Russia

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1 General

1.1 Please identify the scope of claims that may be brought in Russia for breach of competition law.

A number of publicly enforced competition cases substantially prevails in Russia over private enforcement litigation. In practice, competition law issues are mostly handled by the Federal Antimonopoly Service ("FAS"), which is empowered to initiate and conduct antitrust investigations.

Where the FAS finds that an infringement has been committed, it can issue a decision ordering an undertaking to end the infringement, it may impose behavioural remedies (to rescind, amend or to conclude a contract, for example), and/or an administrative fine. However the competition authority in Russia cannot grant an injured party civil remedies; for example, recognise an agreement as null and void or award damages for breach of competition law rules.

At the same time, competition rules can be enforced directly and an undertaking or individual who has suffered as a result of a breach of competition law rules can file a stand-alone action without a prior administrative proceeding in the FAS or a follow-on action. The Supreme Arbitrazh Court of the Russian Federation clarified this issue (Section 20 of Decision of the Plenum of the Supreme Arbitrazh Court of the Russian Federation of 30.06.2008 №30).

However, currently, the vast majority of competition cases lodged before national courts are claims of undertakings seeking the annulment of decisions and remedies imposed by the FAS.

The scope of claims for breach of competition law is defined in the Competition Law (Federal Law № 135-FZ of 26.07.2006 "On the Protection of Competition") and the Civil Code (Civil Code of the Russian Federation (part one) № 51-FZ of 30.11.1994). Similarly to other jurisdictions, Russian competition law prohibits the following actions:

- abuse of dominant position (article 10 of the Competition Law);
- cartels and other restrictive agreements, concerted practices and coordination of economic activity (article 11 and 11.1 of the Competition Law);
- unfair competition (article 14 of the Competition Law); and
- restriction of competition during tendering procedures (article 17 of the Competition Law).

Article 37 of the Competition Law specifically provides that a person whose rights were infringed as a result of a breach of competition law rules is entitled to redress including to bring actions for damages. The general rules on civil remedies that are defined in the Civil Code shall be applied in competition litigation. Thus Russian courts have the power to grant an aggrieved party the following remedies:

- termination of anticompetitive behaviour (cease and desist order);
- recognition of restrictive agreements null and void and applying consequences of invalidity;
- recovery of damages; and
- specific performance including an order to amend an agreement.

1.2 What is the legal basis for bringing an action for breach of competition law?

The legal basis for bringing an action for breach of competition law is the Competition Law and Civil Code as described above.

1.3 Is the legal basis for competition law claims derived from international, national or regional law?

The legal basis for competition law claims is derived from the national law enacted on a federal level.

1.4 Are there specialist courts in Russia to which competition law cases are assigned?

There are no specialist courts in Russia to which competition claims are assigned. The arbitrazh courts (state commercial courts) consider competition claims brought by the undertakings. Individuals who do not carry out an economic activity can bring competition claims in the courts of general jurisdiction. The Court on Intellectual Property Rights has a jurisdiction in respect of unfair competition cases.

1.5 Who has standing to bring an action for breach of competition law and what are the available mechanisms for multiple claimants? For instance, is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?

Any undertaking or individual whose rights were infringed as a result of a breach of competition rules has a legal standing to bring an action for breach of competition law rules. The FAS has legal standing in claims seeking an annulment of restrictive agreements and enforcement of its decisions and remedies. Moreover the FAS

has legal standing in private enforcement claims as well. Its procedural status in private litigation may vary from case to case.

Collective claims were introduced into the Russian legal system by amendments to the Arbitrazh Procedural Code in 2009. A prerequisite for bringing a collective claim is a connection of all parties of the claim with one legal relation.

Collective claims are rather underdeveloped in Russia.

1.6 What jurisdictional factors will determine whether a court is entitled to take on a competition law claim?

In defining the court competent to adjudicate a competition claim, general rules on jurisdiction are to be applied. According to the Arbitrazh Procedural Code and the Civil Procedural Code a claim for breach of competition law rules can be brought in the court where the defendant is registered (if the defendant is a legal entity) or resides (if the defendant is an individual).

1.7 Does Russia have a reputation for attracting claimants or, on the contrary, defendant applications to seize jurisdiction and if so, why?

Private enforcement is underdeveloped in Russia and therefore Russia does not have a reputation for attracting claimants.

1.8 Is the judicial process adversarial or inquisitorial?

The judicial process in Russia is adversarial. On the contrary, the administrative procedure in the FAS is inquisitorial and the commission of the FAS during competition investigations acts both as a "prosecutor" and a "judge".

2 Interim Remedies

2.1 Are interim remedies available in competition law cases?

There are no specific rules on interim remedies to be provided in competition litigation. General rules on interim remedies provided in the Arbitrazh Procedural Code and Civil Procedural Code are to be applied in this respect.

2.2 What interim remedies are available and under what conditions will a court grant them?

A court may grant interim remedies at any stage of the judicial procedure if it finds that failure to grant interim remedies will lead to difficulties in the execution of the judicial decision or will cause the claimant substantial damages. The list of available interim remedies is provided in the Arbitrazh Procedural Code and the Civil Procedural Code but it is not exhaustive. Thus the court may, for example, freeze the assets of the defendant or prohibit the defendant from carrying out particular actions or grant other measures it finds fit.

3 Final Remedies

3.1 Please identify the final remedies which may be available and describe in each case the tests which a court will apply in deciding whether to grant such a remedy.

Damages, the recognition of restrictive agreements null and void, the application of consequences of invalidity of restrictive agreements, and an order to conclude (to amend) an agreement are the most common remedies in private competition litigation.

In order the recover damages, the claimant has to prove illegal the act (restriction of competition), the amount of suffered damages, and a causal link between the illegal act and the damages suffered. The burden of proof lies upon the claimant.

With regard to the claims seeking the invalidity of restrictive agreements, it is the violation of the provisions of the Competition Law that should be proved.

In claims related to entering or modifying agreements, the claimant has to prove the legal obligation of the defendant to enter into (or to modify) the agreement (it is the most common remedy in abuse of dominance cases).

3.2 If damages are an available remedy, on what bases can a court determine the amount of the award? Are exemplary damages available?

Damages are an available remedy in competition litigation. In pursuing the provisions of the Civil Code an aggrieved party may only recover actual damage and lost profit and the amount of damages has to be proved by the claimant. In accordance with the provisions of the Civil Code, a judge at his/her own discretion may mitigate the amount of the award (article 333 of the Civil Code). Exemplary damages are not available.

3.3 Are fines imposed by competition authorities taken into account by the court when calculating the award?

Fines imposed by the competition authorities are not taken into account by the court when calculating the award. In accordance with the Administrative Code (Article 3.5, article 14.31-14.33 of Administrative Code) the amount of an administrative fine to be imposed upon an undertaking in breach of the Competition Law is calculated on the basis of turnover on the market where the infringement occurred. On the contrary the award is not punitive in nature. As was stated earlier, an aggrieved party may only recover the actual damage and lost profits and the amount of damages has to be proved by a claimant.

4 Evidence

4.1 What is the standard of proof?

A court evaluates the evidence in accordance with its own convictions based on a full, impartial and immediate examination of the evidence. No evidence has predetermined value.

4.2 Who bears the evidential burden of proof?

The burden of proof lies upon a claimant.

4.3 Are there limitations on the forms of evidence which may be put forward by either side? Is expert evidence accepted by the courts?

There are no limitations on the forms of evidence which may be put forward by the parties of judicial proceedings. Generally, expert evidence is accepted by the court.

4.4 What are the rules on disclosure? What, if any, documents can be obtained: (i) before proceedings have begun; (ii) during proceedings from the other party; and (iii) from third parties (including competition authorities)?

The concept of pre-trial disclosure is unknown in the Russian legal system. In accordance with the Arbitrazh Procedural Code and the Civil Procedural Code, a court may –upon the motion of any party– request evidence if a party to a judicial proceeding cannot obtain evidence independently. The motion to request evidence should identify the evidence, provide information regarding the facts it supports and reasons why evidence could not have been obtained independently.

4.5 Can witnesses be forced to appear? To what extent, if any, is cross-examination of witnesses possible?

A court may order a witness to appear in court. Failure to fulfil this obligation by the witness may result in bringing the latter to court by the bailiff and the imposition of a judicial fine for contempt of the court. Cross-examination in the way it exists in the Anglo-American system is not possible in Russian courts. However attorneys of the claimant and defendant can pose the questions to the hostile witnesses during the court proceeding.

4.6 Does an infringement decision by a national or international competition authority, or an authority from another country, have probative value as to liability and enable claimants to pursue follow-on claims for damages in the courts?

An infringement decision by national or international competition authority or an authority from another country does not have probative value as to liability of the defendant in a follow-on action. However, the findings of the competition authority as well as documents collected during antitrust investigations can be used in a follow-on action.

In practice, the FAS's infringement decisions are subject to judicial appeal. The judicial decision confirming the findings of the competition authority is *res judicata* for follow-on litigations.

4.7 How would courts deal with issues of commercial confidentiality that may arise in competition proceedings?

Currently, the legislation does not define how the courts should deal with confidential information that may arise in competition proceedings.

4.8 Is there provision for the national competition authority in Russia (and/or the European Commission, in EU Member States) to express its views or analysis in relation to the case? If so, how common is it for the competition authority (or European Commission) to do so?

The FAS has legal standing in private enforcement claims and it may express its views or analysis in respect of the case. Its procedural status in private litigation may vary from case to case.

5 Justification / Defences

5.1 Is a defence of justification/public interest available?

The public interest defence is not available in competition litigation.

5.2 Is the "passing on defence" available and do indirect purchasers have legal standing to sue?

Neither the currently effective Russian legislation nor case law regulates the issue of the "passing on defence". However it seems that it is highly unlikely that an indirect purchaser could have a legal standing in competition cases.

6 Timing

6.1 Is there a limitation period for bringing a claim for breach of competition law, and if so how long is it and when does it start to run?

A limitation period for brining a claim is three years. The term starts to run from the date when a person has learnt or should have learnt that his/her rights had been infringed and not from the date of the FAS's respective decision.

6.2 Broadly speaking, how long does a typical breach of competition law claim take to bring to trial and final judgment? Is it possible to expedite proceedings?

It usually takes from one to two months to prepare the case to bring to trial and around one to one-and-a-half years to final judgment (all three judicial instances).

7 Settlement

7.1 Do parties require the permission of the court to discontinue breach of competition law claims (for example if a settlement is reached)?

According to the procedural rules, parties can discontinue a trial and settle the case at any stage of the judicial procedure. In the Russian legal system a settlement agreement is subject to the court's affirmation. The court may refuse to affirm the settlement agreement if it is unlawful or infringes rights and legitimate interests of third parties.

8 Costs

8.1 Can the claimant/defendant recover its legal costs from the unsuccessful party?

A claimant/defendant can recover their legal costs from the unsuccessful party (including attorneys' fees) as long as the claimant/defendant can support, by the documents, the costs incurred in the result of litigation. However the legal costs can be mitigated by the court at its discretion. In practice exorbitant attorney's legal fees cannot be recovered in their full amount.

8.2 Are lawyers permitted to act on a contingency fee basis?

Lawyers are not permitted to act on a contingency fee basis.

8.3 Is third party funding of competition law claims permitted? If so, has this option been used in many cases to date?

Third party funding is not prohibited but it is not common in practice.

9 Appeal

9.1 Can decisions of the court be appealed?

The decision of the arbitrazh court of first instance is subject to the judicial appeal in the appellate arbitrazh court and arbitrazh court of cassation.

10 Leniency

10.1 Is leniency offered by a national competition authority in Russia? If so, is (a) a successful and (b) an unsuccessful applicant for leniency given immunity from civil claims?

Article 14.32 of the Administrative Code (Code of Administrative Offences of the Russian Federation №195-FZ of 30.12.2001) offers a leniency programme for the parties of the anticompetitive agreements. According to the said provisions of the Administrative Code the first undertaking that discloses information to the FAS regarding anticompetitive agreements and provides sufficient proof of it, enjoys immunity from the FAS's prosecution and the imposition of administrative fines for the violation of competition law rules.

Article 178 of the Criminal Code (Criminal Code of the Russian Federation № 63-FZ of 13.06.1996) sets out similar leniency rules and provides immunity from criminal prosecution to individuals who assisted prosecution in solving of the crime and mitigated the harm caused by the infringement of competition law.

However leniency applicants are not given immunity from the civil claims in follow-on actions.

10.2 Is (a) a successful and (b) an unsuccessful applicant for leniency permitted to withhold evidence disclosed by it when obtaining leniency in any subsequent court proceedings?

Currently the Russian legislation does not protect the interests of leniency applicants in the subsequent follow-on court proceedings and all the documents that were submitted to the FAS within a leniency procedure can be requested by the court from the FAS or the defendant upon the reasoned motion of the claimant.

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Artem Kukin is a partner at Yust Law Firm and a member of Moscow Bar. He holds the degree of Doctor of Law. Artem Kukin successfully represents the interests of clients in respect of mergers and acquisitions carried out in the gas and petroleum processing industries, ferrous and non-ferrous metallurgical industries, property investment, chain retailing, dockside operations and investment into agro-industrial assets, etc. He is recommended in the publication *European Legal Experts* as an expert in corporate law, mergers and acquisitions (M&A transactions) and in the field of litigation. He is also a *Who's Who Legal* nominee. Artem Kukin has participated in the development of a series of programmes and projects involving the government of the City of Moscow and the International Bank for Reconstruction and Development (including the structural reform of companies operating in the oil and gas sector) and has made a consultative contribution to the drafting of such legislation as the reform of the power generating industry, advocacy, the state registration of legal entities, etc.

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Radmila Nikitina is an acting head of the Competition Law Group and a member of the Competition Support Association. She has extensive experience in advising clients on various aspects of Russian competition law including restrictive agreements and concerted practices, abuse of dominant position, unfair competition, clearance of M&A transactions, compliance with strategic investment, and public procurement law. She represents clients' interests in administrative proceedings before Federal Antimonopoly Service and in litigation in arbitrazh courts on competition law matters.

YUST
LAW FIRM

Yust is a full-service law firm. It was founded in 1992 and has stayed among the leaders of the Russian legal market for over 20 years. Our team comprises about 70 attorneys and associates based in the Moscow, Kiev and Donetsk offices.

Yust's Competition Group is one of Russia's leading competition practices. It has an outstanding reputation for providing high quality advice and achieving successful outcomes for clients engaged in a full range of matters, including antitrust investigations, litigation and mergers. *Chambers Europe*, *Global Competition Review*, and *Best Lawyers* has consistently rated Yust's competition group as one of the leading Russian competition practices. *Chambers Europe 2013* wrote about Yust that: "*this strong Russian office is well known for its outstanding work in antitrust litigation*".

Lawyers of the Competition Group are members the Expert Council of the RF Federal Antimonopoly Service and Competition Support Association. They cooperate closely with the Federal Antimonopoly Service in drafting laws amending the currently effective competition legislation.