Antimonopoly control of Economic concentration in the Russian Federation

1. The Russian Federation Legislation

The competition legislation is solely controlled by the Russian Federation. The competition legislation consists of the Russian Federation Constitution, the Russian Law “On Competition and Restrictions of Monopolistic Activities in Commodity Markets” (hereinafter referred to as “the Competition Law”), other federal laws promulgated according to the Competition Law, the Russian Federation President’s Decrees, the Russian Federation Government’s Resolutions and Decrees, the Federal Antimonopoly Service’s Resolutions.

2. Control Authorities, Main Objectives and Goals

The Russian Federal Antimonopoly Service with its territorial authorities is the government body to control economic concentration in the Russian Federation. The government control of economic concentration is one of the most efficient tools to affect directly the market structure, development and performance, and the status of particular entities of economic relations in the markets. The goal of the state antimonopoly control is not to value the transactors’ relations but to assess the transactions impact on competition in the commodity market. The antimonopoly control prevents from establishing large monopolies and negative consequences relating to competition which can be caused by monopolies’ operations in the internal Russian markets. At the same time antimonopoly authorities do not constitute barriers for economically sound enhancing of Russian enterprises.

3. Classification of Mergers

Analyzing cases of business units’ mergers one can divide transactions into three categories depending on the relations between combining companies with respect to competition:

**Horizontal Merger**
- One business unit merges with (acquires) another business unit producing and/or selling similar or replaceable goods (services) in the same region, and, thus, reduces or eliminates competition.

**Vertical Merger**
- One business unit merges with (acquires) a customer or a supplier (vendor).

**Conglomerate Merger**
- other types of mergers, a combination of horizontal and vertical mergers;
- combining business units operate in unrelated businesses (e.g. a shoe factory purchases a gas (petrol) station);
- combining of two business units which manufacture similar products in non-overlapping geographical areas, i.e. the purchaser manufactures the same kind of products as the acquired company but in a different region (e.g. a cement plant in Moscow and a cement plant in Saint-Petersburg).
- merger of business units functionally connected with respect to production line, i.e. business units manufacture products using a similar technology.

**Subjects of Control**

The competition legislation of the Russian Federation currently in force controls the following types of economic concentration:

1. **New Enterprise Establishing**

   In the Russian Federation the establishing of a new business unit is controlled regardless of how many founders are involved. A new enterprise establishing is considered “a consolidation” provided that its founders who operated before as competitors in one commodity market transfer production capacities required for manufacturing of interchangeable products to a new business unit which was established with their participation, and they discontinue manufacturing the indicated products.

2. **For-Profit Organisations merger**

   For-profit organisations merger is defined in the Civil Code of the Russian Federation as a reorganisation of legal entities when their rights and obligations are transferred to a new legal entity according to the transfer balance.

3. **Merger Non-Profit Organisations (Associations, Unions, Non-Profit Partnerships)**

   A merger of non-profit organisations (associations, unions, non-profit partnerships) is defined in the Civil Code of the Russian Federation as a reorganisation of legal entities when their rights and obligations are transferred to a new legal entity according to the transfer balance.

4. **Affiliation of For-Profit Organisations to another one** – reorganisation of legal entities when rights and obligations of the acquired legal entity are transferred to the acquiring legal entity according to the transfer balance.

5. **Acquisition of voting stocks (shares) in the business unit charter capital by a person** when such a person is entitled to dispose of 20 % of the indicated stocks (shares).

6. **Transfer into ownership, use or possession of the plant or intangible assets of one business unit to another business unit**, provided that the book value of the property which is a transaction item (associated transactions item) exceeds 10% of the book value of the plant or intangible assets of the business unit alienating or transferring the property.

7. **Interlock - acquisition of rights by a person** which enable them to determine conditions for the business unit’s activities or to function as its executive body, i.e. the same physical bodies are involved in executive bodies, Boards (Supervisory Boards) of two and more business units.

3. **Merger Consequences**

   Relying on the analysis of the documents and data received and other information available, the antimonopoly authority values a transaction against enhancing economic concentration of the commodity market (enhancing of a dominant position in the commodity market of the business unit/business units involved in the transaction) at the moment of the transaction settlement as
well as a possible impact of this transaction henceforth on the economic concentration, competition, and commodities circulation in the market.

Mergers can have both advantages and disadvantages.

Disadvantages.

Mergers are likely to reduce and eventually eliminate market competition. Mergers of direct competitors may result either in:
- a dominant position of one business unit in the market
- or in increasing possibility that the rest of the business units will openly or secretly coordinate their decisions pertaining to price setting or turnout.

Advantages.

1) a merger may result in application of the most progressive management and technical experience in underexploited production capacities;
2) a merger may result in scale economies which help to reduce production costs, improve products quality, and encourage efficiency;
3) a chance of a possible merger encourages the managers to work more efficiently competing for further appointments;
4) a merger can also give a possibility to an entrepreneur to sell the enterprise to somebody who knows this type of production, therefore, who will get a more favourable position in the market after extending his or her market share and reducing the number of competitors. This purchaser is likely to pay a higher price for the company. A possibility of the advantageous sale encourages entrepreneurs to establish new enterprises stimulating competition, facilitating entry to the market and withdrawal from the market.
5) a merger can be unhazardous for competition when merging enterprises are quite small or when the relevant markets are economically interesting and accessible for new business units.

Since transactions relating to economic concentration pose or can pose a threat to competition and result or can result in the market monopolization the Competition Law provides different procedures and terms of submitting the relevant petitions and notifications of transactions to the antimonopoly authority depending on how much state and public interest are jeopardized.

Criteria of Risk Determination for Competition

When considering mergers, particularly horizontal ones, the antimonopoly authorities apply the following criteria of risk determination for competition to find out:
1) if a merger will result in considerable enhancing of market concentration or creating a concentrated market;
2) if there are any reasons to think that a merger can negatively affect competition (if a merger can create, enhance market power or facilitate its exercise);
3) if new business units can promptly appear in the market to prevent anticompetitive practice;
4) if a merger can become a factor of efficiency increase which could not be achieved by combining enterprises in any other way;
5) a chance of any transaction parties to go bankrupt and lose its assets for the market in case the merger is prohibited and not carried out.

Control Tools
The Competition Law and the Russian Federal Antimonopoly Service’s Order specified a procedure, terms and a list of documents and materials to be submitted by a business unit along with the petition (notification) when executing a transaction, subject to the state antimonopoly control.

These documents are:
1. Petition (notification)
2. Charter of a business unit
3. Partnership agreement
4. The latest balance sheet
5. The State registration certificate of a business unit
6. The payment document of the state duty
7. License

and other documents.

The state duty of RUB 10,000 (USD 330) for consideration of petitions provided for by the competitive legislation is charged to the federal budget of the Russian Federation.

1. Preliminary Control

Provided that the gross book value of assets according to the latest balance sheet exceeds 30 million of minimum monthly wages the following transactions can be executed if agreed by the antimonopoly authority:

- for-profit organisations merger;
- acquisition of voting stocks (shares) in the business unit charter capital by a person (a group of persons);
- transfer into ownership, use or possession of the plant or intangible assets of one business unit (a group of persons) to another business unit;
- interlock-acquisition

In order to execute transactions the parties are to submit a petition to approve the transaction execution and give the information required by the legislation.

The minimum monthly wages is 100 RUB (that is 3.5 USD).

2. Follow-Up Control (After-Transaction Control)

Within 45 days after the state registration the founders (participants) (one of the founders, participants) are to notify the antimonopoly authority of:

- non-profit organisations establishing and merger provided there are more two for-profit organisations in the membership of non-profit organizations;
- change in membership of non-profit organisations provided there are more two for-profit organisations in the membership of non-profit organizations;
- for-profit organisations establishing provided that the gross book value of the founders’ (participants’) assets according to the latest balance sheet exceeds 2 million of minimum monthly wages;
- for-profit organisations consolidation and merger provided that the gross book value of their assets according to the latest balance sheet exceeds 2 million of minimum monthly wages

Insignificant transactions which pose no serious threat to national and public interests are not controlled by the state antimonopoly authority. This applies to transactions of persons (group of persons) when the gross book value of assets according to the latest balance sheet does not exceed:

- 30 million of minimum monthly wages stipulated by the federal law upon consolidation and merger of for-profit organisations;
- 2 million of minimum monthly wages stipulated by the federal law upon establishing, consolidation, and merger of for-profit organisations;
- 30 million of minimum monthly wages stipulated by the federal law upon acquisition of stocks (shares), transfer into ownership, use or possession of the plant or intangible assets, acquisition of rights to determine conditions for the business unit's activities;
- 2 million of minimum monthly wages stipulated by the federal law if physical bodies are elected in the Supervisory Boards.

**Measures of control**

1. **Administrative measures**
   In case of failure to voluntarily discharge the liability provided for by the Competition Law, tentatively or after the transaction execution, a business unit violates the administrative procedure stipulated by the regulatory legal acts. Failure to comply with the requirements specified by the competitive legislation to receive the antimonopoly authority's approval to execute transactions pertaining to economic concentration results in imposition of an administrative penalty regardless of whatever impact this failure may have on the competition in the commodity market.

   The Code of the Russian Federation regulating administrative offences imposes a penalty for:
   - failure to submit petitions if it is required by the competitive legislation;
   - submission of petitions containing inadequate information deliberately provided;
   - failure to comply with the requirements for petition submission stipulated by the competitive legislation;
   - failure to submit the petition prior to the deadline stipulated by the competitive legislation.

   Being liable for administrative offences guilty persons are not released from the responsibility to submit a petition (notification) to be considered or perform other actions provided for by the competitive legislation.

   The penalty amount totals:
   - from RUB 1,500 to RUB 2,500 for physical bodies;
   - from RUB 3,000 to RUB 5,000 for officials;
   - from RUB 100,000 to RUB 500,000 (from USD 3,600 to USD 17,850) for legal entities.

2. **Antimonopoly Measures**
   Regarding to preliminary petitions as well as notifications on transaction execution the Russian Federal Antimonopoly Service can oblige the founders (participants) of a for-profit or non-profit organisation, persons and authorities which made the respective decision to carry out specific actions or observe conditions to ensure competition if the actions can result or resulted in restraint of competition.

   Failure to execute the antimonopoly authority’s resolutions and orders gives grounds to void a respective transaction at the suit of the antimonopoly authority.

   The antimonopoly authority has the right to bring an action before the court of arbitration for annulment of a transaction provided that the transactions execution failed to comply with the procedure requirements stipulated by the legislation and they result in constraint of competition which can be caused by acquiring or enhancing a dominant position.

   In conclusion, the main objective of the antimonopoly authority when controlling economic concentration in Russia is to accurately determine types of economic concentration which are injurious to the public and can have a negative impact on a particular economic sector, region as well as the national economy on the whole.