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MANDATORY ELECTRONIC TRADES AS A LEGAL MEANS OF ANTIMONOPOLY REGULATION

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Abstract. The article analyzes the legal regulation of mandatory electronic trading in the Russian Federation as a means of antimonopoly regulation, based on the works of Russian and foreign legal scientists, practicing lawyers, and specialists in the field of automated information systems. Areas are identified where trades can be held only in electronic form (bankruptcy, purchases to ensure state and municipal needs, purchases of certain types of goods, works and services by some legal entities). Various modifications of mandatory electronic trades and different scale of their use in the identified areas are shown. Non-compliance with the legal rules on protection of competition in the conduct of electronic trade for bankruptcy and distorting competition in conducting online trades for the procurement of relevant objects of civil rights are separately analyzed. It is concluded that in order to effectively use mandatory electronic trades as a legal means of antimonopoly regulation, it is necessary to promptly identify and suppress price manipulation, the infringement of information transparency in the form of lack of certainty in holding trades, establishment of unequal "procedural" requirements on various electronic platforms, and also all possible conspiracies of the sites of such trades.

Keywords: electronic trades, electronic platforms, antimonopoly regulation, auctions in a case of bankruptcy, tenders on purchases for public needs, tenders for purchases by certain types of legal entities.

Introduction. Electronic trades have gained wide acceptance with the development of computer technology, including automated information systems, and in some areas they have become mandatory. Modern IT-technologies allow searching and sorting the necessary property, receiving notices on new lots, and to be territorially independent thanks to online trading, etc. With so many positive sides of electronic trading, a number of negative aspects remain. Among them are the danger of violating the antimonopoly legislation, various abuses of law, the difficulty in ensuring the legitimacy of electronic "transactions", the difficulty of protecting information, authentication of messages in electronic trading [1], etc.

Attention was also paid to the area of electronic trading in the Strategy for the Development of Competition and Antimonopoly Regulation in the Russian Federation for the period 2013-2024 (approved by the Presidium of the Federal Antimonopoly Service of Russia on July 3, 2013). The strategy outlines the feasibility of creating a commercial infrastructure for electronic trading platforms, the need to maintain and improve the mechanism for selecting executors of construction works based on the results of electronic trades, as well as the relevance of introducing an electronic form of open tenders. Technically, there are already developments of programmers offering an electronic tender evaluation

model for determining the most profitable contractor for execution of a construction project under several specified conditions [2]. It remains only to competently legalize the innovations, what would ensure transparency of electronic trading.

It would seem that the electronic form of tenders is aimed at developing competition, but even here it is necessary to implement measures that reliably ensure equal access for all who wish to participate in such a way of concluding civil transactions. Therefore, the study of legal norms on mandatory online tenders as a means of antimonopoly regulation, as well as prevention of possible monopolistic threats and risks when concluding contracts based on the results of such trades, seems actual, relevant and timely.

Materials and methods. Russian legislation provides for the possibility, and in some cases, even the mandatory nature of conducting tenders in electronic form. The positive qualities of trades conducted only in electronic form, as well as their shortcomings, were revealed based on analysis of works of foreign (S. Asbjorensen, D. Harker, K. Ittig, S.L. Schooner, and others) and Russian (A.G. Kostyuchenko, Y.V. Lunyeva, F.A. Tasalov, Z.F. Saphin, O. Tsybul'skaya, and others) legal scientists, practicing lawyers, as well as specialists in the field of automated information systems (R.H. Alias, A. Pourkashani, R. Rzayev, F. Faghihi, and others).

The methodological basis of the research was the dialectical method which made it possible to recognize the essence of tenders, which are necessarily conducted in electronic form, as a legal means of antimonopoly regulation, in its indissoluble unity and in the overall coherence. The logical methods in the form of analysis and synthesis, induction and deduction, comparison and generalization, analogy and typology have also contributed to the study of the problems pointed out in the introduction. The formal-legal method made it possible to understand the essence and significance of legal norms aimed at ensuring the proper functioning of mandatory online trades. A comparative legal method within the domestic law was used to identify differences in the violation of the antimonopoly legislation in the field of mandatory electronic trade for bankruptcy and mandatory electronic tenders for public procurement, as well as for purchases by certain types of legal entities.

Results. Online trades cover not only purely private law (on the order of commercial legal entities and individual entrepreneurs), but, in one way or another, affect some part of public law (bankruptcy, placement of state or municipal order, sale of seized property and others). Not all of these trades, conducted in electronic form, must necessarily be put in such a form. Of course, the legal regulation of trades carried out exclusively in electronic form is more differentiated and detailed, in contrast to trades for which the electronic form is dispositive.

Only in the online form there are held tenders (1) in a case of bankruptcy, tenders (2) for purchases to secure state and municipal needs, and tenders (3) for purchases of certain goods, works and services by certain types of legal entities (state companies, state corporations, natural monopolies, societies with state participation, etc.). In the designated areas, mandatory electronic trading has not only various modifications, but also different scales of their use.

Paragraph 2, Part 7, Art.110 of the Federal Law dd. 26.10.2002 number 127-FZ (as amended on 03.07.2016) "On Insolvency (Bankruptcy)" states that there should be held in electronic form any tenders for the sale of the debtor's business as a whole (in the form of a property complex) during procedures used in bankruptcy cases. That is, in the field of bankruptcy, an auction (including the repeated one), a competition (including the repeated one), and a public offer, as well as their various subspecies (open and closed tenders, open and closed forms of the offer on the price) are carried out in electronic form. Similarly, in accordance with Part 3, Art. 111 of the above law, the sale of a part of the debtor's property at auctions held in electronic form could be performed concerning to: real estate; securities; property rights; pledged property; objects of historical or artistic value; and a thing which market value exceeds 500,000 rubles.

According to Part 2, Art.24 of the Federal Law No. 44-FZ dated 05.04.2013 (as amended on December 28, 2016) "On the contract system in the procurement of goods, works, services for ensuring state and municipal needs", only an auction is held in mandatory electronic form. However, the Draft Federal Law No. 623906-6 "On Amendments to the Federal Law "On the Contract System in the Area of Procurement of Goods, Works, Services for securing State and Municipal Needs" (adopted by the State Duma of the Federal Assembly in 1st reading on February 17, 2015) proposes to include in the composition of competitive methods for determining suppliers any contests, requests for quotations and requests for proposals in electronic form, as well as to establish the features of their conduct on electronic platforms.

An even narrower "niche" of mandatory electronic trades is occupied by purchases of certain types of legal entities under Part 4 of Art.3 of the Federal Law No. 223-FZ dated July 18, 2011 (as amended on December 28, 2016) "On Procurement of Goods, Works, and Services by some Types of Legal Entities". Procurement in electronic form here is applied only to certain objects of civil rights listed in the special list of goods, works and services approved by the Government Decree of the Russian Federation dated 21.06.2012 No. 616 (as amended on 30.12.2015).

Any electronic auction provides relatively high publicity, transparency, and stimulates the development of competition due to more number of participants from different regions of Russia and other countries. The popularity of electronic trading is constantly increasing. The increase in the share of participation in electronic trading through professional intermediaries, especially in "bankrupt" trades, testifies to this circumstance [3].

Foreign specialists also note many positive aspects of electronic trading, including public procurement sphere. So, for example, saving budget funds, an opportunity to get the best result in a short time and the reduction of direct contacts between the customer and the participants ensuring the transparency of the procedure are usually attributed to the advantages of electronic reverse auctions in the US contractual system [4].

In the Russian legislation, a well-developed system of legal means is enshrined to ensure proper functioning of electronic trading. They include the detailed legal procedures for conducting electronic trading, cases of their automatic

completion with the help of software and hardware of the site, automatic reject of applications, a detailed regulation of the actions of an operator upon technical failures of the electronic platform, the legal requirements for operators of electronic platforms (they must protect information contained in the electronic platform from unauthorized access, anti-virus protection, intrusion prevention, backup data recovery and others) and legal requirements for electronic platforms (average value of reaction time of the software for admission of http-requests, an automatic notification about the planned timing of maintenance work of the electronic platform, etc.). These legal means are enshrined in subordinate regulatory legal acts (Government Decree dated 17.03.2008 № 179, Order of the Ministry of Economic Development of Russia dated July 23, 2015 № 495), which allows quickly make changes in them in the case of provisions on technical improvement of the software mechanisms for conducting online trades.

In the field of electronic tenders for procurement, the state information system "Independent Registrar" was specially developed, which plug-in can be downloaded for free from the official site of the Unified Information System in the Field of Procurement (<http://zakupki.gov.ru>) and installed on any computer. It performs video recording of user's actions performed on electronic platforms, as well as checking availability of the Internet connection, availability of the site of the electronic platform at a current time, compliance of the installed browser with the required characteristics, crypto provider, operating system, electronic signature, correct time setting on the local computer [5]. Of course, such a state information system would be very useful for additional protection of the rights of participants in "bankruptcy" auctions.

Despite a significant number of positive qualities of electronic trading aimed at developing competition, monopolistic abuses still occur here. At the same time, violations of the antimonopoly legislation, regulating electronic trade for bankruptcy and electronic tenders for purchases, are not of the same nature.

Failure to comply with the legal provisions on protection of competition in the conduct of electronic trading upon bankruptcy is represented, in our opinion, in two main aspects. Let's start with consideration of abuse of rights by manipulating prices. The case includes situations where an offerer suddenly negotiates a price offer that is many times greater than a step, for example, an auction, and thereby stops the auction, and subsequently refuses to enter into an agreement on collusion, relation or affiliation with another offerer who offered the penultimate price offer. Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation dated 24.06.2014 № 3894/14 on the case number A36-408 / 2013 (Bulletin of the Supreme Arbitration Court of the Russian Federation, 2014, № 11) includes a legal provision bringing the novelty of the legal regulation according to which the court may recognize tenders and a contract of sale of the debtor's property concluded on their results as invalid, if an abuse of the rights is established in the form of coordinated manipulation of prices at the auction. In this case, a new auction should be assigned. We believe that this legal provision should be applicable not only when prices are manipulated in trades upon bankruptcy, but also in other types of trades.

The lack of transparency and certainty in a message on holding tenders in bankruptcy cases is also a violation of the antimonopoly legislation. So, in practice, all other applicants for participation in the public offer, except for the winner, were not allowed to participate in a tender in a case of bankruptcy as a result of the fact that the terms of the tender documentation about the deposit were not clear to an indefinite number of persons. Moreover, according to the message posted by the trade organizer, the deposit amount exceeded the percentage barrier, and also exceeded the total cost of two lots by several times, what contradicts both the sense of a deposit and the very nature of searching a buyer by means of trades [6].

There could be situations when a message about the conduct of tenders upon bankruptcy does not include any draft contracts of purchase and sale and a deposit agreement. In such cases, the bankruptcy administrator, of course, is brought to administrative responsibility [7].

Distorting competition in the conduct of online tenders for the procurement of the relevant objects of civil rights occurs as a result of the lack of clear legislative rules allowing participants to conduct electronic auctions for public needs. The jurisprudence describes loopholes in Russian legislation, the use of which allows customers to grant only to "insider" companies a right to participate in electronic trades. So, there are discrepancies in judicial and administrative practice to the interpretation of a correct specification in the application of the country of origin for goods, works and services, the number of products supplied, specific indicators and range values of goods, the application of legislation on standardization and technical regulation as a way of removing companies from participating in electronic trades [8].

In addition, electronic trading platforms set different requirements for participants in electronic trades. In the legal literature, attention is drawn to the fact that the requirements and the list of documents for participants in electronic procurement tenders are sometimes drawn up in such a way as to exclude any competition and allow only "insider" company to compete [9]. While it has long been established that the federal contract system, including electronic trading conducted within its framework, should be based not only on competition and transparency, but also on their unity [10, 11].

It is not uncommon for collusion of participants in electronic trades. Thus, an agreement was reached to maintain prices in electronic trades for the maintenance and repair of city streets and roads in Perm, in which only two legal entities participated. The collusion was proved by the fact that both subjects filed applications and directly participated in auctions from the same IP address. In addition, it was established that the first legal entity could not become the auction winner because it purposely offered identical price offers, but did it later purposefully ensuring victory in the auction of the second participant [12].

It is generally accepted that the breakdown of a subject of any trades increases the effectiveness of their conduct, since the presence of several lots increases the number of potential winners [13]. However, even the breakdown of the

traded item into a large number of lots does not always lead to a reduction in the risk of collusion between the participants in the purchase [14].

Conclusions. As a result of the conducted research, it should be noted that mandatory electronic trade is not a panacea for preventing a violation of the antimonopoly legislation. At the same time, mandatory online tenders in comparison with other trades that do not have an electronic form, are aimed at a significant increase in the number of their participants. In order to effectively use mandatory electronic tenders as a legal means to ensure fair competition, it is necessary to identify and suppress the manipulation of prices, infringement of information transparency in the form of lack of clarity and certainty in holding trades, the establishment of unequal "procedural" requirements on various electronic platforms, as well as various modifications of collusion between sites of such trades.

Summary. Thus, tenders conducted in electronic form are not always an effective legal means of antimonopoly regulation, but only under certain conditions. Legal improvement of procedures for their conduct is required to increase the competitive effectiveness of mandatory electronic trades.

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THE ROLE OF TATAR SERVICE CLASS AND MUSLIM CLERGY IN THE ACCESSION OF KAZAKH ZHUZES TO RUSSIA

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Abstract. The importance of this work consists in the fact that studying the expansion process of the Russian Empire we can reveal quite interesting information about the interaction between Muslims and state authorities as well as the role of Tatar warriors in the imperial expansion eastwards. Due to the growing international tension and inter-civilization conflicts this unique and valuable historical experience of peaceful coexistence between Orthodoxy and Islam is especially relevant nowadays. The key approach to researching the issue is the problem-chronological one. The article is based on the results of studying the Full set of laws of the Russian Empire and the published sources of the XVIIIth – XIXth centuries. The present paper might be useful for further investigation into the subject as well as teaching special and compulsory courses in Russian history at schools and Universities.