

Transformation of Antitrust Policy against Collusion in Russia and Transition Economies

Authors : Andrey Makarov

Abstract : This article will focus on the development of antitrust policy in transition economies in the context of preventing explicit and tacit collusion. Experience of BRICS, CIS (Ukraine, Kazakhstan) and CEE countries (Bulgaria, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, Czech Republic, Estonia) in the creation of antitrust institutions was analyzed, including both legislation and enforcement practice. Most of these countries in the early 90th were forced to develop completely new legislation in the field of protection of competition and it is important to compare different ways of building antitrust institutions and policy results. The article proposes a special approach to evaluation of preventing collusion mechanisms. This approach takes into account such enforcement problems as: classification problems (tacit vs explicit collusion, vertical vs horizontal agreements), flexibility of prohibitions (the balance between "per se" vs "rule of reason" approaches de jure and in practice), design of sanctions, private enforcement challenge, leniency program mechanisms, the role of antitrust authorities etc. The analysis is conducted using both official data, published by competition authorities, and expert assessments. The paper will show how the integration process within the EU predetermined some aspects of the development of antitrust policy in CEE countries, including the trend of the use of "rule of reason" approach. Simultaneously was analyzed the experience of CEE countries in special mechanisms of government intervention. CIS countries in the development of antitrust policy followed more or less original ways, without such a great impact from the European Union, more attention will be given to Russian experience in this field, including the analysis of judicial decisions in antitrust cases. Main problems and challenges for transition economies in this field will be shown, including: Legal uncertainty problem; Problem of rigidity of prohibitions; Enforcement priorities of the regulator; Interaction of administrative and criminal law, limited effectiveness of criminal sanctions in the antitrust field; The effectiveness of leniency program design; Private enforcement challenge.

Keywords : collusion, antitrust policy, leniency program, transition economies, Russia, CEE

Conference Title : ICLRPP 2015 : International Conference on Law, Regulations and Public Policy

Conference Location : Berlin, Germany

Conference Dates : May 21-22, 2015