is involved into the process of creating more competitive, thus, healthy, social and economic environment, which have indirect impact on the poverty reduction.

Cases considered by the FAS Russia

4. The contribution of the FAS Russia to the cause of poverty reduction is more evident on the market of food products. As one of the state authorities in charge, the FAS Russia monitors product markets and respective price situations, from the healthy competition environment point of view, for socially important goods and other price situation on the consumer market of food products. Along with other state authorities the FAS Russia takes timely necessary measures to keep under control sharp prices fluctuations, especially in the agricultural sector, and takes additional measures to stabilize the consumer prices. The results of monitoring are reported to the Government of the Russian Federation on a regular basis.

Making the food products available for a larger number of people, and reducing the ratio of the amount of money spent on them to the total amount of income for other goods and services might illustrate the poverty level reduction.

In this regard, at present time, the FAS Russia is considering three different cartel cases concerning markets of Vietnam fish. The alleged cartels have lead to establishing excessive prices for certain types of fish (i.e. Pollock, salmon, pangasius)¹. The frozen whole fish is included into the list of socially important food products. Therefore, fighting cartels on these markets and making the price come down will make fish available to a larger number of people, including the poor.

The FAS carried out a huge international investigation regarding to the members of the Association formed a “Pollock cartel”, which resulted in decreased production, an artificial shortage of Pollack and Pollack products, as well as growth of prices across the entire territory of the Russia Federation.

¹ More detailed information is available at the official web-site of the FAS Russia www.fas.gov.ru

The grounds for initiating the case were the findings of the inspections of the Association and several companies involved in Pollock catching, carried out by the FAS Anti-Cartel Department in May – August 2012.

In December 2012, the FAS Russia found that the Pollock Catchers Association coordinated economic activities of market agents, resulting in reduced production. The main evidence of the cartel was the protocols of the Association meetings. Evidence also included communications between members of the Association and agreements on the volume of Pollock harvesting and production of Pollock products (Pollock caviar, Pollock filet, “Pollock B/G”, fish-flour, etc.). Cartel participants discussed sale conditions and prices, signed agreements between companies – members of the Pollock Catchers Association, which formed artificial shortage of Pollock and Pollock products.

Every year over one million tons of Pollock is caught in the Russian Federation – more than salmon, herring and codfish together. Pollock makes one third of Russian fish market. That is why low prices on such products are extremely important for poor people. Existing of a cartel on this market leads to the situation in which poor people cannot afford Pollock products because of high prices.

5. In October 2012, the FAS Russia initiated another case regarding to a number of fish companies dealing with import to Russia on signs of violation of the Law on Protection of Competition (a cartel by the market-sharing). The results of inspections carried out by the FAS Russia during the period from March to June, 2012 in relation to these companies delivering the Norwegian salmon and trout to the Russian Federation formed the basis for initiation of proceedings. During inspections it was established that for the purpose of implementation of the estimated anti-competitive agreement the companies distributed among themselves the Norwegian producers of fish, and later initiated the conclusion of the “Agreement on Strategic Partnership” with them. According to such Agreements the Norwegian producers, except for “exclusive authorized partners,” lost the right to deliver fish for distribution in the territory of the Russian Federation for five years.

Now investigation is not finished. For obtaining more detailed information consultations with representatives of the Competitive Authority of Norway and a number of the Norwegian companies were held.

5. Another sphere which is considered by the FAS Russia to be extremely important for social development and fighting the poverty is pharmaceutical market. Medicines

and drugs are the products which are essential for life saving. Existing of cartels in this market will be even more harmful because it is impossible to replace some drugs which are produced by cartel-member with the other.

The FAS Russia considered one of the most important and much publicized cases in this market. In 2012 the FAS Russia prosecuted two large pharmaceutical companies JSC "R-Pharm" and LLC "Irvin-2" involved in collusive tendering and market allocation to avoid competition and manipulate prices. The Contract amounted 99.899.280. rub (approximately 3,3 bln USD).

After submitting an application to participate in the bidding, JCS "R-Pharm" did not appear on the auction, thus suppressing competition. This situation allowed his rival - LLC "Irwin 2" to win a state contract on the initial (maximum) price. In this case, the FAS Russia found out that after non appearance on the auction JSR "R-Pharm" had sold to the successful bidder necessary products which were the subject of an auction. The Court of the first instance and The Court of Appeal considered that the FAS Russia had not provided direct evidences of collusion, and made decisions not in favor of the FAS Russia. Later The Cassation Court confirmed that such behavior of bidders is a sufficient evidence of the existing of cartel.

The Federal Arbitration Court of Moscow District in its decision of 17.10.2012 pointed out that the actions of the company JCS "R-Pharm" by applying for participation in the auction and its subsequent refusal to take part in the auction, as well as participation in tender between only two large companies are the evidences of the presence of an informal agreement between them aiming at maintaining the contract price. The Appeal court found out that the FAS Russia had come to the reasonable arguments that the actions of JSC "R-Pharm" and LLC "Irvin-2" on this auction were illegal.

This case illustrates that the FAS Russia keeps an eye on the life-essential products which have a direct impact on the social sphere.

Conclusion remarks

Though the FAS Russia is not directly involved into poverty reduction process, *i.e.* it protects competition, and the powers it is vested with do not explicitly stipulate fighting against poverty or carrying out other poverty-related issues; the activity of the FAS Russia, in particular fighting against cartels, has certain impact on creating better social and economic environment for the consumers, and the poor are among

them, and for the economic entities, which through competition might provide the former with better goods at the lowest price, and not abuse their market power and set excessive prices for goods and services necessary for people with relatively small income.

Therefore, the FAS Russia activity is aimed at developing competition, which contributes to the existence of more market players i.e., including, more working places for people. Competition is a driving force of economy and development. Government stimulates economic entities to legitimate fight for consumer who, in its turn, has to make a choice within the available price range (from lowest to highest) but at a reasonable quality, respective of «value for money» approach.