

Effects-based Approach and the Enforcement Problem in Russia's Anti-cartel Regime

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BACKGROUND

- In many countries, hard-core cartel conduct is deemed to be illegal. However, in Russia the cartel restrictions are profoundly different.
- Courts in Russia take two opposing approaches: (i) the agreement is banned, or (ii) particular aspects of the effects are speculative.
- Adding to this, the market analysis outcomes necessary for cartel enforcement in Russia are often contradictory. This includes exaggerated enforcement or reversal of judgements imposing fines.

METHODOLOGY

- The paper starts by presenting Russia's cartel prohibition and administrative sanctions leading on to an analysis surrounding the weak incentives to deter cartels and to penalize perpetrators.
- Two types of cases are used to display that there is no criterion to choose between a "per se" approach and an effects-based approach where there is a complete test of effects to prove cartels.
- The first group of cases shows how the courts clarify and administer the binding interpretation of cartel wrongdoing given by the High Commercial Court. The second group analyses the cases of fish cartels.
- Investigation of the enforcement problem and the reasons that it occurs.

KEY FINDINGS

- Businesses tend to find the dangers concerning cartels to be irrelevant due to the small fines and the frequent uncertainty of the enforcement. With fines being set at a small proportion of turnover in the one year preceding the investigation, cartels continue to be attractive as the expected penalties are considerably lower than any cartel profits (the cartel overcharge).

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POLICY ISSUES

- Policy amendments are required to bolster the per se prohibition, to ensure enforcement only against cartels with an appreciable effect on trade and to enhance cartel deterrence. This will then develop the credibility of the anti-cartel administration.

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