

Legal ensuring competitiveness of subjects of small and medium business in the age of digitalisation

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Abstract— The article analyses the factors affecting the increase in the competitiveness of small and medium-sized businesses from the perspective of their legal regulation in the era of digitalisation of the economy. The study points out the importance of developing small and medium-sized businesses in the interests of the national economy. The complex of the problems which are negatively affecting on development of small and medium business comes to light. The systematisation of the allocated problematic issues as a result of which three primary groups of the existing problems are allocated is carried out. Each group, in terms of a possible change of legal regulation, is investigated. It is a specified set of the measures allowing to solve economic, administrative and legal problems. The need for a change of the mechanism of legal regulation of the relations with the participation of small and medium business is proved. It is indicated the need for entering into the legislation of such legal categories as the smart contract and the electronic transaction. The need for a change of legal regulation of electronic platforms of trade with the participation of the aggregator is proved; the thesis about the need for a change of conditions of responsibility of the aggregator is proved. The main vectors of development of the legislation allowing to solve in the long term problems of improving the competitiveness of subjects of small and medium business are formulated.

Keywords— *smart contract; competitiveness; aggregator; electronic transaction; small and medium business; digitalisation; economy; mechanism of legal regulation.*

I. INTRODUCTION

One of the main directions of development of small and medium business is an increase in their competitiveness where a method of such change is the introduction and extensive use of telecommunication technologies acts. Process of digitalisation changes the structural elements of the economy folding over the years. Moreover, the essence of the economic relations remains the same; many institutes lose their importance, opening the road to others, earlier, hidden parts.

The economic relations, which are one of the central and integral parts of society, move to a new level of digitalisation and actively replace traditional forms of interaction of subjects, including small and medium

business. The efficiency of different types of production is defined by a possibility of reduction of time of an exit of goods directly in commodity turnover, general availability of the electronic market that leads to attraction of diverse and more extensive circle of participants of the process, and, therefore, the flexibility of production increases. As a result, a fully developed digital economic system will allow increasing competitiveness aside from subjects of small and medium business but also large industrial production.

In the same time, the problem of a discrepancy of the legislation to new economic realities comes to the forefront. Development of digital economy consistently attracts the formation of the new principles, definitions, rules of conduct of entrepreneur, which need to be reflected in rules of law. It is undoubted, that the radical change of information infrastructure has to be provided with the latest legal regulation.

It is also necessary to note, the rapid growth of the digital technologies defining the structure of new digital world economy leads to a cardinal change of trend of supply and demand of goods and services, and with need attracts change of legal status of an entrepreneur of small and medium business working at this market. So as a result, it demands the development of the new legal funds allocated for the creation of the most optimal conditions of the development of competitiveness of subjects of small and medium business.

Important point for development of small and medium business and increase a level of ability to compete is the formation of cybersecurity, especially in the field of the bank, industrial and state relations; cross-border cooperation as interaction of platforms (aggregators) trade online; creation of the digital aggregators allowing to synchronise the civil relations; digitalisation of public services, in the form of creation of IT platforms for simpler and convenient access for natural and legal entities to data on the public and municipal services [1]. Such development demands favourable settlement at the legislative level.

Improving the competitiveness of subjects of small and medium business also is in direct dependence on a number of the interconnected factors which can conditionally be

divided into three groups. The first group is a legal improvement regulation of the economic relations as which subjects' representatives of the small and medium business act. The second is the development of the system of preferences. The third group is the introduction of educational programs, allowing to create digital competencies that also demands necessary legal support. Thus, the complex of the interconnected problems of economic and legal character, generates need of carrying out the research directed to elaboration of approaches to formation of the new mechanism of the legal regulation which is adequately reflecting the latest economic relations in digital economy and aimed at the development of competitiveness of subjects of small and medium business

II. MATERIALS AND METHODS (MODEL)

Important point for development of small and medium business and increase in its level competitiveness of ability is the formation of cybersecurity, especially in the field of the bank, industrial and state relations; cross-border cooperation as interaction of platforms (aggregators) trade online; creation of the digital aggregators allowing to synchronise the civil relations; digitalisation of public services, in the form of creation of IT platforms for simpler and convenient access for natural and legal entities to data on the public and municipal services. Such development demands favourable settlement at the legislative level.

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The fundamental normative legal acts, which formed an empirical basis for carrying out the scientific analysis and allowing to achieve the research objective directed to the solution of a complex of the problems connected with increase in level of competitiveness of subjects of small and medium business during a digitalisation era became the Presidential decree of the Russian Federation of May 09, 2017 No. 203 "About the Development strategy of information society in the Russian Federation for 2017-2030" and the "Digital Economy of the Russian Federation" program. For the solution of the questions connected with improving competitiveness of subjects of small and medium business are investigated: Civil Code of the Russian Federation, Federal law of July 24, 2007 No. 209-FL "About development of small and average business in the Russian Federation"; Federal Law draft No. 419090-7 "About alternative ways attraction of investments (crowdfunding)". For development of the recommendations

submitted on digitalisation of business processes of subjects of small and average business are investigated the bill Federal Law No. 419059-7 "About digital financial assets" (the edition accepted by the State Duma of Federal Assembly of the Russian Federation in the first reading on May 22, 2018); accepted by the State Duma of the Russian Federation on March 12, 2019. Federal law "About Modification of Parts the First, Second and Article 1124 Parts of the Third of the Civil Code of the Russian Federation", et al.

The international acts, such as Convention of the UN "About Use of Electronic Messages in International Treaties" became an important component when carrying out a research (It is concluded in New York in 23.11.2005); The Model law of UNCITRAL about electronic trading (It is accepted in New York in 28.05.1996 - 14.06.1996 at the 29th session of UNCITRAL) and others.

The theoretical basis of the research was made by works of the scientists who devoted the works to a research of a concept and the legal nature of smart contracts, in particular, of D. I. Skvortsov [2], N. Szabo [3], A. I. Saveliev [4], S. Amual, J. N. Dewey, J. Seul [5]; electronic transactions of H. Rosler [6], S. Squires [7]; to creation of electronic platforms of trade and activity of aggregators A.A. Ivanov [8], D.E. Rauch, D. Schleicher [9], A. E. Molotnikov, E.V. Arkhipov [10], A. I. Bychkov [11].

Methodological base of the research made the logical method which caused the application of induction, deduction, the analysis and synthesis; the technical and legal method which is defined as the interpretation of rules of law and legal modelling. In the analysis of the arising legal relationship, the system approach which is a general scientific method of knowledge was used.

III. RESULTS AND DISCUSSION

The legal basis for the establishment of interrelations and functioning is necessary for the process of involvement of subjects of small and medium business in an economy with the use of means of digitalisation. The legal regime which will provide favourable development and formation of participation of subjects of small and medium business in an economy with the use of information and telecommunication technologies acts as this basis. Formation of the specified legal regime is demanded by creation of new regulatory base, by a change of the main codified normative legal acts and create new, the addition of the existing acts.

The digitalisation of the civil relations with participation of small and medium business allows to increase the competitiveness of subjects of entrepreneurial activity, will lead to economic growth by an increase in the availability of goods and services. However, increase in the growth rate of development of digital economy requires the adoption of acts which directly designated the measures applied by the state for the creation of legal bases of the optimum mode allowing subjects of entrepreneurial activity to enter freely economic, legal relationship with the use of digital technologies. At the same time, the most effective method for the increase in interest of subjects of the civil relations in acceptance of systems of digitalisation and their active use

is the method of application of various encouragement, but not establishments of unlimited sanctions.

In the last three years, the legislation governing the relations connected with information and communication technologies develops enough in high gear. The fundamental role in legal regulation of the arising legal relationship belongs to the Presidential decree of the Russian Federation of May 09, 2017 No. 203 "About the Development strategy of information society in the Russian Federation for 2017-2030" in which the purposes and problems of creation of the new legal means necessary for the development of communication and information society are formulated. For the performance of the decree, the "Digital Economy of the Russian Federation" program is developed and approved. In development of the provisions designated in the program drafts of laws Federal Laws No. 419059-7 "About digital financial assets" are developed (the edition accepted by the State Duma of Federal Assembly of the Russian Federation in the I reading on May 22, 2018); Federal Law draft No. 419090-7 "About alternative ways attraction of investments (crowdfunding)", changes are made to the Civil Code of the Russian Federation, the Federal law No. 34-FL adopted by the State Duma of the Russian Federation on March 12, 2019, is signed by the Russian President. "About modification of parts the first, second and article 1124 parts of the third of the Civil code of the Russian Federation", entering new legal category – the digital right. However, despite such active development, in the Russian Federation as the main statutory act governing the relations of small and medium business the Federal law of July 24, 2007 No. 209-FL "About development of small and average business in the Russian Federation". Which, unfortunately, does not contain bases of legal regulation of participation of these subjects of business in the global trade turnover with the use of digital technologies acts.

The regulations, which are effectively governing the digital relations with participation of subjects of an entrepreneurial activity act on the international level. In particular, the Convention of the UN on the use of electronic messages in international treaties of 2005 [12] is directed to use of digital technologies in international trade. "The model law of UNCITRAL on electronic trading" [13] contains recommendatory provisions and the fundamental principles of international trade in the sphere of information-telecommunication messages. The analysis of the application of the international acts, at regulation by a legal relationship with the participation of representatives of the Russian small-medium business, two system problems allow revealing. The first is connected about lack of ratification of some normative legal acts by the Russian Federation; the second – gaps which create problems as introductions in the civil circulation of the Russian subjects of small and medium business, and violations of their rights have the international relations of conflict regulation. Therefore, for the protection of the Russian companies participating in the international commercial turnover, it is necessary to systematise already available international standards, to ratify them.

For the elaboration of the general strategy of legal regulation improving the competitiveness of subjects of small and medium business during an era of digitalisation

needs to be allocated a complex of the problems interfering the solution of the set national objective which needs to be divided into three views: economic, administrative and legal.

It is necessary to carry to economic problems: the existence of high customs duties and transportation tariffs; the overestimated requirements to certification; limited delivery time et al. The Russian economy in the majority are aimed at providing advantages of a large business. Requirements for small and medium business are not satisfied. The reason for such situation inefficient public policy and the insufficient amount of financing of development programs of small and medium business seems. On statistical data small business in Russia generally performs mediatorial functions between the foreign producer and the Russian buyer, thereby increasing the level of economic development of the countries of the producer [14]. The solution of the specified problem requires the establishment of privileges for delivery of goods of small and medium business; decrease in customs duties; introduction of a system of adequate supervision of regulation of tariffs; realisation and investment projects; abolition of monopolies.

Administrative problems of participation of small and medium business in a property turn are connected with redundancy of control functions of the state in this sphere. Of course, there is no need to speak about the full cancellation of control of the small and medium business by public authorities. However, the existing system shows inefficiency. Small business does not develop and often does not survive because of the obligatory standards established by the legislation. For example, the lack of profit at the small enterprise in the first quarter leads to restriction of the use of the bank account and also conducting cameral tax audit [15] that is the first step to the insolvency of such businessman. The numerous reporting and disproportionate to the income of small business penalties, lack of real state privileges are the reason of the inability of the small and medium business to compete not only with the foreign enterprises but also with internal subjects. Solutions of the specified problems are the elimination of redundancy of ministerial procedures, carrying out from digitalisation. Establishment and realisation of telecommunication, electronic systems of necessary documents and coordination of small and medium business, necessary for the registration, is a priority. Establishing useful feedback in the relationship between the state and subjects of small business is necessary.

Legal problems, with the lack of legal regulation of the arising legal relationship, or existence of old rules, do not allow to govern changed the economic relations. In a section of legal problems of lack of legal regulation, it is necessary to allocate lack of regulation of the relations with the use of smart contracts; lack of a legal basis for the development of electronic transactions; gaps in the legislation on trading electronic platforms and activity of aggregators.

So far, the Russian legislation does not contain the norms directed to regulations of the relations with the use of smart contracts. However, this technology allows us solving a number of the problems connected with the free reaching of representatives of small and medium business world

level. The lack of adequate legal regulation is directly connected with a lack of the doctrine. This statement concerns both Russian science and foreign. In particular, the analysis of scientific literature shows that scientists consider the legal nature of the smart contract as a form of signing of the contract [2] or as a way of ensuring execution of the obligation [3], or as the independent contract [4]. In foreign science the point of view that the smart contract should be considered as the document created and executed with the use of blockchain technology [5] is prevalent.

The analysis of the Russian legislation (Federal Law No. 34-FL "About modification of parts the first, second and article 1124 parts of the third of the Civil code of the Russian Federation" 2019) shows that the smart contract is considered as a way of execution of the obligation. However, such an approach rather narrow also does not allow to use all positive sides of the smart contract in the activity of businesspeople. Comparison reflected in scientific literature, and the legislation of signs of the smart contract with provisions of the Civil Code of the Russian Federation allows to conclude that it has all necessary properties of the contract. Moreover, provisions of Chapter 27-29 of the Civil Code of the Russian Federation it is quite applicable at regulation of legal relationship with the use of the smart contract. It should be noted that, proceeding from the principles reflected in the international acts the Principles of the international commercial treaties UNIDRUA (UNIDROIT principles of international commercial contracts 2010) [16], in the Principles of the European contract law (the added and revised version of 1998) [17], and another acts the possibility of the conclusion of smart contracts is entirely proved also in the international commercial turnover.

The significant obstacle of the development of commodity turnover is the lack of regulation the legislation of the electronic transaction which is an intrinsic link of the new economic relations. Normative legal acts govern the digital relations without specifics of the contract expressed in a digital form. In the Russian legislation the electronic transaction is defined as remote and is regulated by Article 497 of the Civil Code of the Russian Federation, the Law of February 07, 1992 No. 2300-1 (an edition of 04.06.2018) "About consumer protection" and Rules of sale of goods in the remote way (approved by Government resolution No. 612 of September 27, 2007).

The concept "electronic transaction" is not defined by either the national legal system, or international, however foreign acts partially regulate questions of such contracts, including concepts the digital signature, electronic trading, et al. of Federal Law No. 34-FL "About modification of parts the first, second and article 1124 parts of the third of the Civil code of the Russian Federation" eliminates this gap in the national legal system, entering a possibility of the conclusion of the transaction on means of exchanging electronic documents. Unlike the western legislation reflecting the broad approach to electronic transactions and, considering the last as any bargain concluded through the Internet [6], the Russian legislation apprehended approach when the electronic transaction is considered as the transaction made by an exchange of electronic documents (narrow approach. It is also reflected in foreign literature [7]. However electronic transactions were beyond

transactions by an exchange of electronic documents long ago that puts national the legislation in a rank of lagging.

Overcoming the barriers which are slowing down the participation of subjects of small and medium business in civil circulation with the use of digital technologies is possible also using the introduction of new digital platforms. In particular, the electronic aggregator "Global Rus Trade" announced as the first unique and most useful Internet platform of international trade for small business [8] is created recently. However, in practice, this platform does not justify the expected results of small enterprises. The reason seems in not the quite reasonable right status enshrined in the current legislation for platforms of such look.

It should be noted that in the foreign scientific literature [9] two types of aggregators of electronic trading allocate: the first acts under the services agreement, selecting contractors for a number of the indicators declared them. The second – provides to persons the online platform for the selection of the contractor, keeping from responsibility for such choice and emergence of adverse effects as a result of it. The Russian legislator attempted to create a set of the norms directed to regulation of the relations with the aggregator of the second look. However, in our opinion, approached this problem rather widely, having included in the relations including the faces tied with technical support of electronic interaction (Article 1253.1 of the Civil Code of the Russian Federation). However, at the same time, narrowed responsibility for the persons who are engaged in entrepreneurial activity in this sphere, having pointed to a possibility of prosecution only at the establishment of fault. The main problem in the legal regulation of these relations remains unresolved; it is connected with the identification of the participant of the relations with the aggregator or electronic platform, and, respectively, with the person who will bear responsibility in case of non-execution or poor execution of the obligation. Some authors suggest assigning a number of the duties connected with the quality of goods and services [10] on the aggregator; protection of interests of weakness [11]. However, such an approach will result in a negative result when the conscientious aggregator bears responsibility, and unfair will be able to leave from it using elimination and other ways.

IV. CONCLUSION

In conclusion, it should be noted that development of small and medium business in Russia and a conclusion it on the international scene consistently attract an increase in the economic growth of the country, promotes employment of the population. Use of innovative technologies increase the competitiveness level in the market, increase business development potential.

A. Part one of conclusions

Digital technologies create steady opportunities for active development of small and medium business, increasing the level of their competitiveness. However, for a conclusion of small and medium business to the international level, it is necessary to solve a complex of the interconnected and interdependent problems which treat:

(1) Lack of the regulatory framework which is adequately reflecting new economic conditions of the introduction in the global commodity turnover with the use of information and communication technologies. In a section of legal problems of lack of legal regulation, it is necessary to allocate lack of regulation of the relations with the use of smart contracts; lack of a legal basis for the development of electronic transactions; gaps in the legislation on trading electronic platforms and activity of aggregators;

(2) The legal means used by the legislator at legal regulation in the form of the bans are not the effective measure contributing to the development of business in the sphere of the international commodity turnover;

(3) Numerous administrative barriers and redundancy of control functions of the state concerning subjects of small and medium business;

(4) A large number of obligatory standards, high customs duties, transportation tariffs, the overestimated requirements to certification and so forth;

(5) Inaccessibility of investment resources, lack of privileges, the inefficiency of the existing programs of support of small and medium business;

Only after carrying out a public policy of effective regulation and development of small business in Russia such subjects of economic activity will have a real opportunity to coexist and compete with foreign producers, to carry out export with use of digital technologies.

B. Part second of conclusions under the article

The conducted research allows to develop ways of overcoming the specified problems:

(1) Ratification by Russia of the available international acts governing the enterprise relations with the use of digital technologies that first of all will allow protecting the Russian businessmen participating in the international commercial turnover;

(2) Creation new and improvement of the existing Russian legal base which consists in entering into the civil legislation of set of norms on electronic transactions, development of essential conditions, rights and duties, conditions of responsibility of the parties of such transaction; legal regulation of the relations with use of the smart contract; change of the precepts of law directed to participation of the aggregators in electronic trading concerning identification of the subjects entering legal relationship and establishment of adequate responsibility for violation of obligations;

(3) Change of the used funds of legal regulation from the bans on permissions and encouragement;

(4) Establishment of a system of legal restrictions from the intervention of administrative structures in economic activity, subjects of small and medium business;

(5) Development of investment projects, adoption of development programs of small and medium business, sufficient financing of the specified programs;

(6) Development of the transport infrastructure promoting the reduction of tariffs for transportation of goods;

(7) Legislative fixing of a system of privileges by delivery of goods to the international market, the establishment of tax preferences (for example, the introduction of the tax holidays on value-added tax within three years from the moment of the beginning of trade turnover in the international market et al.).

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