

Forming the institutional principles of antimonopoly regulation in the digital economy

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Abstract — The article is devoted to the forming the institutional principles of antimonopoly regulation in the digital economy. The sections presented in the paper emphasize that changing in approaches to antimonopoly intervention is due to the transformation of competition forms in the digital markets. Marked as a condition for ensuring innovative development is the understanding of the expediency of regulating competition in the field of intellectual rights as a new paradigm. The proposals of specialists on the formation of rules for protecting innovative companies from unreasonable restrictions on competition in digital markets, including a sequence of gradual implementation of legal norms, are systematized. The importance was noted of the application of a flexible antimonopoly regulation mechanism, which makes it possible to limit the market power of digital monopolies by pin-point adjustment of analytical tools aimed at analyzing potential competition; increasing the value of market indicators based on qualitative criteria. It identifies trends in the development of analytical tools for regulating competition in digital markets compared to traditional approaches. The research results can be used by antimonopoly authorities, as well as by specialists involved in modeling government regulation.

Keywords—*competition; antimonopoly regulation; institutional principles*

I. INTRODUCTION

In the digital economy, the forms and essence of competition at the markets are changing radically. The leadership positions are achieved through multi-level business systems. Pricing competition is transformed into a long-term

process of contest for creating a value to the consumer [1]. Global value chains are becoming a key mechanism for transferring intellectual property.

The introduction of new digital technologies required pooling resources of network companies through the establishing cooperative relations in the form of technological platforms. The market models are changed its direction in expanding the geography of goods, technologies and growth acceleration of economic relations. Developing of digital market players, increasing of their operations speed, flexibility and controllability of production processes forms the structural design of industries. Oligopoly is the predominant type of such design [2].

At the same time, the competitive environment of digital economy carries the risks of forming barriers to entry into the markets, growing the power of market participants and their inequality [3].

The main factors in the development of competition are becoming regions; their role in creating competitive advantages is increasing. The paradigm of equality in territorial development has been replaced by an efficiency paradigm based on the principles of smart specialization [4]. The globalization trend is formed with a regional slant, when network companies have to act globally in terms of access to available resources but at the same time locally, to take into account the peculiarities of legislation and other regional characteristics of their presence [5].

The accelerating pace of technological changes and transformation of the competition nature make the task of modernizing the institutional principles of antimonopoly regulation extremely urgent.

II. LITERATURE REVIEW

The optimal model of antimonopoly regulation researching occupies one of the central places in economics. A theoretical approaches to understanding the objectives of antimonopoly regulation were considered in the works of foreign authors such as P.Druker, W.Kovacic, R.Posner, O.Williamson, and in Russia – by I. Knyazeva, V. Polterovich, K. Totyev. The projects which belong to S. Avdasheva, A. Kurdin, V. Tambovtsev, A. Shastitko are the most productive studies of Russian scientists in the area of institutional creation of the antimonopoly regulation.

Such foreign authors as T. McSweeney, J. Stiglitz, as well as Russian ones - E. Voinikanis, A. Ivanov, Y. Tsarikovskiy studied the essence of antimonopoly regulation in the digital economics.

Forming of antimonopoly regulation in economic sectors is the subject in works of foreign authors such as R. Bork, H. Demsetz, C. Kaysen, T. Life, D. Ross, F. Scherer, J. Sutton, D. Turner, L. Thurow, as well as Russian - I. Grechishkina, A. Golomolzin, A. Kashevarov, V. Radaev, N. Rozanova, Y. Rubin, A. Tsyganov.

Further, the employees of international and Russian organizations and state authorities are exploring practical experience in the implementation of antimonopoly regulation. Besides of this, it is necessary to mention the work of such organizations as the Center for Strategic Research (CSR), the Federal Antimonopoly Service of Russia (FAS) and the Organization for Economic Co-operation and Development (OECD).

However, the problem of forming the institutional principles of antimonopoly regulation in the new economy has not been sufficiently studied.

An attempt presented in the paper was made to identify changes in approaches to antimonopoly regulation, which reflect its main characteristics, as well as problematic issues arising in the process of enforcement.

III. RESEARCH METHODOLOGY

The evolutionary and institutional approaches were used in the research. Using an evolutionary approach is determined by the scale and specificity of the regulation of competitive relations. This approach allows timely taking into account the variability of regulations under the influence of the environment. The institutional approach is based on a threat assessment approach of competition associated with the adoption of unreasonable decisions by the control body. The method of systematic and some methods of comparative analysis of approaches for development of competition were applied in this paper. Using specified research methods is aimed at the validity of the analysis results. To ensure the accuracy of the provisions and conclusions, the departmental information of the FAS was used, as well as the calculations obtained by the authors in the course of the research.

IV. PRACTICAL IMPORTANCE, SUGGESTIONS AND RESULTS OF RESEARCHES

As a result of the systematization of research and law enforcement practice, the fundamental provisions of the antimonopoly regulation system in the digital economy are formulated. These principles are derived from the characteristics of digital markets and are based on the need to provide conditions for stimulating competition through the creation of innovative value.

In our opinion, antitrust regulation in the digital economics does not require special regimes. However, the transformation of its institutional principles should occur taking into account the assessment of the dynamics of new markets. Let us consider in more detail some, in our opinion, important changes.

A. Ensuring conditions for innovative economic development in digital markets

This principle implies the optimization of the antimonopoly regulation model based on design and introduction of new effective institutions. The proliferation of antimonopoly laws on transactions related to the regulation of rights to intellectual property will reduce the market power of rights holders. This issue is of particular relevance in the digital sphere. At present, the moving intellectual property objects — three-dimensional models, digitized descriptions of new materials and genetic resources, drug formulas, digital descriptions of industrial facilities currently makes up more than 70% of the traffic of digital networks.¹ However, the question of the expediency of embedding new norms in antitrust legislation remains debatable. The reasons for the application of antimonopoly regulation in the field of intellectual property are the monopolization of markets by companies abusing patent protection; formation of unfair competitive environment.² However, a number of specialists fear that the introduction of new standards may limit the rights of holders, cause them losses and worsen the conditions for Russian business access to innovations [6], the transformation of institutions will take a long period [7]. It seems that for the forming a new paradigm of intellectual rights, understanding the feasibility of regulating competition in this area is a prerequisite for the development of the information society, and an approach that denies the need for antitrust intervention in exclusive rights is a narrow vision of the innovation process [8]. We believe that the success of embedding a new institution of antimonopoly regulation in the sphere of circulation of intellectual property rights depends on the actions of the state authority in setting it up. Russian antimonopoly regulation contains the entire set of modern tools with the help of which it is possible to achieve this goal. Their use allows you to create a competitive culture and contributes to a sufficient level of competition to stimulate innovation. An example is the approach to analyzing the

¹ Effective use of intellectual property. M. : Center for Strategic Research, 2017. - 60 p. URL: https://csr.ru/wpcontent/uploads/2017/10/Intellektualnaya_sobstvennost_doklad.pdf (appeal date: 10/08/2018)

² Kashevarov, A.B. Parallel imports: pros and cons [Electronic resource]. URL: <http://fas.gov.ru/system/presentations/attachments/2016/04/20/original> (access date: 09/06/2018).

dominant digital platforms in the Google business, applied by the FAS of Russia [3].

Effective implementation of the new antimonopoly institution in the field of intellectual property, in our opinion, should be based on a long-term strategy, in which it is advisable to point out the sequence of gradual improvement of legal norms. This will allow to avoid mistakes on the part of the regulator and improve its law enforcement quality. Moreover, the problem of insufficient development by the antimonopoly authority of decisions remains highly relevant. Thus, for the period from 2014 to 2017, the share of decisions completely canceled by the court in the number of appeals does not decrease and amounts to 16%³.

In the scientists' theoretical works who study the issues of modeling antimonopoly regulation, it is noted that the arbitrary determination by the regulator of the type of violation in the process of initiating a case leads to increased legal uncertainty for economic entities [9]. An assessment of this practice is provided, as it fits into the motivation system of control and supervisory bodies [10]. The insufficiently developed decisions were made by the antimonopoly authorities are facilitated by a system of performance indicators, in which quantitative values are fixed for implementation that serves as the basis for material encouragement to employees. The race for the deflated "plan" determines the regulator's interest in reducing the costs of proving a violation of antimonopoly laws.

Among the reasons that affect the performance of antimonopoly regulation, it should be noted a significant increase in the burden on the antimonopoly agency, especially on territorial bodies. In particular, the analysis of the departmental reporting of the FAS of Russia shows that the number of applications, which was reviewed by the supervisory authority only in the manner of antimonopoly laws for the period from 2011 to 2017, increased 1.6 times; the burden of administrative proceedings increased by 57%.⁴

Thus, the lack of quality in identifying threats to competition by a regulator destroys the efficient functioning of a system of rules and regulatory procedures that meets modern requirements and challenges and contributes to distorting the formation of a competitive environment in the markets.

By systematizing the proposals for the formation of rules for protecting innovative companies from unreasonable restrictions on competition in digital markets, they can be grouped into four groups for consistent implementation: the elimination of the exceptions set forth in paragraph 4 of article 10 and paragraph 9 of article 11 of the Federal Law No. 135 of July 20, 2006 "On Protection of Competition"; the introduction of antitrust regulation in licensing agreements; ensuring competition in parallel imports; the introduction of market control of collective rights. In addition, the development of clarifications for each group of regulatory rules is required.

³ Presentation of the Head of the FAS Russia I. Artemyev at the expanded meeting of the FAS Russia (Yalta, 04/25/2018). URL: <https://fas.gov.ru/p/presentations/144> (access date: 09/24/2018).

⁴ Source: calculated by the authors on the Internet resources of the FAS Russia. URL: <https://fas.gov.ru>.

B. Flexibility of the antimonopoly regulation mechanism and its focus on overcoming the abuses of the market power of digital monopolies that limit innovation development.

This principle is particularly relevant for the development of a competitive environment in digital markets, the prevention of abuses of digital monopolism, without prejudice to innovative development. In the conditions of digitalization of the economy, the forms and nature of competition in the markets that need to be taken into account when applying antitrust laws change. Business - models of the company are built under the competition for markets or the creation of new markets [3]. The high rate of technological change leads to a constant change in the boundaries of markets, the impossibility of their unambiguous definition, a change in dominance over a short period. In addition, digital enterprises simultaneously create several organizational models for working in the market. As a result, a restructuring of entire sectors of the economy may occur. Thus, the ability of antitrust authorities to enforce enforcement in digital markets becomes more complex. Features of competition require adequate approaches and tools to assess competition in new markets and develop an antitrust regulation strategy that limits the market power of digital monopolies.

As a result of the generalization of scientific research and the practice of dealing with cases of violations of antimonopoly laws in digital markets, a number of the following principal provisions of the system of their regulation have been formulated:

- orientation in defining the boundaries of digital markets to the specifics of the interaction of the parties of the digital platform, which indicates the number of markets: the direct interaction of the parties is considered as a single market; non-interacting platform users operate in multiple markets;
- recognizing the presence of competition in the market while simultaneously coexisting different business models of enterprises;
- prioritizing the definition of interchangeability of goods, services based on supply, as compared with the demand method, which allows to take into account potential competition;
- refraining from assessing the state of competition based on traditional indicators (market shares) and focusing on indicators, including identification of entry barriers, level of innovation, availability of alternative ways of access to end users.

Analytical antimonopoly regulation tools in digital markets require constant spot-setting based on investigation practice.

V. CONCLUSION

The research has found that antimonopoly regulation in the digital economy remains the object of debate, but its improving is based on the institutional principles of providing conditions for innovative economic development, which implies, in particular, the design and implementation of new

effective institutions related to the antimonopoly regulation of intellectual property rights, with the aim of developing fair competition. The formation of a new paradigm of intellectual rights is a prerequisite for the development of the information society. Among its areas it should be mentioned such as a development of a long-term strategy for the regulation of intellectual property, including a sequence of gradual implementation of legal norms.

Changes in the forms and nature of competition in digital markets require a flexible antimonopoly regulation mechanism, which allows limiting the market power of digital monopolies based on the precise tuning of analytical tools aimed at analyzing potential competition; increasing the value of market indicators based on qualitative criteria. These approaches will improve the effectiveness of regulatory actions in the digital sphere.

VI. THE DISCUSSION OF THE RESULTS

Russian law enforcement practice on protection of competition has begun to take into account the challenges of the digital economy in the past three years, which has required the formation of institutional principles of antimonopoly regulation. In this paper, studies are systematized in the field of adaptation of antimonopoly legislation to the requirements of the digital economy, in particular, approaches to the formation of rules for protecting innovative companies from unreasonable restrictions on competition in digital markets, some fundamental provisions of their regulatory system. However, further work needs to pay special attention to the network effects of the digital economy and competition in the market of digital platforms.

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