The Impact of Antimonopoly Regulation on Innovative Entrepreneurship in the Context of the Epidemiological Crisis: on the Example of Foreign Developed Countries and Russia

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Abstract

Today, entrepreneurs are trying to compensate for the financial losses that they incur due to the epidemiological crisis. At the same time, they can use illegal ways to increase profits, driving competitors out of the market and infringing on the rights of consumers. In such conditions, there are two opposite trends: on the one hand, the state softens control, on the other — in a number of industries, regulation, on the contrary, increases. The article is devoted to the study of the influence of antimonopoly regulation on the development of innovative entrepreneurship in unfavorable conditions.

It is generally believed that competition is the incentive for the development of innovations. Therefore, the task of maintaining the competitive state of the markets is the main task of the antimonopoly authorities. In fact, the actions of the antimonopoly authorities may not always achieve the set goal, sometimes the results of antimonopoly regulation may be the opposite of the desired ones, up to the appearance of anti-competitive effects.

In this regard, the study of the impact of antimonopoly regulation on the development of innovative entrepreneurship in the context of the epidemiological crisis in order to assess such an impact is timely and relevant.

1. Introduction

In modern conditions, the main source of economic growth of any country in the world is innovation. Innovation activity is particularly high in a competitive environment. "Free" competition in the market of goods and services is the basis for the effective development of an innovative economy. In turn, "free" competition in the markets of goods and services implies effective antitrust regulation.

The fact that the development of innovations in Russia lags far behind the leading countries is shown by the data on Russia's place in international rankings. In the ranking of the GII-2019 (Global Innovation Index 2019), Russia is 46th out of 129 (the United States is 3rd). In terms of the quality of innovation, Russia ranks 27th (the United States first) (Global innovation index, 2019), (Rating enforcement, 2019).

The same can be said about the state of competition in Russia, which plays a stimulating role in the development of innovations. In the World Economic Forum's global competitiveness ranking, Russia ranks 43rd (the United States ranks second after Singapore) (The Heritage Foundation, 2017).

In this regard, the study of the impact of antitrust regulation on the development of innovative entrepreneurship in order to assess this impact is timely and relevant.

Increasing the level of concentration and monopolization of markets is traditionally considered as a factor that hinders competition and reduces incentives for innovation. However, world experience proves that it is the large companies that have monopoly power that have significant financial resources necessary for research and development. There is an understanding that in modern conditions, innovative activity is the main means of obtaining a competitive advantage for organizations.
In this regard, questions arise:

- does the antimonopoly policy contribute to the creation of a favorable competitive environment for the development of innovations?

- is there a need for special measures of Antimonopoly regulation for innovative entrepreneurship?

2. Methods

The aim of the work was to find out whether the Russian antimonopoly regulation meets the new challenge that has developed in the economy, and what is its impact on innovation in the unfavorable conditions of the epidemiological crisis.

The object of the study is the antimonopoly policy implemented in the industrialized countries and in Russia. To achieve this goal, we need to consider the stages of development of antimonopoly legislation in the world. Hold analysis of the implementation of antimonopoly policy in the Russian economy and in other countries. To analyze the evolution of theoretical views on the nature and interrelation of such concepts as monopoly, competition and innovation. To analyze the development of the Russian antimonopoly legislation in accordance with the global trends in the liberalization of antimonopoly regulation measures, as well as to answer the following questions: what are the criteria for the optimal competitive environment? Identify common trends in anti-crisis antimonopoly regulation in different countries.

3. Theoretical Background

Maintaining the competitive state of the markets in order to stimulate the development of innovation and economic growth is one of the main tasks of the antimonopoly policy. To solve this problem, extensive legislation has been created, which is based on competition laws and antitrust laws, which aim to prevent and prevent anti-competitive actions, to prevent high market concentration, that is, to protect competition.

Antimonopoly policy in Russian economics is understood as a set of measures aimed at de-monopolizing the economy, controlling and monitoring the processes of concentration in the markets, suppressing monopolistic actions of unfair competition, removing administrative barriers and ensuring conditions for the development of competition in the market. This concept also includes the advocacy of competition—that is, the promotion and dissemination of knowledge that contributes to the creation of equal conditions for all market participants and the formation of public consciousness in favor of the development of market forces (Knyazeva I.V., 2011).

For the first time, laws on antitrust regulation were adopted in the United States: these are the laws of Sherman (1890), Clayton (1914), the law "On the Federal Trade Commission" (1914) (Knyazeva I. V., 2014).
3.1. Conceptual stages of the development of antitrust legislation in developed countries

It seems reasonable to distinguish five conceptual stages of the development of antimonopoly legislation.

1. The formation of precedents for the legislative restriction of monopolistic behavior in the markets (late XIX century) Sherman Act, United States of America (1890)
2. The formation of the world's antitrust legislation in the United States (1900-1950)

1) The Clayton Act (1914)
2) Federal Commercial Commission Act (1914)
3) The Robinson - Nutman Act (1936)
4) The Law Of Sellar Of Kitwara (1950)

3. Formation of antitrust legislation in Europe and the world (1950-1970)

1) Competition laws in Western Europe and Japan;
2) The Rome Convention, which provides for a single EU competition policy;
3) The intensification of the adoption of cruel and restrictive competition legislation in the world according to the American model

4. Liberalization of competition law after the liberalization of economic models (1970-1990)

1) Abandonment of social and political goals and antitrust policies, if the promotion of competitive values can lead to a weakening of economic efficiency;
2) Liberal attitude to mergers and acquisitions, notification of agreements.

5. Formation of the international system of competition regulation (since 1990).

1) Formation of competition and antimonopoly policy in 130 countries.
2) The globalization of world economic relations and the establishment of complex rules of international trade in connection with the creation of the World Trade Organization in 1995.
3) Stop using the methods of deconcentration of the oligopolistic market as an instrument of antitrust policy.
4) Creation of a supranational body in the countries of the European Union.
The first two stages are characterized by active and strict interference in competition in the market, prohibited associations in the form of a trust, collusions or agreements for the purpose of monopolization. Antitrust policy was aimed at protecting the rights of small owners, in the face of the attack on these rights of the formed trusts and monopolies.

The third stage is characterized by the adoption of antitrust legislation in Germany and Japan in 1947. The post-war German economy was militarized and had a high concentration of markets. Therefore, the German antitrust legislation at the initial stage was aimed at preventing market abuse by large dominant companies. A similar situation is typical for Japan.

The fourth stage of antimonopoly regulation falls on the period of 70-80-ies and is characterized by a change in conceptual approaches towards liberalization. This was facilitated by the creation of large multinational companies that successfully competed in world markets.

The fifth stage in the development of antimonopoly regulation continues the trend of liberalization of antimonopoly policy, against the background of integration processes in the world economy. The main feature of this stage is its versatility and fundamentally new economic and legal approaches to the antitrust regulation policy itself.

At the fourth and fifth stages, there is a transition from the principle of prohibitions to the principle of reasonable behavior, and an understanding comes that antitrust regulation can both promote and hinder the development of the economy.

Antimonopoly legislation in Russia appeared relatively recently—about 40 years ago. Its formation began during the reformation of the Russian economy, in fact, from scratch, since the command and administrative system that was present in the management of the economy until quite recently excluded the existence of free competition in economic activities.

The main goal of the antimonopoly policy was to develop competition in the commodity markets, including through de-monopolization – the unbundling of enterprises.

However, competition in the markets is possible in the presence of small and medium-sized businesses, which at that time simply did not exist in Russia. As for the unbundling of enterprises, this goal was achieved partly due to privatization, partly due to the ongoing economic policy.

The arbitrary regulation of prices for the products of monopolistic enterprises, the fixing of prices, the establishment of minimum prices and maximum profit margins as a result have harmed the development of the national market. The antimonopoly policy has actually turned into an anti-market one. This is especially evident in the example of the machine-building complex. In four years, 96% of enterprises in this industry have become almost bankrupt, and their meager share in the domestic market did not pose any threat to competition. A similar situation was observed in many sectors of the Russian economy at that time.
It should be noted that the United States antitrust policy at the initial stage is also assessed as anti-competitive, since it was directed against the destructive competition from large businesses for small businesses.

In 1994-1995, regulatory legal acts were adopted that changed the approaches to antimonopoly regulation. These are the federal laws "On Natural Monopolies", "On Advertising", and the new version of the law "On Competition and Restriction of Monopolistic Activity in Commodity Markets". Despite some vagueness and ambiguity, the introduction of formalized (quantitative) indicators in determining the dominant position of enterprises in the markets and the refusal to regulate the pricing of enterprises included in the register, if they do not abuse their dominant position, were positive.

The financial crisis of 1998 made its own adjustments to the antitrust policy. The status of the State Committee on Monopoly Policy has been upgraded: it has been transformed into the Ministry of the Russian Federation for Antimonopoly Policy and Business Support. A new version of the law "On Competition..." appears. In general, the period of the late 90s and early 2000s is characterized by the development of competition legislation according to the industry principle. During this period, such laws as the laws "On Protection of Competition in the Financial Services Market", "On Protection of Consumer Rights", "On Mineral Resources", a number of by laws regulating the banking sector, insurance, leasing services were approved.

Since 2004, a new stage in the development of antimonopoly regulation in Russia has begun. The Ministry of Antimonopoly Policy is being replaced by the Federal Antimonopoly Service. Its active activity in the field of legal regulation leads to the renewal of the regulatory framework of antimonopoly policy. In July 2006, the Federal Law "On Protection of Competition" was adopted. The very name of the law indicates a change of priorities in antitrust regulation: from limiting monopoly power in the markets to supporting and developing competition.

The Law "On Protection of Competition" is a "living" document. Changes to it are made in two aspects:

- within the framework of antitrust packages - when changes are initiated by the state and involve the introduction of several legislative acts at the same time, such changes are in the nature of reforms, and the "packages" themselves are actively discussed by the legal community;

- within the framework of point changes that are initiated by all participants in the legislative process.

3.2. Development of the Russian antimonopoly legislation in accordance with the global trends of liberalization of antimonopoly regulation measures

The proclamation of the development of the innovative economy as the goal of Russia's economic policy led to the inclusion of special loyal regimes for innovative firms in the antimonopoly legislation. At the same time, granting a privileged position to individual firms in the commodity markets is obviously not linked to the fundamental principle of antitrust law – the creation of equal conditions for all market participants. In any case, we can talk about a potential conflict between the two goals under
consideration. Are special antitrust measures necessary for innovative firms, and how will they affect the achievement of the economic policy goal of creating an innovative economy?

It is impossible not to agree with the opinion of experts that the specificity of developing countries is that institutions that can formally bear the same names and perform the same functions as in developed countries, de facto function differently. This issue will be discussed in more detail in the work.

Analyzing the evolution of antimonopoly policy in Russia and abroad, we can draw the following conclusions. The state of commodity markets during the formation of antitrust regulation was different. For the United States, the initial period is characterized by the presence of a large number of small owners and the encroachment on their rights of trusts and monopolies, for post-war Germany is characterized by high concentration and monopolization, in Russia there was practically no competitive market, as well as small and medium-sized businesses. Antitrust regulation in Russia is quite "young", only a few decades, while in the United States it has been developing for more than a hundred years. Of course, miscalculations are possible along this path, as was the case in Russia in the early 90s, when strict control over enterprises included in the register of monopolists and pricing contributed, among other reasons, to their financial collapse. The need to include certain "preferential" provisions for innovative firms in the Russian antimonopoly legislation is also debatable.

Nevertheless, the development of antimonopoly legislation was carried out according to a single scenario: from strict measures to limit monopoly power to more "soft" measures to protect competition, from the principle of unconditional prohibition (per se) to the principle of reasonable grounds (rule of reason).

**4. Results And Discussion**

**4.1. Market power and Innovation**

Currently, there is a rejection of the classical model of market assessment, when the basic criterion is the assessment of the shares of companies in the market, and antitrust measures are applied to firms that have exceeded the established concentration threshold.

There is an understanding that achieving a competitive advantage and increasing market share can be the result of fair competition based on the development and introduction of innovative products to the market. Many experts believe that in modern conditions, innovation is the main means of obtaining long-term and significant competitive advantages for organizations.

We will try to analyze the evolution of theoretical views on the nature and relationship of monopoly, competition, and innovation, and answer the questions: what are the criteria for the optimality of the competitive environment that ensures high innovation activity of organizations, and whether monopolies are interested in innovation.

In scientific research, the concept of innovation appeared in the 19th century.
Thus, J. Schumpeter in his writings defined innovation as a means of entrepreneurship aimed at making a profit. Russian scientists consider innovation as the final result of intellectual activity in the form of a new object or object that significantly differs in quality characteristics from its counterpart (Schumpeter J., 2016).

According to scientists, innovative entrepreneurship differs from other types of entrepreneurship by using new ways of enterprise development: the creation of new products, technologies, and new forms of management (Shimshirt N. D., 2016).

Thus, innovative activity is the result of intellectual activity, embodied in a new or improved product, technological or organizational process that has economic demand and commercial effect. Innovations in economic analysis are divided into the main, decisive ones – those that fundamentally change the production process or provide an opportunity to release a previously unknown product, and secondary ones that modify the shape of the product or process.

Competition in the market and for the market is the core of the mechanism that ensures the efficient use of limited resources and the generation of innovations.

Table 1. Comparison of innovation development ratings and the Global Competitiveness Index

| Place in the ranking | The First ten countries in the global competitiveness index | The First ten countries in the index of innovation development |
|----------------------|----------------------------------------------------------|----------------------------------------------------------|
| 1                    | Singapore                                                | Switzerland                                             |
| 2                    | United States of America                                 | Sweden                                                  |
| 3                    | Hong Kong                                                | United States of America                                |
| 4                    | Netherlands                                              | Netherlands                                              |
| 5                    | Switzerland                                              | United Kingdom                                          |
| 6                    | Japan                                                    | Finland                                                 |
| 7                    | Germany                                                  | Denmark                                                 |
| 8                    | Sweden                                                   | Singapore                                               |
| 9                    | Great Britain                                            | Germany                                                 |
| 10                   | Denmark                                                  | Israel                                                  |
| ...                  |                                                          |                                                         |
|                     | Russia (43)                                              | Russia (46)                                             |

*Source: The Heritage Foundation, 2017, Global innovation index, 2017*
There is a clear trend of correlation between competitiveness indicators and innovation development indicators. Out of the top ten countries in the competitiveness index, 8 countries are in the top ten and in the innovation index.

In Russia, these indicators also correlate: 43rd place in terms of competitiveness, corresponds to 46th place in the innovation development index.

Let’s try to figure out what should be changed in the antitrust regulation to make the innovation environment in the country more favorable.

It is generally believed that it is the state of competition that determines the level of innovation and contributes to economic growth. However, only economically free economic entities can compete with each other. And their motivation to develop may be reduced due to the fear of attracting the attention of regulatory authorities.

It is also necessary to note the excessive activity of the Russian antimonopoly authorities and its negative impact on competition. Indeed, the scope of antimonopoly policy in Russia includes a fairly large number of tasks, and in recent years it has only expanded.

**Table 2.** Comparison of innovation development ratings and the Global Competitiveness Index
| Area of responsibility | Russia | Great Britain | European Union, | United States of America |
|------------------------|--------|---------------|-----------------|------------------------|
|                        | Federal Antimonopoly Service | Competition and Markets Authority | EuropeanCommission, DirectorateGeneral for Competition | Federal Trade Commission & Department of Justice |
|                        | | | | Antitrust Division |

| | + | + | + | + |
|---|---|---|---|---|
| Sole restriction of competition from large companies | | | | |
| Restrictive competition agreements | + | + | + | + |
| Restriction of competition on the part of government / municipal authorities | + | | | |
| Preliminary control of economic concentration transactions | + | + | + | + |
| Unfair competition | + | + | | + |
| Purchases from other persons | + | | | |
| Government assistance | + | | + | |
| Consumer protection | + | | | + |
| Legislation on advertising | | | | |
| Industry regulation (energy / transport) | + | + | | + |
| Regulation of foreign investment in strategic enterprises | + | | | |
| Tariff regulation | + | | | |
| Legislation on the State Defense order | + | | | |

The variety of tasks disperses resources and reduces quality, in addition, the limited resources create a problem of choosing the priorities of antitrust policy. Currently, a lot of attention in the work of the Federal
Antimonopoly Service of Russia is paid to the control of public procurement, although in other countries this is not the task of antimonopoly policy.

To sum up: the desire of the antimonopoly authorities to protect competition by increasingly regulating the behavior of firms in the markets has led to the opposite effect: the restriction of the economic freedoms of entrepreneurs as the basis of real competition. The restriction of competition has a negative impact on the development of innovation activities. In this regard, the transition to a liberal antitrust policy cannot be called successful.

A large range of tasks within the scope of antimonopoly policy dissipates resources and reduces quality, and encourages the overproduction of the volume of antimonopoly regulation as a public good.

In Russia, it is necessary to focus the antimonopoly policy on the main goal—the protection of competition, not to try to solve other tasks with the help of the antimonopoly authority: social (price control), economic. At the same time, the competition protection policy should exclude the possibility of restricting the freedom of entrepreneurship.

The liberalization of antimonopoly policy implemented in Western countries is precisely aimed at expanding the economic freedom of economic entities, removing or reducing restrictions on economic activity.

Let us consider whether the evolution of the Russian antimonopoly legislation corresponds to the declared course of liberalization.

There are contradictory trends in the transformation of the Russian antimonopoly legislation. On the one hand, the antimonopoly legislation reflects such significant provisions as the separation of agreements and coordinated actions, vertical and horizontal agreements, the introduction of the concept of "cartel", the introduction of the institution of warnings and warnings. The practice of application is also changing, and there is a transition from unconditional prohibitions to a "balanced approach".

5. Directions Of Antimonopoly Policy Of Russian And Foreign Regulatory Authorities In The Context Of The Pandemic

There are five main directions of the antimonopoly policy of the Russian and foreign regulatory authorities that seek to effectively apply the legal tools for regulating innovative entrepreneurship.

5.1. Monopolistically high (low) price

In Russia, the law "On Protection of Competition" defines a monopolistically high (low) price – this is the excess (understatement) of the price over the price of a comparable market, the excess (understatement) of the price over economically justified costs and profits. The concept of a monopolistically high price is the most controversial in the antimonopoly legislation. The objectivity of its comparison with the profit, cost and price of a comparable market is particularly controversial. The price may increase due to
increased demand, which is not available in another comparable market, and the amount of profit may be high as a result of the planned investment.

The traditions of direct state regulation of prices are quite strong in Russian society, and the state responds to these expectations. For this reason, the norm on the monopolistically high price is applied in Russia by the antimonopoly authority very actively. While in other countries, there is no significant practice of its application. Russian researchers note that in the United States, which are the founders of antitrust regulation, the opinion has been formed that high prices attract new participants to the market, and therefore are a factor in the development of competition. This fact is also confirmed by Russian practice.

In the context of the pandemic, the demand for certain categories of products is naturally growing around the world: food products, medical devices and equipment, medicines, personal protective equipment and disinfection, as well as other socially important goods. A number of countries conduct daily monitoring of prices by fixing them in online stores, checking the availability of goods on sale. This constant monitoring is due to the fact that cases of unjustified price increases and deliberate creation of shortages for products with high demand have been repeatedly identified in specific markets.

The Federal Antimonopoly Service of Russia conducts daily monitoring of prices for goods from the category of essential and vital nature. In addition, an operational headquarters has been formed to monitor the situation in certain markets. The Government of the Russian Federation has been given the opportunity to set for a certain period of no more than 90 days the maximum allowable retail prices for medicines and medical devices that are not included in the list of vital necessities, but may actually become so.

Similar measures are being taken by the Competition and Markets Authority in the Great Britain. He calls on entrepreneurs and manufacturers to jointly fight against unfair pricing by setting maximum retail prices for products, such as basic medical devices. Moreover, a special task force has been created to identify illegal pricing methods and ensure compliance with the law.

In the European Union, the European Competition Network, in its guidelines, reminded manufacturers that they are allowed to include maximum prices in the terms of contracts. The European Competition Network members in the document "Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak" expressed extreme concern about the practice of unfair pricing as a result of cartel collusion or abuse of a dominant position. During epidemiological crisis such forms of anti-competitive conduct is widespread, especially in highly innovative pharmaceutical sector (Lead European Competition Regulators Publish Guidance on COVID-19, 2019)

In France, Greece, Spain and China suppliers and distributors of masks, gloves, antiseptics and other medical facilities came under the anti-monopoly control over the market with signs of unjustified price
hikes. In China, more than 4,500 companies have been fined for paying too high prices for medical devices and food.

5.2. Expanding the powers of the antimonopoly authorities

According to article 25.1 of the Law "On Protection of Competition", antimonopoly authorities have the right to conduct scheduled and unscheduled inspections of executive authorities at all levels, as well as state extra-budgetary funds, commercial and non-profit organizations, individuals, and individual entrepreneurs. The expansion of the authority of the antimonopoly authority restricts economic freedom and does not comply with the principles of liberalization of the antimonopoly policy. It seems that the Niskanen model of bureaucracy is at work here — the model of public choice theory, which shows that the interests of civil servants generate pressure in favor of increasing the scale of each of the sections of the public sector and, as a result, this sector as a whole (Niskanen's Model of Bureaucracy, 2019)

5.3. Control over misleading consumers and false advertising

Antimonopoly authorities identify exploitative abuses and other unfair practices. Companies using them mislead consumers about the properties and quality of goods and services, seeking to make it more effective to sell and promote their products in the context of the spread of COVID-19.

In Russia, the Antimonopoly Authority is taking measures to combat the unfair behavior of companies that mislead consumers in order to persuade them to purchase goods and services presented as COVID-19 treatments. So, several cases were initiated for false information about the effectiveness of medicines against coronavirus. In addition, cases were opened against veterinary clinics that offered services for the diagnosis, vaccination and treatment of coronavirus in cats and dogs.

In Italy, online trading is gaining momentum as the best way to meet the needs of customers with minimal effort. The Italian antitrust authority (Autorità Garante della Concorrenza e del Mercato) has brought cases against Amazon and eBay on the grounds of not only unjustified price increases for masks and disinfectants, but also false advertising.

In China, online platforms are advised to keep a particularly close eye on price algorithms to prevent unintended price spikes. The State Administration for Market Regulation of the People's Republic of China also announced the strengthening of measures to combat false advertising in the retail sector, including e-commerce. Beijing, Shanghai and other cities have already launched a campaign against such forms of unfair competition.

The competition authorities of Canada, the Netherlands and the United Kingdom have issued a statement to representatives of the retail sector, calling on them to be held accountable for their actions, which may be aimed at misleading consumers about the effectiveness of personal protective equipment and other products in order to extract benefits through unfair marketing policies.
The US Federal Trade Commission issued warnings to companies that made false statements about the effectiveness of certain products for the prevention or treatment of COVID-19 (COVID-19 and Antitrust Law, 2020)

5.4. Identification and suppression of "crisis" cartels and abuse of a dominant position

To determine the dominant position of the company in the market, a quantitative indicator is used – the company's share in the market. Firms that exceed the established threshold of dominance fall under the special control of the antimonopoly authority. It is obvious that the higher the criterion of dominance, the fewer firms are under the special supervision of the antimonopoly authority, which corresponds to the principle of liberalization. The law "On Competition and Restriction of Monopolistic Activity in Commodity Markets" established that firms with a market share of 65% or more are recognized as dominant. In the law "On Protection of Competition", the threshold of dominance is reduced to 50%, that is, the number of dominant firms can increase by the number of firms whose market share is from 50% to 65%. Moreover, firms with a share of less than 50% can be recognized as dominant, if this is established by the antimonopoly authority, based on their share relative to the shares of competitors, the possibility of market access, or based on other criteria that characterize the commodity market.

In Russia, the law "On Protection of Competition", along with the amended concept of an agreement, introduced the concept of coordinated actions, established prohibitions on agreements restricting competition and coordinated actions. Agreements that restrict competition are prohibited and recognized as a cartel. At the same time, coordinated actions are not recognized as cartel collusion, the very fact of agreements is already considered a violation of the law. This allows the antimonopoly authorities to consider any synchronous increase in prices on the market as unjustified and apply penalties. Thus, the application of this article prohibits such a form of economically justified behavior as price leadership. According to paragraph 4 of part 1 of article 10 of the Federal law "On protection of competition" in Russia, the abuse of a dominant position, is considered to be economically or technologically unjustified reduction or cessation of production of the goods, if this item has a demand or orders are subject to availability, its cost-effective production, if it is not stipulated regulations.

Analyzing the above articles, taking into account the expanded powers of the antimonopoly authorities and the established practice of application, it is difficult to recognize the liberalization of the antimonopoly legislation as having taken place. Restrictions for entrepreneurs in terms of setting prices, output volumes, contracts, and contracts remain quite active. Today, unstable market conditions have become a catalyst for anti-competitive agreements. In various jurisdictions, the Supervisory authorities shall take measures to combat the crisis cartels.

In Russia, there has long been a tendency to strengthen anti-cartel policies, including tougher responsibility for collusion. Currently, the antimonopoly agency is particularly active in monitoring the food and pharmaceutical markets, which are potentially the most susceptible to monopolization. The FAS (Federal Antimonopoly Service) of Russia, after monitoring and unscheduled inspections, has already identified several cartels that set high prices for such scarce goods as protective masks and buckwheat.
In addition, special attention is paid to the behavior of natural monopolies in imposing unfavorable conditions and services, as well as refusing to conclude contracts, unjustifiably inflating prices in the context of a pandemic.

In the United States of America, the Justice Department expects a surge in cartel cases. To support the business, entrepreneurs begin to cooperate with competitors. For example, they may agree not to cut prices or how to reduce excess capacity when faced with falling demand. As stated by United States of America Attorney General William Barr, the Department of Justice will take measures to prevent illegal actions in the production, distribution and sale of medical products in ways that violate antitrust laws, such as setting prices or colluding in auctions (COVID-19 and Antitrust Law, 2020).

The European Union is reluctant to grant exemptions from competition law in connection with COVID-19. The antimonopoly authorities of the European Union member states issued a joint statement dated 23.03.2020 (Impact of COVID-19 Coronavirus Pandemic on European Antitrust Enforcement, 2020), in which they noted that they will not actively interfere with necessary and temporary business measures taken to avoid product shortages or difficulties in the transport and logistics field. In other words, anti-cartel rules will not apply when cooperation is aimed at the benefit of society. However, the actions of companies seeking to misuse their market power through a cartel or abuse of a dominant position will be stopped, even if these are only temporary measures due to an emergency situation.

In addition, the EU (European Union) emphasizes that the cartel reporting exemption program continues to apply regardless of the emergency situation (Impact of COVID-19 Coronavirus Pandemic on European Antitrust Enforcement, 2020)

In the UK (United Kingdom), the Competition and Markets Authority has indicated that competitors are allowed to provide information about inventory, price and delivery conditions. But he stressed that further harmonization of prices charged to suppliers or end-users is still strictly prohibited.

The flexibility shown in antitrust regulation does not give companies the right to participate in collusions that can harm consumers. As noted by the Competition and Markets Authority, it is not allowed to: exchange between competitors commercially important information about pricing policies or business strategies used without urgent need; refuse to cooperate with small competitors to ensure the security of supply; collusion between enterprises aimed at mitigating the adverse commercial consequences of falling demand by artificially maintaining high prices to the detriment of consumers; coordination between enterprises that is actually unnecessary and unjustified, for example, in terms of the distribution of goods or services in areas not affected by the pandemic.

Price manipulation is typical not only for cartels, but also for the abuse of a dominant position. Therefore, the Competition and Markets Authority warned that unfair practices of enterprises that occupy a dominant position (even if it is due to the circumstances of the crisis) will be stopped if they lead to artificially inflated prices for goods and services that are vital for consumers (Competition and Markets Authority approach to business cooperation in response to COVID-19, 2020)
In Poland, the Antimonopoly Service initiated an investigation of alleged abuse of dominance by suppliers of medical equipment, which terminated contracts for the supply of medical masks to hospitals, to renew, but setting higher prices of goods are controlled by the competition authorities.

5.5. Special "preferential" conditions for innovative firms

Theoretical and empirical studies of scientists and economists confirm that innovations develop more actively in a competitive environment. This is probably what the legislators were guided by when introducing special provisions for innovative firms, believing that the introduced "benefits" would promote competition as a driving force for innovation.

What mechanisms for the development of competition are laid down in these provisions?

1) The creation of special conditions for individual innovative firms violates the basic principle of competition – ensuring equal access to the market for all participants in the market process.

2) These provisions exclude the motivation of the company to introduce qualitatively new products due to the desire for competitive advantage, and therefore reduce the intensity of competition.

Thus, they contain, in fact, anti-competitive mechanisms.

The creation of special privileged conditions for individual innovative firms in the market does not contribute to the achievement of the goal of antimonopoly policy—the protection of competition. In this case, there is a potential conflict between the goal of antitrust policy and the goal of economic policy—to achieve economic growth through innovative development. Achieving this goal of economic policy is possible through the use of other instruments (tax, financial). As for the antimonopoly policy, the creation of competitive conditions that are equal for all economic entities would be its contribution to innovative development.

According to scientists, the release of any of the competitors from compliance with the general rules means not only a deviation from the principle of equality, but also an obstacle to progressive changes in the economic system (Taranukha Yu.V., 2019).

The slowdown in the pace of innovative development in Russia is the best proof of this. It should be noted that in countries with developed competition law, such as the United States and the European Union, there are no such exceptions (except for partial exceptions for technology transfer agreements in the European Union). However, this does not prevent them from taking a leading position in the international rankings of innovation development.

5.6. Easing antitrust regulation to deal with the consequences of the pandemic

However, against the background of a severe epidemiological situation in a number of countries, antitrust regulation is being relaxed for some cases of horizontal cooperation aimed at combating the consequences of COVID-19. Exceptional measures (exemptions) are applied restrictively to specific
business sectors that are particularly affected by the crisis, since their joint activities contribute to the restoration of supply chain gaps and more effectively meet consumer demand. The rest of the competition law continues to apply in full.

In the United Kingdom, competing retailers (food stores) are allowed to coordinate joint actions in order to improve the distribution of goods and ensure access to them (Coronavirus and the Competition Act, 2020). Coordination is possible if such measures are: appropriate and necessary to prevent shortages or ensure the security of supply; are in the public interest; benefit consumers; address key issues raised by the pandemic; and do not last longer than is necessary to address critical issues.

In the United States, the Federal Trade Commission and the Department of Justice have approved acceptable forms of joint activities aimed at improving the health and safety response. Such cooperation includes the following activities: integration of production, distribution or service networks to facilitate the production and distribution of supplies related to the pandemic; joint research in the field of treatment methods or the development of a vaccine against COVID-19; development of the best order of patient care in medical institutions; joint agreements on the procurement of personal protective equipment to improve their effectiveness; exchange of information on experience and best practices in solving problems related to COVID-19.

At the same time, organizations that use these forms of joint activity must comply with the established procedure and certain requirements. Companies need to assess the admissibility of cooperation on an individual basis from the point of view of antitrust legislation and then contact the competent authorities for advice. An accelerated procedure has been introduced to review the proposal to organize such an enterprise.

Successful examples of innovation implementation

In March, the United States of America Department of Justice supported the joint efforts of distributors (McKesson Corporation, Owens & Minor Inc., Cardinal Health Inc., Medline Industries Inc., and Henry Schein Inc.) to implement the Airbridge project, aimed at accelerating the pace and expansion of production, improving the supply and distribution of personal protective equipment in the context of the pandemic. The Department of Justice Is Issuing A Business Review Letter to Medical Supplies Distributors supporting the Airbridge Project as part of the Accelerated COVID-19 Pandemic Response.

Another example is the joint research of pharmaceutical companies Pfizer and BioNTech to develop a vaccine against COVID-19.

In the European Union, the Eurocommerce Association has spoken out about a possible relaxation of antitrust regulation in order to allow retail businesses to interact freely with each other. In response, the European Commission indicated that there would be no suspension of the legislation, but this did not preclude joint activities if they were effective, useful and did not eliminate competition.
The European Commission is ready, in exceptional cases, to provide companies with a letter of recommendation (letter) regarding specific cooperation projects that need to be implemented quickly to combat COVID-19, especially if it is not clear at all whether such initiatives are compatible with European Union competition law.

Other examples, the competition authority of Iceland temporarily released representatives of the tourism sector (travel agents, hotels and tour operators) from the application of anti-cartel norms to them. Companies are allowed to cooperate in finding ways to reduce the number of canceled flights and increase the demand for Icelandic tourism, but they are not allowed to discuss pricing and business conditions together (Antitrust authorities are fighting coronavirus, 2020).

The Norwegian government has temporarily exempted rival airlines SAS and Norwegian Airlines, as well as rail and water transport, from the rules on the prohibition of cartels. This was done so that the companies could cooperate and ensure minimal air transport of people and goods across countries (COVID-19-Antitrust regulators in Europe began taking action, 2020).

**Conclusion**

General features of antimonopoly regulation in the context of a pandemic

It is possible to note the trends of anti-crisis antimonopoly regulation that are common for different countries.

1. Price monitoring is the most common preventive practice in a pandemic. It contributes to the effective detection and suppression of unfair manipulation of pricing in relation to goods, the greatest availability of which should be ensured in the current conditions. With the help of this tool, both in Russia and abroad, the price policy aimed at protecting consumers is stabilized in socially important markets.

2. A thorough investigation of collusion in the food and pharmaceutical industries prevents companies from improperly enriching themselves during the crisis. However, the most innovative measures relate to the development of a list of cases where the cooperation of competitors can be recognized as permissible. In fact, the state transfers to business the tools with which to meet consumer demand and mitigate the consequences of the pandemic.

In Russia, the antimonopoly authorities have not yet provided for such changes. Although it would be advisable, by analogy with some States, to allow competitors to cooperate in the field of highly innovative pharmaceutical research for the development of a vaccine, as well as in the retail sector to avoid shortages, for example, the production of masks. At the same time, it will be difficult for Russian business to prove the validity of such horizontal cooperation, and it is necessary to clearly define the criteria for the admissibility of joint activities. Preliminary approval of the forms of horizontal cooperation with the antimonopoly authority allows companies to protect themselves from the risks of violating competition law.
4. The suspension of approval of mergers and acquisitions in foreign countries is a natural reaction of the antimonopoly authorities, due to the fact that interaction with economic entities has become more complicated. However, this may negatively affect both the internal relations of the parties to the transaction due to the forced delays and the resulting uncertainty, as well as the financial component. It should be noted that in Russia, such measures were not applied to transactions of economic concentration.

**Abbreviations**

GII  
Global Innovation Index  
COVID  
coronavirus disease  
FAS  
Federal Antimonopoly Service  
UK  
United Kingdom  
EU  
European Union

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