



FEDERAL ANTIMONOPOLY SERVICE

THE ROLE OF ASSOCIATIONS IN ANTI-COMPETITIVE AGREEMENTS. RUSSIAN PRACTICES

**Alexander Velikanov,
Office of the Federal Antimonopoly Service for Volgograd,
The Head of the Monopoly Activity and Trade
Inspection Department**

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ASSOCIATIONS

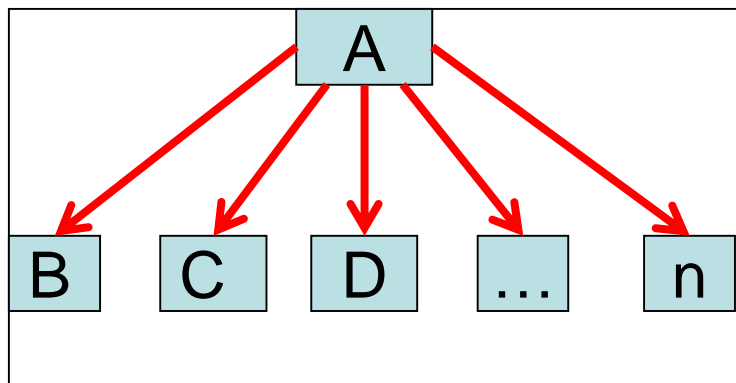
Pursuant to the Russian legislation, association (union) shall be deemed to be a cooperation of legal entities and (or) citizens based on a voluntary membership or, in cases specified by law, a compulsory membership and established for the purposes of representation and protection of common interests, including professional ones, achievement of socially useful objectives and other legitimate and non-commercial objectives. Associations, as non-commercial corporate organizations, stand as subjects of antimonopoly bans set forth by the Russian antimonopoly legislation.

Therewith, interaction between members of association is based on the corporate relations of the association membership (subpara. 4 of art. 65.2, art. 123.11 of the Civil Code of the Russian Federation) and does not arise from agency contract or vertical agreement.

MODELS OF ANTICOMPETITIVE BEHAVIOUR OF ASSOCIATIONS

According to the Russian legislation and law enforcement practice, there are three main models of anticompetitive behaviour of associations:

MODEL №1: Coordination of economic activities of members of association (without anticompetitive agreements emerging between members of association and third parties).



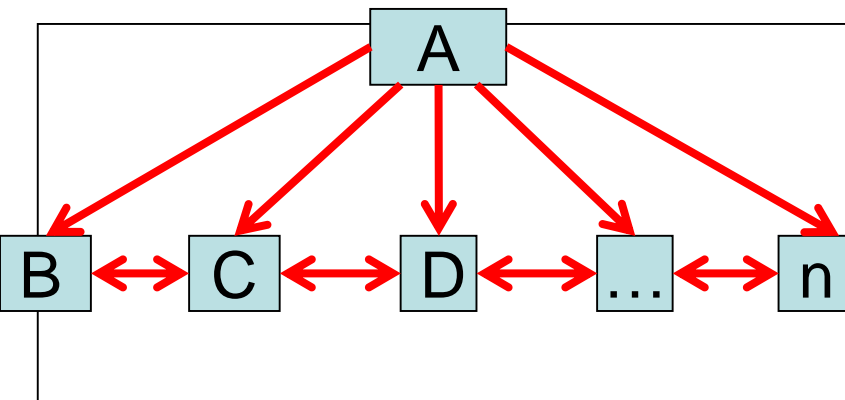
A – Association;
B,C,D,...,n – members of Association



MODELS OF ANTICOMPETITIVE BEHAVIOUR OF ASSOCIATIONS

According to the Russian legislation and law enforcement practice, there are three main models of anticompetitive behaviour of associations:

MODEL №2: Coordination of economic activities of members of association concurrently with emergence of agreements between members of association: on prices, participation in tendering, market sharing, creation of deficit and boycotting.



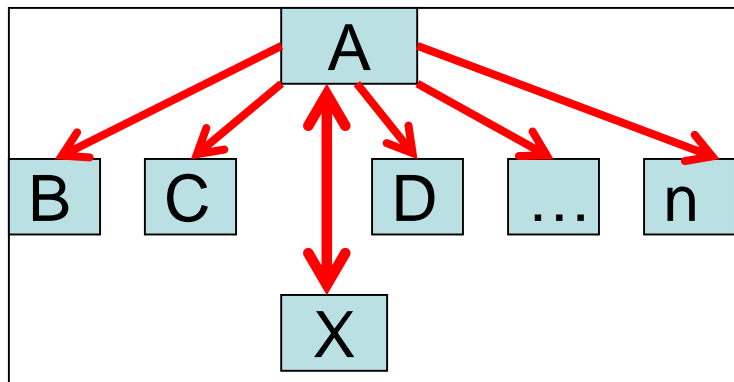
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MODELS OF ANTICOMPETITIVE BEHAVIOUR OF ASSOCIATIONS

According to the Russian legislation and law enforcement practice, there are three main models of anticompetitive behaviour of associations:

MODEL №3: Coordination of economic activities of members of association concurrently with emergence of agreements between members of association and third parties (public authorities or commercial entities).



A – Association;
B,C,D,...,n – members of Association;
X – third party (public authority or commercial entity)



MODELS OF GROUP BEHAVIOUR WITHIN ASSOCIATION

Pursuant to the Nash equilibrium theory, three different models of group behaviour within association can be distinguished:

- 1) **Independent behaviour.** All members of association act independently, their behaviour is not determined by drive to make deals or win customers by means of competitive struggle.
- 2) **Partially coordinated behaviour.** Only some members of association act and compete independently, whereas other members form a coalition (enter into a cartel agreement).
- 3) **Fully coordinated behaviour.** All members of association participate in coalition (cartel agreement) and carry out activities under the agreement.



PECULIARITIES OF PROVING ILLEGAL COORDINATION OF ECONOMIC ACTIVITIES

In general, the means of proving illegal coordination of economic activities are similar to those applicable for exposing anticompetitive agreements (unscheduled inspections, analysis of interconnections, content analysis of short-hand notes and minutes of meetings, content analysis of correspondence, including email, etc.)

The peculiarity of proving illegal coordination of economic activities, according to the Russian legislation, is a necessity to identify harmful repercussions of such coordination.



A common example of “MODEL №1”

A few citizens filed applications denoting evidence of antimonopoly legislation breaches to the Administration of the Federal Antimonopoly Service for the Volgograd region (hereinafter – Volgograd OFAS).

The applicants stated that starting from 2013 all management companies of the city of Volzhsky rejected to perform the functions of municipal services provider in regard to settlements for public utilities, provided under the utilities provision contracts, with utilities providing organizations and switched to the method of direct management of the city housing.



CASE OF MANAGEMENT COMPANIES OF THE CITY OF VOLZHSKY OF THE VOLGOGRAD REGION

In the course of investigation it was found that all management companies, which ceased their activities on management of apartment blocks, were members of the Association “Management and operating organizations in the sphere of housing and public utilities”.

Decisions of the Association were recorded in the minutes of meetings and were signed by the Association’s executives.

Illegal coordination of economic activities of Association in regard to commercial entities-members of Association resulted in renunciation by management companies of functions of municipal services provider in regard to settlements with utilities providing organizations and refusal to enter corresponding contracts.

CASE OF ALCOHOLIC PRODUCTS SUPPLIERS IN THE CITY OF KEMEROVO

A common example of “MODEL №2”

Members of the Alcohol union “Quality guarantee” (hereinafter – “Union”) entered an Agreement on systematization of activities on wholesale trade carried out by organizations-members of Association. All members of Association signed the Agreement.

“Union” illegally coordinated economic activities of its members and exercised control over implementation of anticompetitive agreement concurrently.

Members of the union assumed a commitment:

to fix the lowest price for vodka, produced in other constituents of the Russian Federation, for retail trading organizations in the amount of 75 rubles for a 0,5l bottle;

to maintain the price pattern for alcoholic products, manufactured in the Kemerovo region, in accordance with distribution contracts concluded with suppliers;

not to purchase vodka and other liqueurs and spirits manufactured in the North Caucasus Republics.

The Agreement also established responsibility for non-fulfilment of its conditions in the form of fines and expulsion from the Union.



A common example of “MODEL №3”

Russian pangasius importing companies entered an anticompetitive agreement (cartel) which resulted in fixing prices for pangasius, goods market sharing in regard to volume of sales and purchase of goods, list of vendors and customers.

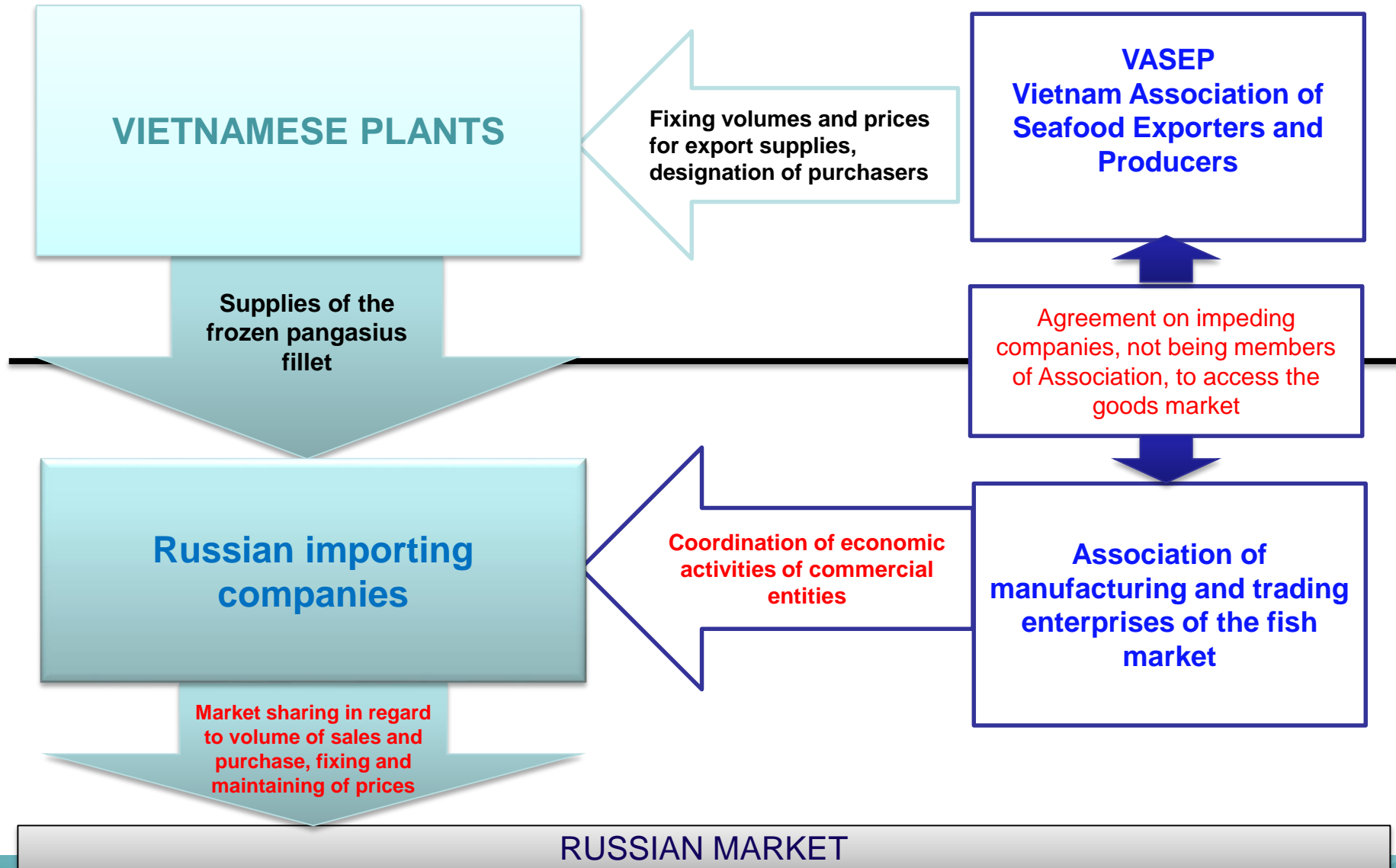
Association of manufacturing and trading enterprises of the fish market coordinated cartel's activities.

In the course of investigation it was found that Association entered an anticompetitive agreement with the Vietnam's administrative committee on export of pangasius to the Russian market. Due to cooperation of the Federal Antimonopoly Service (FAS) of Russia and government authorities of Vietnam realization of the anticompetitive agreement was stopped.

Courts of three instances upheld the decision of FAS of Russia on the pangasius importers' cartel.



SCHEME OF ANTICOMPETITIVE AGREEMENT



THANK YOU FOR YOUR ATTENTION!



www.volgograd.fas.gov.ru



to34@fas.gov.ru



to34-velikanov@fas.gov.ru



anticartel.ru