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The review provides a detailed analysis of main trends in Russian economy in 2016. The paper contains 6 big sections that highlight single aspects of Russia's economic development: the socio-political context; the monetary and budget spheres; financial markets; the real sector; social sphere; institutional challenges. The paper employs a huge mass of statistical data that forms the basis of original computation and numerous charts.

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6.2. Corporate control market: stages, specific features, regulation[1]

6.2.1. Russia's market for mergers and acquisitions: stages of evolution

Russia's market for mergers and acquisitions came into being in the early 1990s when mass privatization of state-owned property gained momentum. More specifically, it was not until after the Russian financial crisis of 1998 that mergers and friendly takeovers took place in Russia. Up until then there were 'acquisitions through privatization' that can be regarded as a primary manifestation of the **initial stage** of building a market for corporate control (from 1992 till the onset of the financial crisis of 1998). Reorganization proceeded privatization in 1/3 of cases, was coupled with privatization in 1/3 of cases and followed privatization in 1/3 of cases. Also, the practice of consolidating Russian assets through both M&A and outsider shareholding was adopted in the mid-1990s. In 1998, the equity of about 40% of surveyed enterprises was partially held by outside corporate shareholders, and more than 13% of those enterprises were integrated with suppliers or consumers.[2]

It was during that particular period that the first biggest Russian financial industrial groups were under formation, expanding aggressively their scope of business. Also, preconditions for highly concentrated corporate property were created at that stage, marking the key features of Russia's corporate market as it is now.

The **second stage** of the M&A market evolution (1999–2002) – 'post-crisis boom' during a period of economic recovery growth – was related to property redistribution in the aftermath of the crisis of 1998. The stage was characterized by both an upturn in the market for hostile takeovers and a considerable share of speculative M&A transactions of the overall market volume.

Assets were consolidated around old and new business groups during that period. Most of integrated private entities were completely formed by about 2003, and the market for mergers and acquisitions saw big companies decelerate substantially their activity. Instead, second/third-level companies accelerated their activity in the market.

The M&A process, originally initiated by Russia's biggest oil producers, took place in ferrous/nonferrous metal industries, chemical industry, coal-mining industry, mechanical engineering industry, forestry, pharmaceutical industry. Oil companies started practicing a special type of merger, also known as the transition to a single share.

It was during that period – many companies were hit hard by the crisis of 1998, and there was an increase in hostile takeovers by initiating bankruptcy cases – that the legal entities law loopholes were exploited, etc. It was exactly during that period that the practice of extremely hostile takeover of corporate property, also known as illegal corporate raiding or asset-grabbing ('reiderstvo' in Russian), was widely employed in Russia. Besides *law infringement*, a key feature of illegal corporate raiding was the use of so-called 'administrative resources'

[1] Authors of chapter: E. Apevalova – RANEPA, N. Polezhaeva – RANEPA, A. Radygin – Gaidar Institute, RANEPA.

[2] For more details on conceptual challenges in Russia's corporate control market and on evolutionary specific features of the Russian market for mergers of acquisitions in the 1990s–2000s, see A. D. Radygin, R.M Entov, E.A. Apevalova et al. Modern development trends in the market for mergers of acquisitions. M., Delo, 2010.

(instruments of formal and informal influence).[1] Obviously, raiders intended to dissipate and sell off target company's most valuable (primarily immovable) assets rather than to enhance its efficiency.

As regards acquisition tactics which are reduced to seven main groups, they haven't changed over more than two decades since the M&A practice was first introduced in Russia:

- interest purchase in the secondary market;
- lobbying state-held interest privatization transactions;
- administrative involvement in vertically integrated entities (holding companies or other groups);
- debt purchase and conversion into shareholding;
- gaining control by initiating bankruptcy cases;
- initiating court rulings (invalidating previously executed transactions; restricting voting or shareholding rights; holding general meetings of shareholders, etc.
- using noneconomic methods for the purpose of involuntary asset ownership transfer.

The early 2000s saw biggest corporate groups decelerate the expansion because the most appealing assets had been allotted and the reorganization process slipped into downturn due to economic and legal reorganization, legalizing and securing ownership rights to these assets.

The **third stage** (2004–2008) was a stage of economic upturn which prior to the global economic crisis was characterized by Russian government's heavy involvement in M&A processes, a mounting share of 'civilized' transactions and transparent mechanisms of property restructuring, including stock market instruments.

A substantial and steady growth in the market for mergers and acquisitions was seen since 2004, with transactions increasing both in number and in volume. The process of capital consolidation during that period differed largely from the practices used in western countries, in particular:

- public regulators' direct control over M&A processes was weak;
- a small number of organized stock market instruments were used in the M&A process;
- minority shareholders had no way of exercising a significant influence on company's business operations;
- most companies' core owners acted in the capacity of CEO;
- a lack of transparent corporate ownership structure (ultimate beneficiaries);
- much higher degree of equity capital concentration.

The practice of acquiring a 100% interest in the target-company and of stakebuilding until a controlling interest is acquired was widely employed in 2004–2008 because there was no other way of having any significant influence on company's business operations.

The share of corporate raiding and asset grabbing of the total volume of transactions was not significant during that period. According to the data of Russia's Ministry of the Interior (MVD), disputed assets were worth about Rb 200bn in volume in 2005, or about 12% of the total volume of M&A transactions in 2005.

In general, the following specific features prevailed in Russia's market for mergers and acquisitions in 2008:[2]

[1] See A. D. Radygin Mergers and acquisitions in corporate sector: basic approaches and regulatory challenges. – Voprosy Ekonomiki, 2002, No. 12, pp. 85–109.

[2] See A. D. Radygin, Russian market for mergers of acquisitions: stages, specific features, outlooks. – Voprosy Ekonomiki, 2009, No. 10, pp. 23–45.

- rapid (seven-fold) acceleration of the volume of transactions in the M&A market in the period of 2003-2007;

- the Russian market was prevailed by transactions worth USD 30–40m involving assets of enterprises qualified as medium-sized, according to the western division standard. According to estimates, this happened because highly liquid and appealing assets were already acquired, and key player groups were established in each sector;

- there was a considerable share of M&A transactions in which foreigners were involved (formally). In 2007, the share stood at about 22% of the total Russian market volume, down from 35% in 2006. At the same time, inward foreign investments were worth more than Russian outward foreign investments;

- in 2005–2007, there was a substantial (more than double) growth in the average net worth of companies acquired in the global M&A market (USD 142m in 2005, USD 167m in 2006, more than USD 300m in 2007) and in the number of transactions involving foreign asset purchases over the period of 2003– 2008 (from 5 in 2003 to 70 in 2007);

- at that period, there was a big number of M&A transactions involving offshore companies established by Russian residents, estimated 3.5–4% (about 100,000) of the world's total number of offshore companies.[1] The use of offshore companies as elements of Russian holding companies for accumulating the principal corporate income gained a wide practice since the 2000s;

- hostile takeovers, as well as criminal takeovers, were practiced on a mass scale;

- many M&A transactions were not disclosed in an effort to secure confidentiality of the data on beneficiaries and to avoid competitors' undesirable transactions, including hostile takeovers and asset-grabbing. According to some estimates, at least 30–40% of the total volume of public transactions were side deals;

- administrative resources and extra-market methods (including the practice of securing law enforcement support) were used so that assets reverted to state ownership and were acquired by state-owned corporations.

Such factors as highly concentrated ownership, undeveloped market institutions and the judiciary system inefficiency, nontransparent ownership rights and corruption had a systemic impact upon all the aspects pertaining to the Russian market for mergers and acquisitions.

The **fourth stage** ran from the fall of 2008 till 2014. The financial crisis of 2008, including a stock market collapse and liquidity deficit, the onset of industrial downturn, as well as considerable decline in global prices of certain essential commodities, was responsible for considerable reduction in the number of transactions in the global market for mergers and acquisitions.

2008 saw first defaults on bonded corporate loans. Bond defaults totaled about Rb 30bn by the beginning of November 2008. During that period, the number of transactions involving top managers selling their interest to their company was reduced considerably. Instead, there was a reverse trend, that is, top managers (major shareholders in Russia) started buying shares in their own companies. Most companies managed to protect their assets despite a widespread practice of stock-backed lending. By the beginning of 2009, there were some cases of asset transfer to a lending bank (first of all, in construction and retail trade sectors, etc.). The number of cross-border transactions decreased consistently starting from 2010: a 3.4-fold decrease of Russian outward investment transactions (from USD 19.76bn in 2010 to USD 5.85bn in 2013). The

[1] See B. Heifets. Russian business expansion abroad and Russia's national interests.- Mergers and acquisitions, 2007, No. 9., p.56

volume transactions involving Russian assets and foreign buyers more than halved (from USD 10.14bn in 2010 to USD 4.92bn in 2013).[1]

The period of 2014 through to the present day – the **fifth stage** – is characterized by both downturn and stagnation. The market for mergers and acquisitions slipped to an all-time low of more than 60%, from USD 120bn in 2013 to USD 46.8bn in 2014 (see below for details). This was caused by the overlapped global and domestic crises[2], the external economic shock from Western sanctions against Russia and from falling crude oil prices, etc.

All in all, according to the available data on transactions in the Russian market for mergers and acquisitions in 2001–2017, 16569 closing-stage transactions were registered to a total of USD 1 010 211.36m.[3]

6.2.2. Dynamics of market for mergers and acquisitions: Russia's reverse trend to that of the rest of the world

Overall market dynamics

In 2010–2016, the total annual volume of transactions in the Russian market was driven by a mixed trend, reaching a peak of Rb 3.82 trillion in 2013 after a Rb 1.55 trillion decline in 2012, more than twice the amount recorded in the previous year (*Fig. 1).*

In dollar terms, a peak (USD 120.70bn) was also reached in 2013 (by contrast, the peak in 2007 was USD 124bn), with a subsequent drastic (nearly 2.6-fold) plunge to USD 46.86bn and a similar level (USD 47.15bn) seen in 2015.

Unlike the M&A market in 2003–2007, which was a fast growing market (6.5-fold growth from USD 19bn to USD 124bn), the market of 2010–2015 was hit by the shock of 2014 stronger than that of 2008–2009 (in 2008, the market lost 36% of its capacity year over year, from USD 120–122bn to USD 75.5bn)[4] and shrank considerably by more than 60%, from USD 120bn to USD 46.8bn (*Table 13*).

[1]M&A market: Russia beats the abysmal low of 2009 in terms of number of transactions-www.akm.ru/rus/ma/stat/2015/12.htm.

[2] For details, see V. Mau. Global crisis and post-crisis economic agenda discussion.-Russian economy in 2014, M, Gaidar Institute, 2015 – pp. 2–27.

[3] See http://mergers.ru/deals/

[4] A. D. Radygin. Russian market for mergers of acquisitions: stages, progress and outlooks. – Voprosy Ekonomiki.-2009, No. 10.

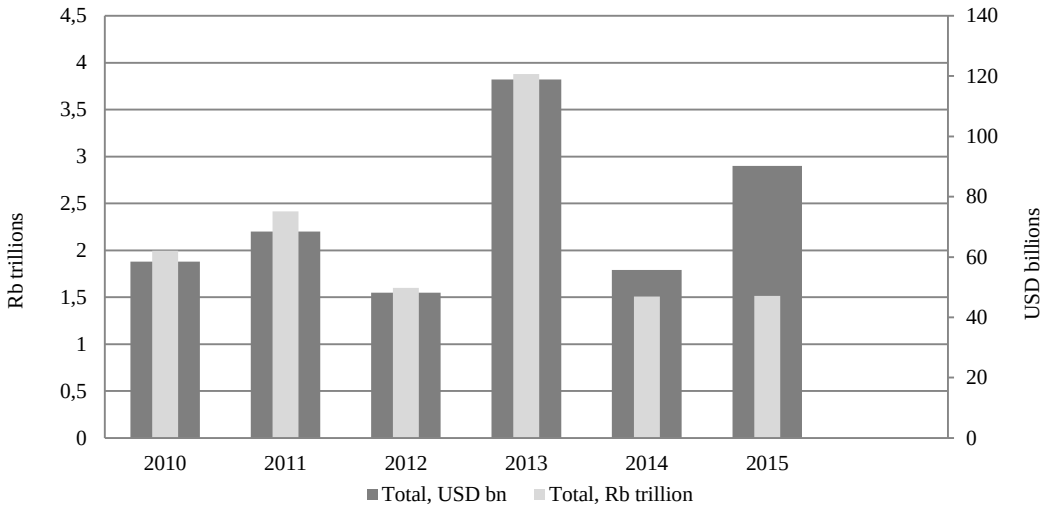

Fig. 1. Dynamics of transactions in Russia's market for mergers and acquisitions, Rb trillion

Source: AK&M Information Agency.[1]

Table 13

Russia's M&A market to GDP ratio, 2007–2015

Year	Russia's GDP at 1990 values, USD bn	Russia's M&A market volume, USD bn	M&A market to GDP ratio, %
2007	606	124	20.46
2008	637.8	60	9.4
2009	587.9	41.91	7.14
2010	614.4	61.12	9.9
2011	640.6	75.17	11.73
2012	662.6	49.79	7.5
2013	671.3	120.7	17.98
2014	675.3	46.86	6.94
2015	649.64	47.15	7.26

Sources: Rosstat, AK&M Information Agency, http://investorschool.ru/vvp-rossii-po-godam

[1] The following sources of statistics are used hereinafter: PREQVECA information and analytical website (http://mergers.ru); M&A market: Russia beats the abysmal low of 2009 in number of transactions – www.akm.ru/rus/ma/stat/2015/12.htm.; Rating: Top-30 M&A transactions in 2016 – http://mergers.akm.ru/rates/9; *http://investorschool.ru/vvp-rossii-po-godam;* O.Yu. Kirillova, A.V. Uskov. History and trends in the development of Russia's corporate control market. – University Bulletin (State University of Management), 2015, No. 7; M&A transactions: Outcomes for Russia and worldwide.- http://www.kpi.ru/pressroom/analytics/sdelki_sliyaniya_i_pogloweniya_ma_itogi_2015_g_v_rossii_i_mire.,18.04.16; Market driven up by multiple minor transactions.-www.akm.ru/rus/ma/stat/2016/07. AK&M Information Agency's statistics reflect buy/sell transactions involving at least a 50% interest or consolidation thereof, or acquisition of less than 50% of a major stake (if there is no stake/shareholder of 50% or more) in companies with Russian shareholding or assets worth USD 1m or more located on the territory of Russian that were reported during the year. To be selected for statistics, transactions must meet the following criteria: transactions must be settled; transactions must be approved by company's Board of Directors, by the meeting of shareholders, by competition authorities; an agreement of intent must be signed. The following transactions fail to meet the criteria: transactions involving an interest of less than 50%, unless they involve controlling interest consolidation or majority stake acquisition if there is no controlling party; transactions worth less than USD 1m; transactions settled within a holding company or a single group of persons as ultimate beneficiaries of the companies involved in a given transaction (See www.akm.ru/rus/ma/stat/2015/12.htm).

As shown in *Table 13*, the M&A market to GDP ratio for Russia hit a peak of nearly 20.46% in 2007 and then declined to 7.14% in 2009. Also, the ratio was high enough (almost 18%) in 2013, and then hit a low of 6.94% in 2014, with a tiny hike to 7.26% in 2015. Cross-border capital flows slowed considerably since 2013 (from 18.5% of GDP between G20 countries in 2007 to 4.5% in 2013).[1] The important thing to note is that until 2010 Russia's corporate control market was driven by a trend similar to the global trend. However, the trend reversed beginning with 2011, and in 2010–2011, growth in the aggregate value of M&A transactions in the global market corresponded to decline in the aggregate value of M&A transactions in the Russian corporate control market. Conversely, the global market declined as the Russian market picked up in 2012–2013**.** The Russian market reached a peak of USD 118.12bn (from 43.61 in 2011, or a 170% growth) in 2013, while the global market declined from USD 3100bn in 2011 to USD 2310bn in 2013 (-25.5%)[2] (*Fig. 2*).

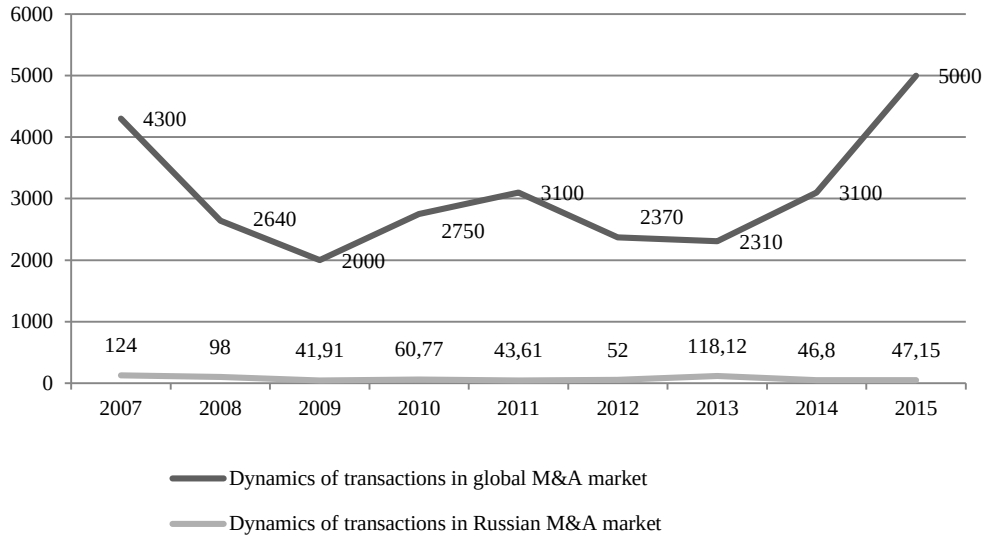

Fig. 2. Dynamics of transactions in global and Russian M&A markets, USD bn

Sources: O.Yu. Kirillova, A.V. Uskov. History and trends in the development of Russia's corporate control market. - University Bulletin (State University of Management, Moscow), 2015, No. 7; M&A transactions: Outcomes in Russia and worldwide;- http://www.kpi.ru/pressroom/analytics/sdelki_sliyaniya_i_pogloweniya_ma_itogi_2015_g_v_rossii_i_mire.,18.04.16.

2015 saw a booming global market for mergers and acquisitions: the total value of transactions was more than USD 5 trillion, higher than the 2007 peak of USD 4.6 trillion. The year saw the biggest number of mega-transactions on record worth more than USD 5bn.[3] Conversely, the Russian market was hit by a downturn. As regards the drivers of the global market rally, they include demand for innovative medicines and medical treatment methods. For instance, the biggest deal (Rb 160bn) on record in the industry and the second-biggest deal

[1] For more details, see V. Mau. Russian economy awaits a new growth model: reconstruction or acceleration?- Russian economy in 2013 M. Gaidar Institute, 2014, pp.11–16.

[2] O.Yu. Kirillova, A.V. Uskov. History and trends in the development of Russia's corporate control market. - University Bulletin (State University of Management, Moscow), 2015, No. 7.

[3] The following data are used hereinafter: M&A transactions: Outcomes for Russia and worldwide.- http://www.kpi.ru/pressroom/analytics/sdelki_sliyaniya_i_pogloweniya_ma_itogi_2015_g_v_rossii_i_mire.,18,04.16

ever was US drug giant Pfizer's takeover of Irish Allergan Plc. Another driver was the technology sector: the volume of transactions involving IT companies exceeded USD 713bn. The biggest transaction on record in the IT market was the acquisition of *EMC by Dell and Silver Lake* Partners. The deal was worth USD 67bn.

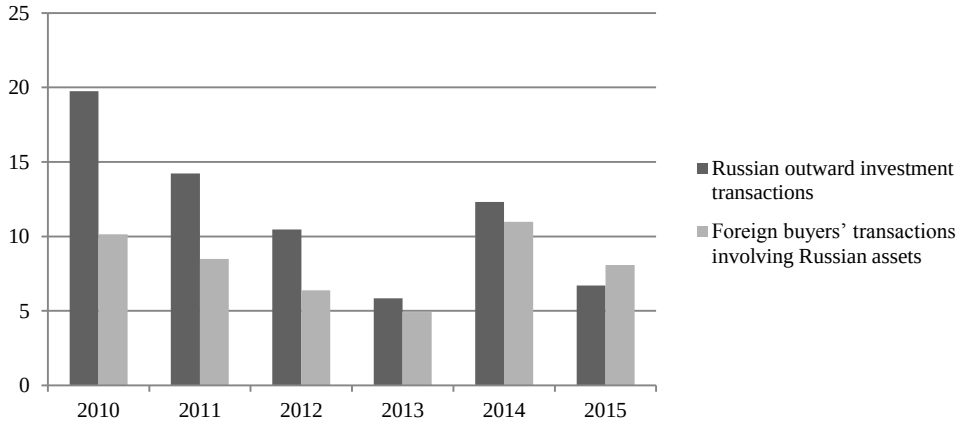

Fig. 3. Dynamics of cross-border transactions in terms of value (USD bn)

Source: AK&M Information Agency.

As regards cross-border transactions, the important thing to note is that most of them are *Russian outward investment transactions* (2010–2014), except 2015 when foreign buyers' transactions involving Russian assets outnumbered Russian outward investment transactions.

The period between 2010 and 2013 saw a consistent decline in the number of cross-border transactions:

- Russian outward investment transactions dropped 3/4-fold (from USD 19.76bn in 2010 to USD 5.85bn in 2013);

- foreign buyers' transactions involving Russian assets more than halved (from USD 10.14bn in 2010 to USD 4.92bn in 2013).

In 2014, a more than two-fold upturn was recorded in the market for mergers and acquisitions, including both Russian outward investment transactions (from USD 5.85bn in 2013 to USD 12.32bn in 2014) and foreign buyers' transactions involving Russian assets (from USD 4.92bn in 2013 to USD 10.99bn in 2014). Conversely, 2015 saw a total decrease in the volume of settled cross-border transactions: Russian outward investment transactions dropped almost 84% and foreign buyers' transactions involving Russian assets fell nearly 26%.

As regards cross-border transactions, the important thing to note is that the interest in 'old' offshore zones, above all, Cyprus, tended to subdue. In 2015, one-third (136) out of 500 biggest Russian companies had offshore companies in Cyprus. At the same time, such countries as Bahamas, Bermudas, British Virgin Islands, Cayman Islands increased 'direct' investment in Russia. In Q3 2015, they invested more than USD 2bn in Russia, thus contributing to an increase of 40% over the previous year.[1]

[1] Businesses redirect capital flows toward other jurisdictions: money doesn't return to Russia until it goes first to companies registered in Cyprus (because they are official owners of Russian assets) and then is transferred to new entities located in other countries. – E. Markelova. Business flees Cyprus. - life.ru, September 23, 2016.

Mergers and acquisitions in Russia in 2015–2016: sector-specific dynamics

According to the available data, the construction and development sector contributed most (28%) to the Russian market for mergers and acquisitions in 2015, followed by the fuel and energy complex (19%) and mineral extraction (11%). The transport and financial sectors contributed 8% and 7%, respectively. The data on the sector-specific market share in the Russian market for mergers and acquisitions for 2015 are show in *Fig. 4*.

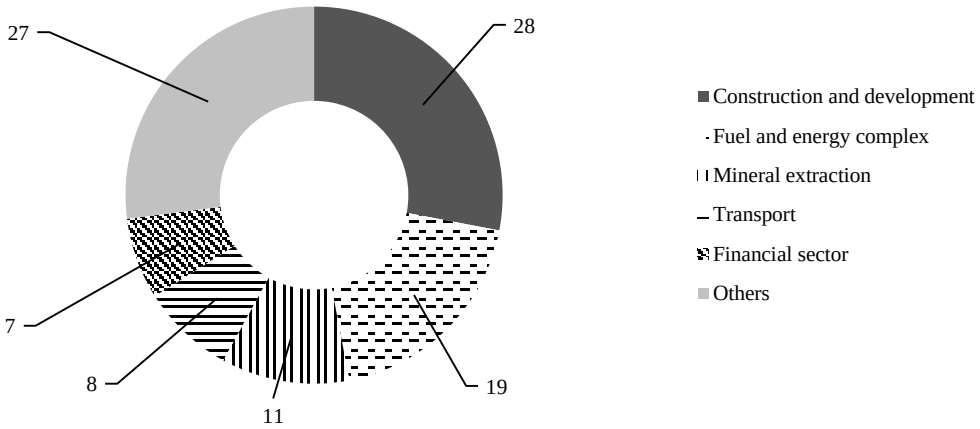

Fig. 4. Sector-specific market share in Russia's M&A market in 2015, by transaction value

Source: AK&M Information Agency

In 2015, the construction and development sector ranked first in number of transactions (15%), followed by the financial sector (11%) and trade sector (10%). The data on the sector-specific market share in the Russian market for mergers and acquisitions are shown in *Fig. 5*.

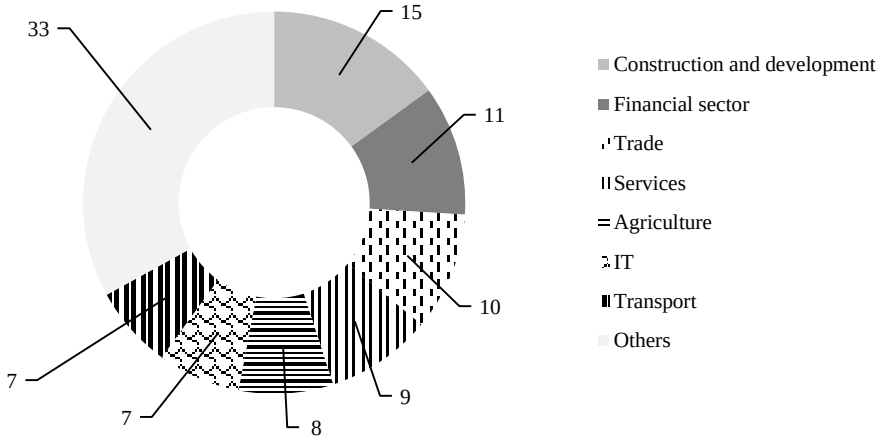

Fig. 5. Sector-specific market share in Russia's M&A market by number of transactions, 2015

Source: AK&M Information Agency

In *H1 2016*, M&A transactions totaled USD 15.49bn, nearly 10% less than the value seen in H1 2015[1], whereas M&A transactions increased 18% in number to 209 transactions compared to 177 in H1 2015. The average value of transactions remained the same (USD 45.1m), while biggest transactions increased more than USD 1bn compared to USD 45.6m in H1 2015.

The data on the average value of M&A transactions are presented in *Fig. 6.*

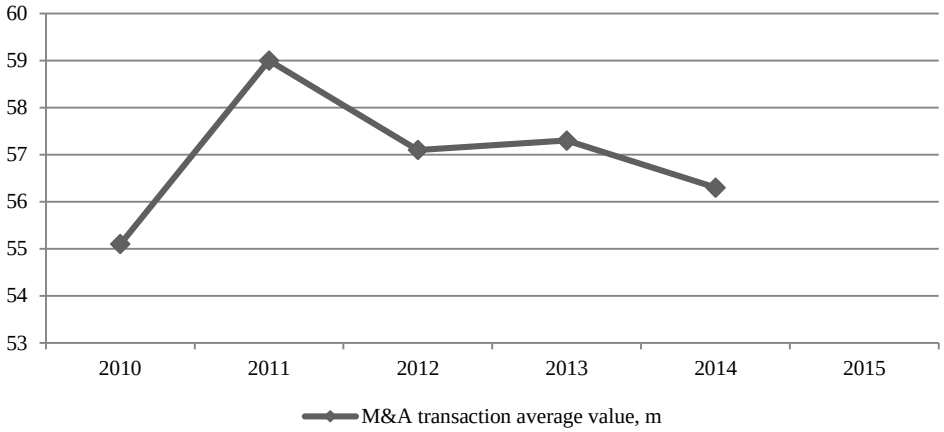

Fig. 6. M&A transaction average value in Russia, USD m

Source: AK&M Information Agency.

In 2015, one-fourth of the M&A market volume was first of all accounted for by the USD 7bn-worth acquisition of Stroygazconsulting by Gazprombank and United Capital Partners (UCP), and by the USD 5.3bn-worth acquisition of gold mining giant Polyus Gold by Sacturino Ltd.

The data on the annual number of M&A transactions are shown in *Fig. 7.*

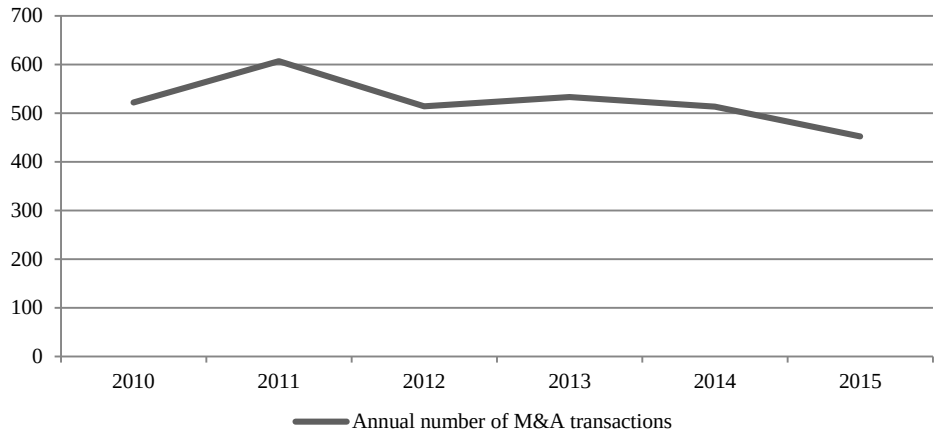

Fig. 7. Annual number of M&A transactions

Source: AK&M Information Agency.

[1] See Market driven up by multiple minor transactions.-www.akm.ru/rus/ma/stat/2016/07

The data on the average value of M&A transactions in Russian industries in 2015 are shown in *Fig. 8.*

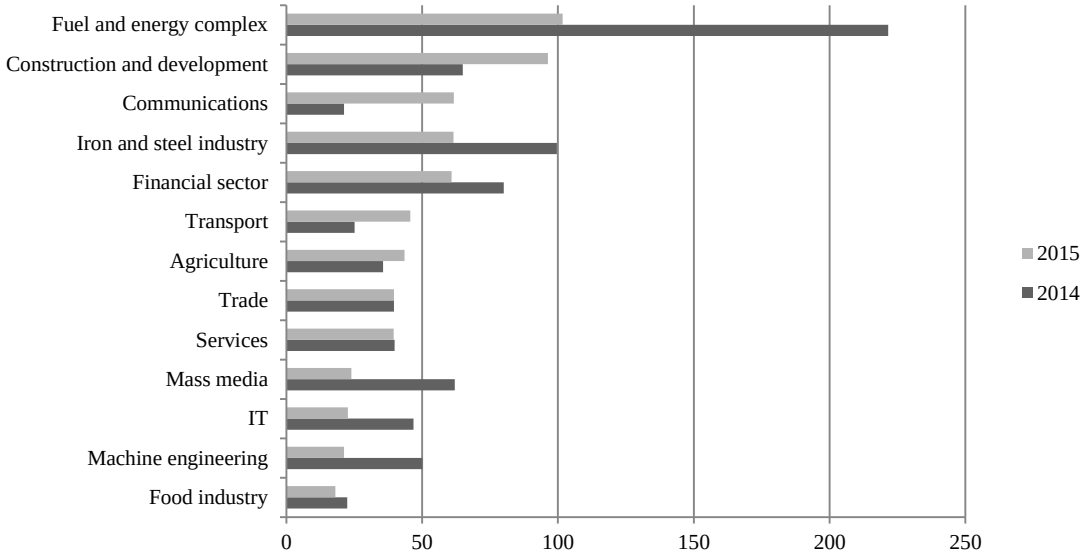

Fig. 8. Average value of M&A transactions (excluding biggest transactions) in Russian sectors in 2015, USD m

Source: AK&M Information Agency.

The average value of M&A transactions changed substantially in 2015:

- the value of transactions in the fuel and energy complex more than halved compared to 2014 (from USD 221.6m to USD 101.7m); the average value of transactions in the iron and steel industry dropped 1/6-fold (from USD 99.6m to USD 61.5m). The value of transactions in the financial, mass media, IT sectors and in the machine engineering industry decreased, too.

- by contrast, the following industries saw the average value of M&A transaction increase in 2015: construction and development sector (148%, from USD 65m to USD 96.3m); communications sector (291%, from USD 21.2m to USD 61.7m); transport sector (181.7%, from USD 25.1m to USD 45.6m); agricultural sector (almost 122.2%, from USD 35.6m to USD 43.5m).

As regards H1 2016, the construction and development sector ranked first like in 2015. Thirty eight transactions worth USD 8.68bn were executed in this sector in H1 2016, accounting for 56% of the market volume. Buying sites allotted for construction and redevelopment contributed most to the number of transactions in the sector (more than one-fourth of transactions in the sector). Taking advantage of the downturn, investors purchased the sites "for future use". Another most popular investment target was buying business centers and development projects in progress. The trade and financial sectors ranked second and third, accounting for 14% and 7% of the market volume, respectively.

In H1 2016, the construction and development sector ranked first (18%) in the number of transactions, followed by trade (12%), financial (10%) and IT (10%) sectors.

Furthermore, the construction and development sector contributed a lot to the Russian M&A market: triple growth in the number of settled transactions compared to 2014, as well as increase in the average value of transactions. According to experts, investors viewed commercial real

estate as a source of securing assets amid crisis and of capitalizing on the value in the post-crisis period.

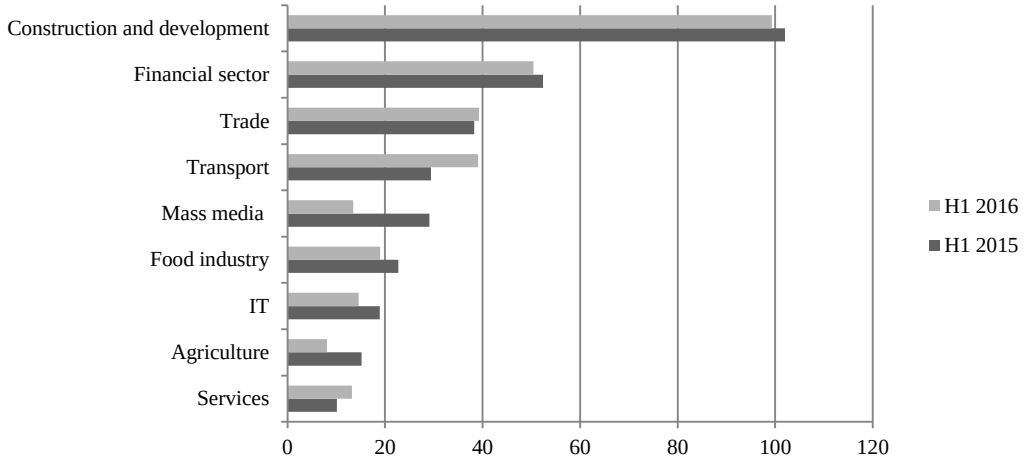

Fig. 9. Average value of M&A transactions (excluding biggest transactions) in Russian sectors, USD m[1]

Source: AK&M Information Agency

The average value of M&A transactions in Russian sectors is shown in *Fig. 9.* The construction and development ranked first, a way (almost twice) ahead of other sectors in respect to the average value of M&A transactions (USD 99.3m in H1 2015 and USD 102m in H1 2016), followed by the financial sector (USD 52.4m in H1 2016 vs. USD 50.4m in H1 2015) and the trade sector (USD 38.3m in 2016 compared with USD 39.3m in 2015). The mass media sector saw a more than double increase in the average value of M&A transactions (USD 29.1m compared with USD 13.5m, respectively).

In Q1 2016, the average value of M&A transactions increased for almost all the sectors compared to Q1 2015, except trade, transport and services.

2016 was marked by growth in the number of transactions settled on account of debt repayment. For instance, Rossiysky Capital Bank acted as a 'bridge bank' for SU-155 developer (the deal was equal to SU-155's debt liabilities of about USD 4.9bn). Sberbank took ownership of the President Plaza business center in Moscow as repayment for the debt owed by the previous owner of the center. VTB Group took ownership of the *Eurasia Tower* located in the *Moscow-City* business center as part of a deal covering the debt owed by the former owner. To be able to service the debt, the former owner of Zarechnaya coal company transferred its interest in the company, including its affiliates, to a new owner.[2]

It shouldn't go unnoticed that the state played a significant part in the corporate control market. According to estimates, state-owned entities purchased not less than about 40% of the total value of all the M&A transactions settled in H1 2016. According to the Analytical Center for the Government of the Russian Federation (analysis of statistical data on the number of registered organizations, the number of M&A transactions involving Russian assets and on the intensity of bankruptcies of Russian enterprises), it is *the bankruptcy institution*, not mergers

[1] Only sectors with 10 or more transactions, excluding biggest transactions worth USD 1bn or more.
[2] Rating: Top-30 M&A transactions 2016 - http://mergers.akm.ru/rates/9.

and acquisitions, that had the strongest effect on the concentration of companies' market shares in the Russian economy in time of economic crises. For instance, during the crises of 2008–2010 and of 2014–2015 the market for mergers and acquisitions involving Russian assets slowed substantially. This trend suggests that growth in the concentration in Russian markets cannot be attributed to the execution of M&A transactions in time of recession. However, the intensity of bankruptcies of Russian enterprises increased substantially in the course of the above mentioned crises.[1]

2017 is anticipated to see an upturn in the global market for mergers and acquisitions. Developed countries are expected to reach a peak of the aggregate value of M&A transactions in 2017, while emerging economies will reach a peak in 2018. The Russian market is most likely to stay at the 2016 level. It was not until 2017–2018 that the Russian market is expected to grow.

6.2.3. Corporate conflicts: corporate raiding (asset grabbing) evolution in 2008–2016

Raiding in Russia emerged in the 1990s. While raiders of the past were mostly part of criminal groups that employed violent tactics, raiders of the late 2000s were increasingly represented by persons educated in business-related disciplines and connected with public officials. In 2008–2016, raids spurred by the financial crisis of 2008 hit the headlines and were studied in research literature. After 2010, the prevalence of white-collar raiders employing more intellectual tactics resulted in less publicly available information on raids which continued increasing in number. Analysis of corporate raiding which was widely practiced during the pre- and post-crisis periods, and its contemporary, albeit less in number, notorious cases reveals types of raiders, targets, stages and tactics of corporate raiding and which one of these is prevailing today, provides an opportunity to see which way the Russian corporate raiding tends to move.[2]

Raiding is not defined in the Russian legislation. There is no single definition of the phenomenon in the academic literature, too. It often refers to a hostile takeover, and there is a distinction between legal ('white') and illegal ('dark') raiding.[3]

In Russia, however, corporate raiding, which emerged in the 1990s and, unlike the foreign practice, is closely associated with violent and hence illegal tactics, shouldn't be treated as a legal practice. Accordingly, hostile takeover is not corporate raiding, which in most countries refers to cases in which a minority shareholder or investor buys an interest in a publicly-traded company[4] sometimes with the intention of changing the management, but always with the goal of increasing the share value. This process is governed by takeover rules and corporate law.[5]

[1] For more details, see the Analytical Center for the Government of the Russian Federation. Concentration in Russian markets: trends amid economic downturn.- Competition Bulletin, December 2015

[2] This section is written based on analysis of the data published by *printed and online media, including.* Novaya Gazeta, BFM.ru, RIA Novosti, RBC, Prestupnaya Rossiya, The Guardian, Politcom.ru, Rossiyskaya Gazeta, Izvestiya, Business weekly *Ekonomika i Zhizn'— Chernozemiye*, Radio Liberty, The Moscow Post, Ruspress, Rossiyskoye Predprinimatelstvo, Pravo.ru, Commersant.ru, Forbes.

[3] See, for example, A. D. Radygin, P.M. Entov, E.A. Apevalova et al. Modern development trends in the market for mergers of acquisitions. M., Delo, 2010; I.A. Sokolov. Reiderstvo as a criminal and legal phenomenon in Russia and abroad // Business in law. Ekonomiko-Yuridichesky Zhurnal. 2014. No. 5. PP. 92-94; A.V. Voevodkin. Understanding reiderstvo in Russia // Rossiyskoye Pravo: Obrazovaniye, Praktika, Nauka. 2016. No. 1 (91). PP. 58–59.

[4] Reiderstvo is not limited to publicly-traded companies.

[5] Hereinafter see Shelley L., Deane J. (George Mason University's Terrorism, Transnational Crime and Corruption Center). The rise of reiderstvo: implications for Russia and the West (May 9, 2016) // http://reiderstvo.org/

Thus, in Russia, "corporate raiding" refers to a host of illegal tactics ranging from bribery, forgery, corruption, intimidation, and violence employed by raiders to steal companies from their owners, making massive and rapid profits by selling off assets and laundering the proceeds.

Reliable statistics on asset grabbing are difficult to obtain. Investigative authorities had opened nearly 200,000 cases of so-called "economic crimes" in 2014. Fifteen thousand out of 46,000 cases that came to trial were dismissed. Thus, only 15% resulted in a conviction. However, about 80–83% of businessmen charged with a criminal offence still ended up losing control of their businesses, "they were pressurized, ripped off and released".[1]

However, according to expert estimates, corporate raiding cases are increasing in number. One known tactic of corporate raiders is to have business owners arrested on fabricated economic crime charges in order to take control of the company while the owners are tangled in court proceedings. As of April 1, 2012, about 4,000 entrepreneurs were held in custody. In H1 2015, the number of persons placed in custody for economic offences increased 1.5-fold.[2] According to the business ombudsman, 6,500 persons were held in custody for economic offences as of February 1, 2016.[3] However, there is a ban in force since April 9, 2010 on holding in custody persons suspected or accused of having committed the crimes set forth in the Criminal Code (fraud, misappropriation and embezzlement, illegal entrepreneurship, etc.), if the crimes relate to entrepreneurship (Article 108 of the Criminal Procedure Code). Courts dodge this regulation despite Supreme Court's explanations.[4]

Legal avenues exist for companies to report alleged corporate raiding to authorities, but very few cases are ever investigated, and only a small portion of them ended in criminal courts, there are no official statistics on how many of asset-grabbing cases were resolved in favor of legal owners. Russia's main federal enforcement authority, the Investigative Committee, completed investigations of just 45 raiding claims in H1 2016, 112 in 2015, 96 in 2014, and 104 in 2013.[5] The Investigative Committee reported 368 raiding claims in 2015, a 27.9% decrease compared to 2014. All and all, 23 criminal cases were initiated in 2015 vs. 42 in 2014. The Committee decided not to initiate criminal proceedings for the rest of the claims.[6]

The economic crisis of 2008 and of 2014 contributed to growth in the number of raiding cases in Russia, because enterprises' net worth decreased; therefore, raiding attacks became more cost-effective. Raiders began to employ mostly debt and corruption tactics. An example is the CentrObuv Trade House which survived the economic crisis of 2008, was hit by the downturn in the footwear market in 2014 and therefore started racking up debts to banks and suppliers, becoming an easy target for raiders.[7]

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[1] The Annual Presidential Address to the Federal Assembly (December 3, 2015) // http://kremlin.ru/events/president/news/50864

[2] See V. Chelischeva. It's hard to avoid jail (October 19, 2015) // http://www.novayagazeta.ru/inquests/70380.html

[3] Business FM. May businessmen not be held in custody? (November 3, 2016) // https://www.bfm.ru/news/337845

[4] Resolution of Plenum of Supreme Court of the Russian Federation No. 41 of December 19, 2013 "On the Court Practice of Applying the Legislation on Commitment to Custody, House Arrest and Bail" // РГ, No. 294, of December 27, 2013; RIA Novosti. Supreme Court proposes a ban on holding businessmen in custody (November 3, 2016) // https://ria.ru/incidents/20161103/1480597597.html

[5] See Statistical information // http://sledcom.ru/activities/statistic

[6] See The Investigative Committee reports on a double decrease in the number raider attacks in Moscow (February 2, 2016) // http://rbc.ru/rbcfreenews/56bc49b69a79473eb1757746

[7] See How CentrObuv managed to survive two crises but failed to oppose raiders (May 20, 2016) // https://crimerussia.com/raidergrabs/kak-tsentrobuv-perezhila-dva-krizisa-i-ne-spravilas-s-reyderami/

The low risk of prosecution makes raiding one of the most profitable crimes in modern Russia. It costs around $120,000- $170,000 to bankrupt an average company. But the raider can then make $3-4m profit.[1]

The chasm between the number of cases of raiding and the number of investigations has several explanations. Important contributing factors are corruption, legislative loopholes and inefficient law enforcement.[2] The Russian Criminal Code does not define or punish reiderstvo itself, instead classifying separate raiding acts as fraud (Article 159), official forgery (Article 292), etc.[3] Some raiders can protect their illegal activities in the capacity of highly-placed office-holders, thus discouraging their victims to seek help. When a law enforcement agency tries to oppose illegal raiders, it often encounters resistance from other state agencies or even internal departments within the same agency. An important impact has been on public opinion: the majority of the population who felt that all private property had been acquired illegally or, at least, unfairly. As a result, the general public is often apathetic towards individual cases of raiding.

It is difficult and sometimes impossible to attribute a given case to raiding or asset-grabbing because available information is often conflicted. For example, some sources consider the Rudgormash's CEO as raider[4], while others claim his is a victim to raiding.[5] One thing that is real, though, is that the company saw its employment and productivity drop as a result of a long-lasting "gunfight". Not less intricate is the cases of, e.g., Hermitage Capital Management (HCM) and Yevroset.

Assets owned by individuals, corporations, public institutions and even state-owned entities have all fallen victim to corporate raids, although small businesses with few resources to protect themselves are the most common target.

Raiders focus on real estate in big cities, while agricultural land is also targeted, especially in the vicinity of the larger cities. For example, Raiders tried to take over the Taneev School of Music, Moscow's best-known music school for children, soon after a 12-year-long renovation of its building in central Moscow was completed. The saga started in 2014, when inspectors from Rospotrebnadzor (Russia's Federal Consumer Protection Agency) closed the building down, allegedly because of the presence of ammonia in the building. The school was subsequently inspected by various agencies including a commission from the EMERCOM (Russia'a Emergencies Ministry), none of which found any evidence of ammonia. However,

[1] See Harding L. Raiders of the Russian Billions (June 24, 2008) // https://www.theguardian.com/world/2008/jun/24/russia.internationalcrime

[2] See Center for Political Technologies. Reiderstvo as a socio-economic and political phenomenon in contemporary Russia (2008) // http://politcom.ru/tables/otchet.doc. P. 7.

[3] In 2015, a draft of the first article of the Criminal Code concerning criminal liability for the appropriation of rights to own and manage a legal entity and/or its assets (or a reiderstvo draft bill) was submitted to the State Duma. The new document didn't receive a unanimous support, including the Supreme Court which is certain that the effective law provides sufficient instruments to combat raiders. The draft bill was rejected on March 16, 2016. See Draft bill No. 816921-6 // http://asozd2.duma.gov.ru/main.nsf/%28SpravkaNew%29? OpenAgent&RN=816921-6&02; Yu. Voronina. Laying hands on others' property (July 7, 2015) // https://rg.ru/2015/07/07/reyderstvo.html

[4] A. Voloshin. Actual Rudgormash CEO A. Chekmenev has been pictured as "a tumor" on the Voronezh business community (March 18, 2013) // http://www.eizh.ru/articles/konflikty/fakticheskiy-rukovoditel-rudgormasha-a-chekmenev-stal-rakovoy-opukholyu-voronezhskogo-biznes-soobshch/

[5] S. Nikitina. Rudgormash is seized by raiders (February 8, 2011) // http://izvestia.ru/news/371047

the school building remained closed down. Furthermore, Rospotrebnadzor brought a legal action seeking to shutdown the school. The case is still pending.[1]

Recently, raiders have turned their attention to intellectual property, with anything from musical, literary and artistic works, to discoveries and inventions targeted. Given that intellectual property rights do not enjoy strong protection in Russia, the risks of raiding in this sector are even higher.

In 1997, the Social Insurance Fund (SIF) decided to develop the Unified Integrated Information System (UIIS) Sotsstrakh. Since the SIF was short of money, NIST (later OIT) Company undertook to provide free-of-charge development and full technical support for the (UIIS) Sotsstrakh. Until 2010, NIST provided technical support and developed the (UIIS) Sotsstrakh coupled with a free-of-charge development of new subsystems thereof. In 2011, SIF's new managers contracted other company to provide technical support for the (UIIS) Sotsstrakh, thus infringing a copyright and increasing dramatically operation costs for the system. Since then there have been an endless series of reciprocal legal claims and court hearings between the companies. Although there are two companies in dispute, the SIF's involvement by using administrative resources is restricting courts from sorting out the problem objectively.[2]

Raids on companies owned by or partnered with foreigners are rare, but tend to attract the most public attention. Nevertheless, high-profile raids on firms with a foreign shareholding have contributed somewhat to the decline in inward foreign investment.

Russian highest-level officials have proven willing to countenance the destruction of major enterprises for private gain, even in one-factory towns where the majority of the population depends on a single enterprise. As an example, the open joint- stock company Khimvolokno was once a highly successful textile company in the Saratov region, with a profit margin of nearly 25%, and successful market entries in Germany, South Korea, Turkey and Switzerland. Despite its success, the company was unable to ward off attacks from raiders, who within a couple of years were able to seize control of the company and initiate a bankruptcy claim. Khimvolokno, estimated at Rb 87bn, was sold at Rb 100m after being stripped off of its valuable assets.[3]

Even companies that are strategically important for Russia's defense industry and national security have been raided, too. Some of these were deliberately bankrupted, others had to sell off their most valuable assets, while still others had to dismiss their highly trained staff (e.g., The Moscow M.L. Mil Helicopter Plant, OJSC Barrikady Industrial Group, NPO Geliymash[4]). In the late 2000s, it was reported with reference to the data of Russian security services that allegedly more than 200 enterprises in the Russian defense industry were the subject of raid seizures.[5]

Experts distinguish four different types of corporate raiders.

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[1] See L. Palveleva. Taneev School in weal and woe (June 4, 2015) // http://www.svoboda.org/a/27054012.html

[2] See N. Khromov. Do the government employ raiding to grab intellectual products? (08.10.2014) // http://www.moscow-post.com/economics/gosudarstvennoe_rejderstvo_po_zaxvatu_produktov_intellektualnoj_dejatelnosti15586/

[3] See Beitman A. Bankruptcy Fraud in Russia (July 22, 2013) // http://traccc.gmu.edu/2013/07/22/bankruptcy-fraud-in-russia/

[4] See A. Lazareva. Vadim Uduta's response to the article entitled "'Evil Helium' Vadim Uduta steals for his wife" (February 18, 2015) // http://www.rospres.com/finance/15467/

[5] See Have raiders set their sights on defense industry? (April 10, 2008) // https://iq.hse.ru/news/177682074.html

1. *Criminal organizations and gangs* were the original raiders. Beginning in the 1990s, their violent raids involved the armed seizure of assets and often the outright murder of business owners. They were perpetrated not just by criminals but also by former law enforcement and security officers with close ties to state agencies.

2. *Legalized owners* were able to convert assets illegally obtained in the 1990s into legalized businesses in the 2000s. They continue to use illegal methods, but maintain a lower profile than gangs and retain connections with the judiciary, local governments, and with law enforcement. This group can include minority shareholders and businessmen who own shares while pursuing extra-legal means of securing ownership over a company, such as instigating bogus criminal cases against legal owners, launching black PR campaigns, and entering false information in shareholder registers.

3. *Private-sector white-collar criminals* educated in business-related disciplines (law, economics, finance, accounting, psychology) have pioneered the use of quasilegal methods to seize assets in the post-privatization period. Some of these private-sector criminals have founded banks that initially build up relations with borrowers in order to seize their assets later. Others have created entire companies that specialize in grabbing asset.[1]

4. *Public-sector white-collar criminals*. It is well-known that public officials were involved in raiding from the very beginning of the asset-grabbing practice in Russia. Today, however, public officials and their family members play an increasingly more important part in initiating in grabbing and further distribution of assets.

The case of the open joint-stock company Agrofirma Engel'skay aillustrates this type, the Saratov Military Court convicted the former CEO, the chief accountant, a law enforcement officer, as well as the former deputy chairman of Property Management Commission of the Engel'sk Municipal District, and subsequently the Advisor to the Head of the Regional Control Directorate, of illegal seizure of the big joint-stock company Agrofirma Engel'skaya. The Court held it proved that the ex-CEO was supported by the law enforcement officer in holding in 2008 an illegal meeting of the shareholders to have the former managers ousted. The former CEO was detained by both police and drug control officers, the former discovered a firearm in his car, while the latter found drugs in his office. Eventually, the CEO was held not guilty. Initially, the raiders succeeded in seizing the company's assets worth Rb 47.7m, stealing the Agrofirma Engel'skaya immovable property worth Rb 191m, etc.[2]

Another example is Agromol. Agromol was a medium-sized factory located in Russia's Northwest (Kostroma), employing 300 workers and producing milk and milk products. In 2008 two former FSB (intelligence) officers approached its owner and threatened to have him arrested unless he sold them the company at below the market price. When he refused, he was charged with theft in connection with a bank loan (Rb 1.8m) the company had taken out two years earlier, and was sentenced to five and a half years in prison despite the fact that the owner disclosed to the court that he had been blackmailed. He was released after two years in prison by the ruling of the Supreme Court, and was held not guilty.[3]

[1] In 2009, for instance, the Simonovsky District Court (Moscow) convicted the leaders of IK Russia, a Russian major group of raiders. More than 50 enterprises fell victims to the raiders. See O. Mefodiyeva. Reiderstvo comes up roses in Russia (March 18, 2010) // http://politcom.ru/9787.html

[2] See A. Kulikov. FSB lieutenant-colonel convicted of asset-grabbing in Saratov (February 17, 2012) // https://rg.ru/2012/02/17/reg-pfo/pomanov-anons.html

[3] See A.A. Yakovlev, A.A. Sobolev, A.P. Kazun (Higher School of Economics). *Can Russian business* curtail government's "pressure"? *// Preprint WP1/2014/01, M., 2014. PP. 22–24.*

A raiding attack is basically four-staged. *Preparation* is target selection and collection of information. The overwhelming majority of raiding attacks succeed at the (second) stage of *negotiation* (which includes acquisition of a minority shareholding, dissemination of compromising information, blackmail, etc.) when victims, realizing that it would be futile to resist, sell their assets to raiders. The stage of *execution* begins if the owner has refused to negotiate. The stage of *legalization* follows the seizure of assets and includes swift resell of the assets to various persons and shutdown of the target company.

The standard four-stage sequence to these tactics is addressed after the eight categories.

1. *Forgery and fraud* is a component of almost every raiding case, including the falsification of documents of all kinds, ranging from shareholder registers to leases, deeds, ownership documents, permits, contracts, court decisions and bank documents. The complicity of public officials at all levels is required for these documents to be notarized, registered, and accepted. In small-scale property cases, raiders may simply show up at a property with forged ownership documents and take over the premises by force or threat of force.[1]

2. *Malicious prosecutions* take place when the raider fabricates false criminal charges against the owners or managers of the target company. In a "zakaznoye delo", also known as "telephone justice", a senior official simply picks up the phone and tells the judge how to rule. Since the calls don't leave a trace, it is difficult to estimate how common they really are.

3. *Tax inspections and other regulatory harassment*. Raiders often bribe regulatory agencies to carry out inspections, file false reports and initiate other administrative harassment so that the owners of a company are spread too thin to effectively counter raiding attacks.

4. *Misuse of shares and shareholder protections*. In the past 15 years, raiders have increasingly used "attacks from within," misusing basic institutions of corporate governance to gain control. Other tactics include buying a minority stake in order to gain access to confidential information, forging internal documents, spreading false information, disrupting shareholder meetings, etc.[2]

5. *Misuse of the banking system* plays an important role in facilitating raiding. In some cases, raiders set up banks specifically to give credit to companies they are seeking to take over; in others, banks sell confidential information about clients to prospective raiders. In still other cases, banks are themselves raided by groups seeking to call in the bank's loans and gain control of its clients.

In 2009, many large companies were driven into bankruptcy by raiding banks using the so-called 'credit raiding' in the aftermath of the economic crisis of 2008[3]: a major steel maker in Russia's Far East (Amurmetall), a large textile works in Moscow Oblast (Serpukhovsky

[1] Tax officers were convicted of abuse of office, bribery, a serious fraud attempt. It was found that public officials committed theft of Pushkinskaya Company's registration file and made illegal updates to the records of eight legal entities. See A court in S. Petersburg convicts a group of persons involved in raiding attacks against enterprises and organizations (June 16, 2010) // http://sledcom.ru/news/item/540987

[2] The case of the SMARTS Group, 5th biggest mobile operator in Russia, offers a good example of how raiders misuse a minority share package to take over the company. After the raiders bought a minority share of the company, they repeatedly disrupted shareholder meetings; they had lawyers file legal claims against SMARTS in order to paralyze the company's operations via the court system; they entered into false contracts on behalf of the company in other regions. After several attempts, the raiders succeeded in taking control of SMARTS and then reselling the shares at a huge profit. See N. Studenkin. PR-defense for business in corporate wars: a tutorial for winners. M.: Alpina Publishers. 2011, pp. 332–339.

[3] See S.A. Meshkov, A.V. Rumyantseva. Asset-grabbing as a manifestation of shadow economy expansion in the national economy // Rossiyskoye Predprinimatelstvo. 2014. No. 6 (252). pp. 51–58.

Tekstil), an alcohol distributor in Perm (Dobrynya Enterprises), a textile factory in Volgograd (Kamyshynsky KHBK), a meat factory in Omsk (Myasokombinat Omskyy), a waterworks and pipeline company in Dalnegorsk (Dalgrad), and a leading vodka producer (Kristall).[1] In some of these cases the companies' traditional banks had been willing to continue lending them money, but new "raiding" banks had taken over parts of the debt in order to call them in and liquidate the company.

6. *Violence* (including armed raids, arson, physical attacks, etc) is still in use, although its degree has lowered markedly since the 1990s.[2]

7. *"Dark" PR campaigns* are a common feature of raiding attacks. They trace their roots to the smear wars of the 1990s. The main aims of a dark PR campaign are to destroy the target company's reputation, create uncertainty about its future, and misinform stakeholders about its economic performance. Contemporary dark PR specialists tend to wage information war online, publishing negative information about raided businesses and their owners.

8. *Abuse of international law enforcement mechanisms*. Raiders may engage law enforcement to have Interpol issue a "red notice", or international arrest warrant. Using fabricated criminal charges, the objective is to ensure that the firm's owner or management will be arrested and returned to Russia. As the number of red notices issued has increased rapidly, Interpol staff have estimated that only 3% of red notice requests are reviewed in depth.[3]

Raiders may either take actions from several different categories or may employ them all: forgery and fraud, malicious prosecutions, tax inspections and other regulatory harassment, misuse of shares and of the banking system, violence, "dark" PR campaigns, abuse of international law enforcement mechanisms.[4] A remarkable example is the 10-year (2005 till 2015) case of Togliattiazot (ToAZ), a world's largest ammonia producer, as part of which a full-scale information war was raged, criminal cases on privatization violations and on tax evasion through the sale of ammonia at below-market prices were initiated, false representations were submitted to the Federal Tax Service, documents were forged, the data on shareholders were tempered, company's assets were frozen, extradition requests were issued, etc.[5]

Summarizing, the point to notice is that Russian corporate raiding is not new. Post-privatization criminal raids of the 1990s, which were characterized by explicitly criminal tactics and violence, gave way to a systematic taking of assets from legitimate businesses by public officials and businessmen. Raiders capitalize on the weakness of Russian institutions, endemic corruption and abuse rule of law, mass media. Russian corporate raiding gains its distinction

[1] See S. Petrov. Credit Reiderstvo (June 18, 2009) // http://pravo.ru/review/view/12918/

[2] A good example is an attempted asset grabbing against OGAT, Ltd., one of the largest and most established road transport companies in the Russian Far East. See A. Chernyshev. Raiders didn't stop short of killing (July 23, 2013) // http://kommersant.ru/doc/2238936

[3] See Bowcott O. Interpol Accused of Failing to Scrutinise red notice requests (November 27, 2013) // https://www.theguardian.com/uk-news/2013/nov/27/interpol-accused-red-notice-requests

[4] Examples of employing various combinations of raider instruments are given in, e.g., Shelley L., Deane J. (George Mason University's Terrorism, Transnational Crime and Corruption Center). The rise of reiderstvo: implications for Russia and the West (May 9, 2016) // http://reiderstvo.org/

[5] For more details, see A. Livinsky. The ammonia case: how the Togliattiazot's "red' director has lost control of the company (April 25, 2016) // http://www.forbes.ru/kompanii/resursy/318561-delo-s-zapakhom-ammiaka-kak-krasnyi-direktor-tolyattiazota-poteryal-kontrol; OAO Togliattiazot's statement regarding the incorrect information disclosed by the Uralchem Director General in his interview (December 5, 2014) // http://www.toaz.ru/rus/press/document1715.phtml; OAO Togliattiazot discovers an illegal attempt to block its operations through minority shareholder's fraudulent acts (December 7, 2015) // http://www.toaz.ru/rus/press/news/document1959.phtml

from Western practice of corporate raiding specifically through the use of destructive, corrupt, and violent means, contributing to Russia's current unfriendly business climate and to declining investor confidence in the country. Without addressing this issue, without support and real legal protection for entrepreneurs and companies, asset-grabbing will only become more prevalent.

6.2.4. Corporate legislation as applicable to mergers and acquisitions (2010–2016): civil legislation reforms

The Russian practice of mergers and acquisitions began upon the early 1990s when first Russian OAOs (open joint-stock companies) were formed. The general legislative norms regulating legal entities reorganization, open joint-stock companies, the issuance and floating of shares are set forth in Part 1 of The Civil Code of the Russian Federation effective since January 1, 1995, which laid foundation for the regulation of corporate relations in this field. The scope of the legal regulation for mergers and acquisitions was substantially updated and expanded by the adoption of the Federal Law "On Joint-Stock Companies" effective since January 1, 1996.

Up until 2002–2003, neither did the legislator nor the business community regard M&A procedures – company's reorganization or acquisition of a controlling interest – as special tools designed for business development and as potential sources of corporate issues that deserve special attention by both the legislator and companies.

In the period of 2002–2003, a substantial growth in the number of well-publicized bad faith takeovers of joint-stock companies (see above) prompted the federal government to pay more attention to various regulatory issues related to the market for mergers and acquisitions. In October 2003, parliamentary hearings – Legal security of ownership rights as a factor of Russia's economic resilience – were held in the State Duma. It was at that particular time that the need for special approaches to the regulation of mergers and acquisitions of joint-stock companies, primarily for the purpose of limiting illegal seizures of assets (asset grabbing), was for the first time acknowledged at the federal level.

At present, M&A procedures are subject to thorough regulation by the Civil Code and the Federal Law "On Joint-Stock Companies" (hereinafter – FL "On Joint-Stock Companies"). The basic principles of mergers – reorganization by way of mergers and acquisitions of business entities (companies), as defined in the Russian legislation – amount to the following.

1. Business entities (companies) can be merged or acquired by a decision of their founders (members) or by a decision of their governing board authorized to do this by the company's charter. In some cases, a merger or acquisition requires the clearance of authorized public authority – The Federal Antimonopoly Service of the Russian Federation (hereinafter – FAS Russia). FAS Russia shall approve M&A transactions pursuant to the provisions set forth in the Federal Law "On the Protection of Competition".

2. The creditor of each of the legal entities involved in reorganization shall be entitled to demand early performance of the obligation to the creditor by the legal entity under reorganization or, if the early performance cannot be possible, termination of the obligation and compensation for losses, with a few exceptions as described below.[1]

3. A universal succession arises out of merger and consolidation of legal entities, that is, all the rights and responsibilities of the persons involved in the reorganization shall be transferred

[1] Until the Federal Law No. 315-FZ was adopted on December 30, 2008, the creditor had the right to select between termination and early performance of the obligations with compensation for losses during the reorganization of a legal entity.

to the new legal entity formed as a result of the merger or to the legal entity into which the persons are consolidated.

4. In the case of merger, the legal entity shall be deemed to be reorganized from the date of state registration of the legal entity formed as a result of the merger. In the case of reorganization by consolidation, the legal entity ceasing to exist shall be deemed to be reorganized from the date of entry in the Unified State Register of Legal Entities on the cessation of the consolidated legal entity's business.

5. The shareholders of companies under reorganization shall be entitled to demand the share repurchase by the company (Clause 1 Article 75, FL "On Joint-Stock Companies").[1]

Besides general provisions the legislator contemplated a decision-making procedure for merger and consolidation, the wording and a procedure whereby merger and consolidation agreements can be concluded (Articles 16 and 17, FL "On Joint-Stock Companies"), a procedure whereby the charter can be approved and the board of directors elected, as well as some other procedures.

In practice, the institution of reorganization is disfavored by Russian businesses. A reason for this is that merger and consolidation may give rise to extra obligations such as early redemption of debts to creditors, minority shareholding repurchase. In addition, the requirement for a complicated reorganization procedure takes on extra costs, and the transparency of consolidation and reorganization poses additional threats from both competitors and potential raiders.

Russian companies most often use consolidation and merger in the event of so-called transition to a single share.[2] This may be performed through one of the following options:

- subsidiaries consolidation with the parent company;
- consolidation with the parent company, as well as subsidiaries consolidation with a subsidiary of the parent company;
- merger of the parent company with all its subsidiaries;
- consolidation of the parent company and the subsidiaries with a newly formed company.

In fact, the mechanism of reorganization fails to perform its function in the market for mergers and acquisitions because companies tend to become more vulnerable in time of reorganization and to face a higher risk of competitors' undesired actions and of losing control because of a highly formalized reorganization procedure which makes reorganization economically unviable, especially amid mixed market trends, and because the reorganization is a time-consuming procedure.

In 2001, the legislator attempted for the first time to create a legal framework designed to balance between interests of various groups of persons with regard to acquisitions including hostile takeovers. The ambiguity concerning the possibility of restricting the free-floating of open joint-stock companies' shares was eliminated. As a result, both joint-stock companies and the shareholders were not entitled to preserve the preferential right to purchase shares disposed by other shareholders. This rule allowed for legitimate purchase of shares in the secondary market, including the purchase of shares for taking over a joint-stock company by gaining a full corporate control thereof. As a result, open joint-stock company's additional shares could be placed both by non-public offering, that is, in favor of a single buyer or several buyers known

[1] In practice, such shareholders are often face the issue of undervalued shares.
[2] Hereinafter A. Molotnikov. Mergers and acquisitions. M., SPb., Vershina, 2007, p.20.

beforehand,[1] and by public offering, thus increasing the number of outstanding shares and eventually simplifying the purchase of the shares in an open market. In addition, every shareholder was entitled to exercise the preferential right to purchase the placed voting shares pro rata to the quantity of shares owned by the shareholder in a given joint-stock company. The mechanism which, according to the legislator, was supposed to become a counterbalance in combating mounting hostile acquisitions was the mechanism whereby the share placement decision only could be adopted by not less than three-fourths of the voting shareholders attending the general meeting of shareholders. If the placement of open joint-stock company's voting shares falls into the category of non-arm's length transaction, the persons having a vested interest in the transaction, including the shareholder or a group of shareholders planning to gain corporate control over the joint-stock company, are not entitled to vote with regard to such share placement decision.

The period of 2001–2006 was marked by an upsurge in the number of high-profile criminal takeovers, and therefore the complaints against the acquisition regulatory norms set forth in the joint-stock companies law with regard to the shareholders' rights protection had reached a critical mass. Too many acquisition issues were left unaddressed, thus discouraging business development. The issue of regulating the relationship between majority and minority shareholders in the corporate legislation was a critical issue because of attempts to drive the latter out of joint-stock companies and to dilute the shares.

In 2006, the law set some new rules concerning takeovers by acquiring a major interest. A distinction was drawn between *voluntary and compulsory share purchase offers*. The mechanism of the proposed regulation was intended to balance between the interests of the buyer, of the "old" shareholders and of the company's managers. If this mechanism proves efficient, any bad-faith takeover will become less cost-efficient, more risky and therefore less lucrative than a good-faith legal acquisition. A federal law[2] was adopted in January 2006, introducing new mechanisms in the corporate legislation.

Voluntary and compulsory share purchase offers. A person seeking to purchase more than 30% of the total common and preferred voting shares in an open joint-stock company (including the shares owned by the person and by the affiliates therewith) shall be entitled to send to the open joint-stock company a public share purchase offer addressed to the shareholders for the acquisition of the shares owned by the shareholders (Article 84.1, FL "On Joint-Stock Companies"). Upon acquiring more than a 30% interest in the open joint-stock company (including the shares owned by the person and by the affiliates therewith) the shareholder must send a public share purchase offer to the other shareholders for the acquisition of the shares owned by the shareholders (Article 84.2, FL "On Joint-Stock Companies").

Following listed are the terms intended to protect shareholders' rights.

a) a bank guarantee shall be attached to voluntary and compulsory share purchase offers, constituting the guarantor' obligation to pay the price to the former security holders in the case the offerer fails to perform in due time his obligations to pay for the securities. Furthermore, the banking guarantee must expire in no event sooner than six months from the due date set in the securities purchase offer.

[1] Including those that form a group of persons by implication of the Federal Law "On the Protection of Competition".
[2] No. 7- Federal Law of January 5, 2006 "On Amendments to the Federal Law "On Joint-Stock Companies".

The securities sale offer shall be made to *all* the shareholders on equal terms. With respect to the compulsory offer, the due date for the payment for shares shall be a date not later than 15 days from the date of entry on the offerer's deposit account.

The sender of voluntary/compulsory offer shall present information on the shares purchase procedure and the data on the relevant transaction (in the case of voluntary offer), on the shares he owns and on his managers holding an interest of more than 20% (in the case of voluntary offer), etc.;

b) the sender of voluntary offer may not acquire shares on terms other than the terms set out for the voluntary offer within the effective period thereof;

c) the acceptance period for the voluntary offer shall range between 70 and 90 days from the receipt of the voluntary offer by the joint-stock company; and 70 to 80 days for the compulsory offer;

d) a prior notice shall be sent to the FFMS (Federal Financial Markets Service) if the shares are traded in the securities market.

However, an attempt to protect minority shareholders in such a manner wrong-footed major shareholders (especially amid a liquidity deficit) who, while purchasing an interest, must within a month or so present a long-term bank guarantee equal to the price of the rest of the shares. In this case, if their offer is not accepted, there is no way whatsoever for them to recoup the costs.

The civil legislation reform of 2008–2014 updated the regulation for mergers and acquisitions. Federal Law No. 99-FZ of May 5, 2014, No. 99-FZ (as latest amended on November 28, 2015) "On Amendments to Part 1, Chapter 4 of the Civil Code of the Russian Federation and the Revocation of Certain Provisions of Legislative Acts of the Russian Federation" was adopted in May 2014.

The law introduced a possibility of undertaking *a comprehensive reorganization*, that is, the reorganization of a legal entity combining various forms of reorganization at a time, as well as reorganization involving more than two legal entities, including companies with different organizational and legal forms. Apparently, such a considerable room for reorganization will make it difficult to identify the successor and will encourage entities under reorganization to employ abuse practices.

Today, the principal document for the reorganization of legal entities is the transfer certificate (previously, the transfer certificate and the spin-off balance sheet were required).[1]

Regulation of guarantees to creditor's rights in reorganization changed substantially. Previously, the creditor of a legal entity was entitled to demand *early performance of the obligation by the debtor* or, if early performance cannot be possible, termination of the obligation and compensation for losses, if his claim originated prior to the initial notice of legal entity reorganization (except for a few cases specified by the law). At present, all creditors are subject to the terms that were previously applicable to joint-stock companies: the creditor shall be entitled to demand early performance of the obligation strictly through legal proceedings

[1] The transfer certificate must contain, apart from the old requirements, "the succession procedure due to change to the type, composition and value of the assets, the origination, change, termination of legal entity's rights and obligations which may take place *after* the date the transfer certificate is drawn for" (Article 59, Part 1 of the Civil Code of Russia). If the transfer certificate cannot identify the successor or it is implicit therein that in the course of reorganization the legal entities' assets and obligations were split up in bad faith, thus resulting in material infringement of the creditors' rights, the reorganized legal entity and the legal entities formed as a result of the reorganization shall be held jointly and severally liable for the obligation.

within 30 days from the date of the most recent notice of legal entity reorganization, etc., except for secured creditors. In fact, this narrows creditor's rights in cases of reorganization.

In addition, the responsibility for defaulting on obligations to the creditor now rests not only on legal entities formed as a result of the reorganization but also on the "*persons who really can govern the reorganized legal entities' acts, their board members, the person authorized to act on behalf of the reorganized person",* if such acts have led to non-recoverability of losses, early default on the obligations, non-provision of an adequate security.

What the law secures explicitly is that judicial invalidation of the reorganization decision shall not imply the liquidation of the legal entity formed as a result of the reorganization and shall not be cause for invalidation of the transactions settled by this legal entity. It would seem that this regulatory norm must secure an immutable division of the property owned by state-owned companies and by state-owned corporations formed as a result of multiple reorganizations.

The invalidation of reorganization was given a special regulatory attention. Invalidation may take place at the request of a corporation member who voted against the reorganization decision or did not participate in voting on this subject matter, provided that the reorganization decision was not adopted by the members of the reorganized corporation, as well as by the members of corporations formed during the reorganization using designedly false data on reorganization.

Such a court ruling implies:

- reconstitution of legal entities that existed prior to the reorganization;
- that transactions between legal entities formed as a result of the reorganization and persons relying in good faith upon the succession shall remain in force for the reconstituted legal entities as joint and several debtors and creditors on such transactions;
- that the members of the previously existing legal entity shall be deemed to be owners of a interest therein equal to the interest they held prior to the reorganization, and some other persons.

In addition, the reorganization of business partnerships and business entities into not-for-profit organizations, as well as into unitary business organizations, was prohibited. In general, the introduced regulatory norms for reorganization mostly reflected the interests of biggest companies and other entities partly owned or with a controlling interest held by the government, thus restricting somehow creditor's rights.

The mechanism of acquiring a controlling interest in companies is much more in demand and continues to develop at a fast pace. Its development in 1990– 2008 is described in details above.[1] As a follow-up to the civil legislation reform, *the share trading specifics for publicly-traded companies and non-public joint-stock companies* were set out in the law on joint-stock companies in June 2015:[2]

1. The charter of a non-public joint-stock company may contemplate the *preferential right for the shareholders to acquire shares* in the company, provided that the shares are acquired through transactions for consideration at the third party offer price or at the price set forth in the company's charter or in the manner set forth in the company's charter;
2. Where shares are acquired though other transactions (exchange, satisfaction, etc.), the charter of a non-public joint-stock company may contemplate the preferential right to

[1] A. D. Radygin, R.M. Entov, E.A. Apevalova et al. Modern development trends in the market for mergers of acquisitions. M., Delo, 2010.

[2] Federal Law of June 29, 2015, No. 210-FZ "On Amendments to Certain Legislative Acts of the Russian Federation and the Revocation of Certain Provisions of Legislative Acts of the Russian Federation".

acquire such shares only at the price or pursuant to the pricing procedure set forth in the charter thereof;

3. Shareholders shall enjoy the preferential right to acquire the shares being disposed of pro rata to the quantity of shares owned by each of them, except the company's charter contemplates otherwise;
4. In addition, the charter of a non-public joint-stock company may contemplate the company's preferential right to acquire shares being disposed of in the case the shareholders fail to exercise their preferential right;
5. The shareholder seeking to sell shares to a third person *must notify accordingly the non-public joint-stock company* whose charter envisages the preferential right to acquire the shares being disposed of;
6. The shareholder may *sell his shares to a third person,* provided that the company's other shareholders and/or the company itself do not exercise the preferential right to acquire all the shares being disposed of within *two months* of the date of receipt of such notice by the company, except where the company's charter contemplates a shorter term;
7. When non-public joint-stock company's shares are sold in breach of the preferential right, the preferential right shareholders or the company itself, if the company's charter envisages the company's preferential right to acquire shares, within *three months* following the date on which the shareholder or the company learned or should have learnt about such a breach *may demand in court that they will be granted the buyer's rights and responsibilities* and/or the sold shares will be transferred to them by paying to the buyer the price under a purchase/sale agreement or the price set forth in the company's charter, and, if the shares have been sold though transactions other than purchase/sale agreement, the sold shares will be transferred to them by paying to the buyer the price set forth in the company's charter, to the extent that the buyer has been proven to know or should have known about the preferential right envisaged by the company's charter;
8. The non-public joint-stock company's charter may contemplate that the shares may be sold to third persons subject to *shareholders' consent*;
9. The non-public joint-stock company's charter or a decision on placement of additional shares or emissive securities convertible into shares approved by unanimous voting at the general meeting of shareholders of the non-public joint-stock company may contemplate no preferential right for the shareholders to acquire the additional shares or emissive securities convertible into shares.[1]

The non-public joint-stock company's charter may contemplate a procedure (including disproportion) whereby certain categories of shares can be *converted into the shares in other joint-stock company* formed as a result of the company's reorganization, and/or a procedure (including disproportion) whereby they can be exchanged for interest in the limited liability company, for an interest or shareholding in the business partnership's charter capital or for units owned by the members of the production cooperative formed as a result of the company's reorganization. Such a decision shall be subject to unanimous voting only.

A public joint-stock company may not place preferred shares at a par value being less than the ordinary share par value. (Clause 2, Article 25, FL "On Joint-Stock Companies").

The charter of non-public joint-stock company or the shareholders' agreement to which all the shareholders of the non-public joint-stock company are parties may set a procedure other

[1] For details, see Article 7, FZ "On Joint-Stock Companies".

than that laid down in this Article whereby the preferential right is exercised to acquire the shares placed by non-public joint-stock company or emissive securities convertible into its shares. Relevant provisions may be contemplated by the charter of non-public joint-stock company while being established or they may be introduced in the charter thereof, updated and/or revoked from the charter thereof by a unanimous resolution voted by all the shareholders at the general meeting of shareholders (Clause 5, Article 41, FL "On Joint-Stock Companies").

The same law introduced *substantial changes to the procedure whereby shareholders can acquire shares.* The most important updates to mergers and acquisitions amount to the following.

1. The repurchase request for the shares owned by a shareholder registered with the company's shareholder registry or the repurchase request withdrawal shall be communicated to the *registrar*, not, as was earlier the case, to the company;

2. *The procedure for considering compulsory and voluntary share repurchase offers* was updated, making it impossible for the general meeting of shareholders to accept recommendations on the voluntary/compulsory share offer (Article 84.3, Paragraph 3, Clause 1, FL "On Joint-Stock Companies") while delegating the relevant authority exclusively to the board of directors.

The *registrar* will now play a distinct role in the share repurchase procedure. The registrar of a publicly-traded company is exclusively entitled to:

- receive the securities sale application from the securities holder registered with the public company's shareholder registry;
- receive information on the current account or depository account to which securities are credited in payment for the securities being disposed of (if the use of other securities as payment for the securities being disposed of is selected as payment method). The registrar of publicly-traded company must receive this information not later than the deadline for the acceptance of the voluntary or compulsory offer;
- to make entry regarding restrictions on the account[1] on which the securities holder's rights are asserted, without order of the securities holder. Also, the law stipulates a restriction release procedure.

Furthermore, the registrar shall transfer the securities sale application to the sender of voluntary or compulsory offer and make entries of the ownership transfer of the securities being disposed of to the sender of voluntary or compulsory offer (according to the report and the documents evidencing that the payment obligations have been honored or that the securities have been credited to the account of the seller – securities holder – registered with the company's shareholder registry, without the order thereof.

The money with respect to sale of securities by their owners not registered with the public company's shareholder registry shall be paid via bank transfer to the bank account of the nominee share holder registered with the public company's shareholder registry.

3. A few updates were made to *the forced share repurchase procedure* (Article 84.8, FL "On Joint-Stock Companies"). In particular, the buyer of shares, if such person is not registered with the company's shareholder registry, must send information identifying him and his affiliates

[1] Account restrictions mean that disposal of the securities, including pledge thereof, any encumbrance thereon through other means, is prohibited. Such restrictions may take effect from the date on which the registrar receives the securities sale application from the securities owner registered with the shareholders register till the date of entry regarding the transfer of ownership of the securities for sale to the sender of voluntary or compulsory offer or till the date of receipt of the application withdrawal (Clause 4.2, Article 84.3, FL "On Joint-Stock Companies").

(with reference to the quantity of securities on deposit accounts in compliance with the rules provided for by the Russian securities legislation for exercising the securities rights by persons whose rights asserted by the nominee holder) to the registrar of the company.

The registrar shall send to the person subject to forced share repurchase the bank accounts details of the nominee holders registered with the company's shareholder registry and account details in the case such nominee holders are credit institutions.

The person subject to forced share repurchase shall pay with respect to securities repurchase from the holders not registered with the company's shareholder registry to the nominee holders via bank transfer to the bank accounts according to the information received from the registrar of the company.

Nominee holders must pay to their depositors regarding the securities repurchase in compliance with the foregoing provisions. The registrar shall be provided with information about the current accounts (deposit accounts) on which the securities holder's and its affiliates' rights are asserted. And, it is not until such information is presented to the registrar that the registrar shall write off the repurchase securities of the securities owners' current accounts, of the nominee securities holders' current accounts and credit them to the current account of the person performing the forced share repurchase (without order of the persons registered with the public company's shareholder registry).

In July 2009, the scope of regulatory norms regulating *joint and several liability of the joint-stock company and the registrar* was expanded. For instance, the debtor which has performed his joint and several obligation may exercise the right of recourse against other debtor in an amount equal to a half of the recovered loss amount, unless otherwise stipulated below. The terms for exercising this right (including the amount of recourse) may be defined by an agreement between the joint-stock company and the registrar. Insignificant are the terms of an agreement stipulating the liability distribution procedure or the procedure for relieving the joint-stock company and the registrar from liability if loss is inflicted by at least one of the parties. If only one of the joint and several debtors is at fault, the debtor at fault shall have no right of recourse against the debtor not at fault, whereas the debtor not at fault shall have the right of recourse against the debtor at fault in an amount equal to the total recovered loss amount. If both joint and several debtors are at fault, the recourse shall be determined according to the degree of fault of each of the joint and several debtors, and if the degree of fault of each of them cannot be determined, the recourse shall be equal to a half of the recovered loss amount.[1] The foregoing regulatory norms were abolished in June 2015.

Furthermore, *the same law expanded regulatory norms for large transactions*.

For instance, the limitation period for large transaction invalidation claims shall not be subject to restoration if it has been overrun. The court shall dismiss invalidation claims for large transactions settled in violation of the legal requirements thereto if one of the following circumstances has occurred:

- the voting of the shareholder who has filed a large transaction invalidation claim subject to voting at the general meeting of shareholders could not influence the voting results, even if the shareholder participated in the voting on that matter;

- the settlement of the transaction has not been proved to cause any loss to the company or to the claimant shareholder or the occurrence of other adverse consequences thereto;

[1] Federal Law of July 19, 2009, No. 205-FZ "On Amendments to Certain Legislative Acts of the Russian Federation".

- the evidence of subsequent approval of the transaction in compliance with the rules set forth in this federal law are presented by the time of legal proceedings;

- in the course of the legal proceedings it was proved that the other party to the transaction was not aware and was not supposed to be aware of that the transaction had been settled in violation of the requirements thereto stipulated in this federal law.

In other words, the law makes it more difficult to deem a transaction to be a large transaction and hence being subject to a special transaction settlement procedure. This fits into the interests of managers, thereby complicating the control over managers' acts. The transaction settlement mechanisms for large transactions and non-arms' length transactions are the most often violated types of transactions by companies partly owned by the government.[1]

Previously, in June 2009, regulatory norms for *shareholders' agreement* were introduced with a view to preventing and settling corporate conflicts. The basic principles of the shareholders' agreement regulation amount to the following.

a) the shareholders' agreement shall be deemed to be an agreement on the exercise of rights asserted by shares and/or on the specifics of exercising the rights to shares:

b) the parties to a shareholders' agreement undertake to exercise in a particular manner the rights asserted by shares and/or the rights to shares and/or to refrain from exercising the said rights;

c) the shareholders' agreement may contemplate the responsibility of the parties thereto to

- vote in a particular manner at the general meeting of shareholders,
- coordinate the voting option with the other shareholders,
- acquire or sell shares at a preset price and/or upon the occurrence of certain circumstances,
- refrain from selling shares until the occurrence of certain circumstances,
- coordinate other corporate governance acts with the operations, the reorganization and the liquidation of the company.

In November 2010, the list of circumstances in which the compulsory offer regulatory norm shall not be applied was expanded by adding the following clauses:

- purchase of shares as a contribution by the Russian Federation, by a subject of the Russian Federation or by a municipality to the charter capital of the open joint-stock company in which more than 50% of ordinary shares are or will be held as a result of such a contribution by the Russian Federation, by the subject of the Russian Federation or by the municipality;

- purchase of shares in payment for the non-public offering of additional shares by a joint-stock company being on the list of strategic enterprises and strategic joint-stock companies approved by the President of the Russian Federation.

In December 2011,[2] an article of *transfer agents* – other registrars, depositories and brokers that may be engaged by the registrar to perform some of its functions under an agency agreement or a surety agreement and a proxy agreement – was introduced in the Federal Law "On Securities Market". While performing its functions transfer agents *must* specify that they are acting in the name and on behalf of the registrar, as well as present to all the persons concerned the proxy issued by the registrar.

In the cases envisaged by the agreement and the proxy *transfer agents shall be entitled to*:

1) accept documents required for making entries in the register;

[1] For details, see G.N. Malginov, A. D. Radygin Mixed property in corporate sector, M. Gaidar Institute, 2007, pp. 511,518–521, 536.

[2] Federal Law No. 415-FZ of December 2, 2011.

2) provide registered persons and other persons with current account statements, notices and other information from the register disclosed by the registrar.

Transfer agents must:

1) take measures to identify persons submitting the documents required for making entries in the register;

2) give the registrar access to its accounting records at the registrar's request;

3) protect the confidentiality of the information received in respect of the functions performed by transfer agent;

4) verify the authority of persons acting on behalf of registered persons;

5) certify natural persons' signatures in accordance with the procedure set forth by the Bank of Russia;

6) meet the other requirements set forth in the Bank of Russia regulatory acts.

Terms for exercising the share repurchase preferential right were introduced in December 2012.[1] In particular, it is clarified that if the placing price or the pricing procedure thereof is not established by a decision to place securities convertible into shares, the preferential right may stay in force not *less than 20 days* from the date of dispatch (delivery) or publishing of the notice. And if the information contained in such a notice is disclosed in compliance with the requirements set forth in the securities legislation of the Russian Federation, the preferential right may stay in force not *less than eight working days* from the date of disclosure. In such a case, the notice must contain information on the securities payment date which may be not be set *less than five working days* from the date of disclosure of the information on the placing price or the pricing procedure.

In June 2015, amendments were made in order to expand the scope of corporate governance opportunities for persons not registered with the company's shareholder registry, whose rights are represented by nominee holders. In particular, they may attend the meeting of shareholders and vote on the issues put to vote.[2]

In December 2015, amendments were made to defend the shareholders' rights in the "arbitrazh" (arbitration) court (in the circumstances and in the manner set forth in the federal law).[3] The amendments are in force since September 1, 2016 and related to the adoption of the Federal Law "On Arbitration (arbitration proceedings) in the Russian Federation" which establishes that "disputes between the parties to civil cases may be arbitrable (subject to arbitration proceedings) upon mutual agreement of the parties, except where the federal law contemplates otherwise".

Summarizing, the point to notice is that the practice of mergers and acquisitions underwent substantial changes in 2010–2016:

- with regard to the reorganization of companies, which is traditionally a challenge, a comprehensive reorganization was made possible, the regulatory norms regulating the provision of guarantees for creditors' rights in case of reorganization (in fact, creditors' rights were restricted) were updated, the scope of liability of owners and other persons who really can

[1] Federal Law of December 29, 2012, No. 282-FZ "On Amendments to Certain Legislative Acts of the Russian Federation and the Revocation of Certain Provisions of Legislative Acts of the Russian Federation"

[2] Federal Law of June 29, 2015, No. 210-FZ "On Amendments to Certain Legislative Acts of the Russian Federation and the Revocation of Certain Provisions of Legislative Acts of the Russian Federation".

[3] Federal Law of December 29, 2012, No. 409-FZ "On Amendments to Certain Legislative Acts of the Russian Federation and the Revocation of Clause 3, Article 6, Part 1 of the Federal Law "On Self-Regulatory Organizations" due to the adoption of the Federal Law "On Arbitration (Arbitration Proceedings) in the Russian Federation".

govern the acts of persons under reorganization, if such acts have led to non-recoverability of losses, early default on obligations, non-provision of an adequate security, were expanded;

- measures were taken to ensure a constant asset division by reorganization (regulatory norms regulating the reorganization decision invalidation and implications thereof, the invalidation of reorganization), which first of all fit into the interests of biggest companies and other entities partly owned or with a controlling interest held by the government;
- the powers of the publicly-traded company' registrar were secured with regard to the share repurchase procedure;
- measures were taken with a view to preventing and settling corporate conflicts, and regulatory norms for shareholders' agreement were introduced;
- the procedure whereby the transaction is deemed to be a large transaction was made more complicated, requiring a special transaction settlement procedure. This is first of all fits into the interests of the companies' managers because of complicated control over their acts. The transaction settlement mechanisms for large transactions and non-arms' length transactions are the most often violated types of transactions by companies partly owned by the government;
- in fact joint-stock company relationship models were made increasingly variable to the extent of converting the non-public joint-stock company into a completely "closed" joint-stock company, and the company's charter became increasingly significant.

6.2.5. Antimonopoly M&A regulation practice in 2010–2016: legislative relaxation and government's heavier involvement in the economy

The Russian practice of antimonopoly regulation of mergers and acquisitions was first introduced in 1991 with the adoption of the Federal Law "On Competition and Restriction of Monopoly Activity in Commodity Markets"[1] which defined the concept of "acquisition" and "group of persons"; contemplated obligatory preliminary clearance on M&A transactions by the antimonopoly authority and subsequent notice of the transactions; as well as contained a few other provisions with regard to government control of mergers and acquisitions.[2]

In 1995, the regulation of mergers and acquisitions of natural monopolies was separated into a stand-alone category. Besides the Federal Law "On Natural Monopolies",[3] mergers and acquisitions for natural monopolies are also governed by a few distinct laws.[4]

Since 1999, the regulation of M&A antimonopoly control procedures in financial markets was governed by the Federal Law "On the Protection of Competition in the Financial Services Market".[5]

[1] Law of the RSFSR of March 22, 1991, No. 948-1 "On Competition and Restriction of Monopoly Activity in Commodity Markets" // Vedomosti SPD and SC RSFSR, April 18, 1991, No. 16, Article 499.

[2] For more details on evolution of the antimonopoly M&A regulation in 1991–2009, see A. D. Radygin, R.M Entov, E.A. Apevalova et al. Modern development trends in the market for mergers of acquisitions. M., Delo, 2010.

[3] Federal Law of August 17, 1995, No. 147-FZ "On Natural Monopolies" // RG, No. 164, August 24, 1995.

[4] See, for example, Federal Law of March 31, 1999, No. 69-FZ "On Gas Supply in the Russian Federation" // RG, No. 67, April 8, 1999; Federal Law of February 27, 2003, No. 29-FZ «On the Specifics of Management and Disposal of Railway Transport Assets" // RG, No. 42, March 5, 2003; Federal Law of March 26, 2003, No. 36-FZ "Specifics of Electric Power Industry in Transition..." // RG, No. 59, March 29, 2003.

[5] Federal Law of June 23, 1999, No. 117-FZ "On the Protection of Competition in the Financial Services Market" // RG, No. 120, June 29, 1999.

In 2006, Federal Law "On the Protection of Competition"[1] was adopted to govern the antimonopoly regulation practice in commodity and financial markets and generally contemplated the old conventional approach to identifying circumstances in which mergers or acquisitions are deemed to be acceptable for the government.

The concept of economic concentration was a novelty in terms of implementing M&A procedures; the administrative control was relaxed for real estate transactions. Furthermore, the Federal Law "On the Protection of Competition" provided for the regulation of powers vested with the antimonopoly authority while inspecting business entities; the concept and the mechanisms of exercising "public and municipal preferences" were introduced; vertical agreements between business entities were prohibited if such agreements result in resale pricing.

Thus, a legal framework regulating the forms and the methods of antimonopoly control of mergers and acquisitions, as well as a system of government supervisory agencies, had been established by 2010. However, competition failed to become an integral part of the Russian economy. In terms of capitalization, the antimonopoly control covered the lower and the middle market segments, including mergers and acquisitions. In terms of the biggest companies oversight, the antimonopoly agency's activity, or, conversely, a lack thereof, it was driven largely by noneconomic motives.[2]

The development of antimonopoly regulation practice in the period of 2010–2016 was marked by the adoption of "The Third and The Fourth Antimonopoly Packages".

The major amendments adopted in December 2011 in Federal Law No. 401-FZ, also known as the 'Third Antimonopoly Package', were intended to provide more detailed requirements to anticompetitive agreements and concerted practices, as well as to clarify the criteria of a monopolistically high price. Also, the Government of the Russian Federation was granted the right to establish the rules for non-discriminatory access to infrastructural assets in commodity markets in regards to natural monopolies, and the procedure for government control of economic concentration and the procedure for consideration of antimonopoly violations were clarified.[3]

Below listed are the most important amendments concerning mergers and acquisitions.

1. The threshold for transactions involving mergers and consolidations that require preliminary clearance by the antimonopoly authority was lifted once gain (from Rb 3bm to Rb 7bn for total balance sheet value of assets and from Rb 6bn to Rb 10bn for total revenue from the sale of goods) (Clauses 1, 2, Article 27.1. FZ "On the Protection of Competition"), thus narrowing the segment of transactions monitored by the antimonopoly authority;

2. An article was introduced, stipulating that the economic concentration control will cover, besides Russian transactions and assets, *foreign persons and/or foreign organizations* supplying goods to Russia in an amount of *not more than Rb 1bn* within a year preceding the date of transaction settlement;

3. A new article was adopted to regulate the procedure of *cautions* against antimonopoly violations which the antimonopoly authority shall apply with a view to *preventing* antimonopoly violations (Article 25.7, FZ "On the Protection of Competition");

[1] Federal Law of July 26, 2006, No. 135-FZ "On the Protection of Competition" // RG No. 162, July 27, 2006.
[2] See Modern development trends in the market for mergers of acquisitions / science editor A.D. Radygin. – M.: Delo Publishing House, RANEPA, 2010. – PP. 106-117.
[3] 'The Third Antimonopoly Package' takes force in Russia.- http://pravo.ru/news/view/66926/,10.01.12

4. The scope of the Federal Antimonopoly Service's powers was expanded: FAS Russia was entitled to issue *warnings* to stop illegal acts (omission) that appear to show signs of antimonopoly violations (Article 23, Clause 3.2, Part 1, FZ "On the Protection of Competition").

Warnings are most often issued to companies abusing their dominance, as well as in the event of disputes between business entities when it comes to refusal or reluctance to enter into the agreement or to disadvantageous terms enforcement. According to the estimates of the FAS Russia Legal Division, "1,200 out of 1,500 warnings have been observed on a voluntary basis. This suggests that more than a half of cases have been settled off court, and therefore the infringed rights have been restored in a more rapid manner".[1]

"The Third Antimonopoly Package" clarifies the legal components of the criminal liability for antimonopoly violations, as well as a series of procedural norms governing the order of proceedings for administrative offence cases. For instance, Article 178 of the Criminal Code of Russia was amended by abolishing the liability for concerted practices and vertical agreements between business entities. Thus, it is solely the most threatening anti-competitive acts – cartel agreements – that will be subject to criminal prosecution. At the same time, the definition of a cartel was for the first time introduced in the Russian legislation, which means the illegal agreement between market competitors whereby certain adverse implications occur or may occur, namely setting and maintaining of a certain price, division of the commodity market, refusal to enter into an agreement with a certain buyer, etc.[2]

In October 2015, the following amendments were made to Federal Law No. 275-FZ of October 5, 2015, also known as "The Fourth Antimonopoly Package".

A) The *dominance abuse prohibition was abolished* with respect to business entities in the case their dominance abuse acts impair solely the interests of certain persons not involved in business and do not diminish competition in the market as a whole ("the issue of country home owners" not being able to connect to the power grid);

B) The registry-keeping function was abolished with regard to entities with a commodity market share of more than 35%;

C) transactions of dominant business entities whose assets do not oversize the amounts set forth in the Federal Law were made not subject to the antimonopoly control;

D) *preliminary approval of natural monopolies' transactions was abolished* for transactions settled within a single group of persons pursuant to Article 9 and Article 31, Clause 1, Part 1 of the Federal Law "On the Protection of Competition";[3]

E) a collegial body – the Presidium of FAS Russia – was established, which is entitled, among other powers vested therein, to revise antimonopoly violation cases in the event they violate the consistency of interpretation and application of the antimonopoly legislation, as well as impair the interests of any number of unspecified persons;

F) the scope of application of the institutions of warnings and cautions was expanded substantially by way of, among other things, applying thereof to federal government agencies and local self-government agencies.

[1] E. Dobrikova. Antimonopoly legislation: trends in 2015, GARANT.RU: http://www.garant.ru/article/616813/#ixzz4Ub8JcMwH, April 3, 2015.

[2] "The Third Antimonopoly Package" takes force in Russia".- http://pravo.ru/news/view/66926/,10.01.12.

[3] "The Fourth Antimonopoly Package".- http://fas.gov.ru/netcat_files/557/716/Chetvertyy_antimonopol_nyy_paket.pdf

In July 2016, Federal Law No. 264-FZ contemplated that a legal business entity whose founder (member) is a single individual (including an individual registered as individual entrepreneur) or several individuals may not be deemed to be dominant if such an entity had a revenue from the sale of goods worth not more than *Rb 400m* over the past calendar year, except for financial institutions, business entities partially owned by the Russian Federation, by a subject of the Russian Federation, by a municipality, etc. (Article 5, Parts 2.1, 2.2. FZ "On the Protection of Competition").

In addition, the law established that random ad-hoc on-site inspections initiated following individuals', legal entities', media's information and reports suggesting signs of antimonopoly violation against a small business entity, as well as the antimonopoly authority's detection of signs of antimonopoly violation, shall be subject to approval by the prosecutor's office in the manner set forth in the Prosecutor General's order, with some exceptions (Article 25.1, Part 5.1, FZ "On the Protection of Competition").

The work on "The Fifth Antimonopoly Package" continued in 2016. The Package is expected to cover the co-relation of intellectual property rights and the antimonopoly regulation practice, the statutory definition of an antimonopoly complex and the implications of a good-faith application thereof, the introduction of parallel imports, the creation of a class-action and loss-recovery framework, shifts in the tariff regulation strategy. Finally, the outdated Federal Law "On Natural Monopolies" was abolished.[1]

The important thing to note is that the adoption of a few regulatory norms such as the introduction of the warnings and cautions practice had long been expected and awaited. On the whole, however, the antimonopoly legislation relaxation was observed as the share of the government and state-owned companies of the economy increased. For instance, according to the FAS Russia's estimates, the public sector's contribution (including the budget-funded sector) to GDP was estimated about 70% at the 2015 year-end, while in 2005 it stood at about 35%.[2] At the same time, the antimonopoly regulation practice is still limited in the segment of major owners.

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In the period of 2007–2010, the Russian market for mergers and acquisitions was driven by the same trend as the global M&A market: 2007–2009 saw a substantial decline in the total annual volume of transactions, while there was growth in 2009–2011. In terms of volume, global market transactions increased to 155%. *Russia showed a reverse trend to that of the global market* since 2011: in 2011–2013, the global corporate control market saw a 74.55% decline, while the Russian corporate control market showed a bull rally to 270%, and, conversely, in 2013–2015, the global market saw a bull rally of 216.4%, while the Russian market for mergers and acquisitions was on the slide, to nearly 39.9%.

The Russian market for mergers and acquisitions still remains basically a *local market*, with 78% of transactions involving Russian assets and Russian buyers, with a total value of 69%. As regards cross-border transactions, the period of 2010–2014 saw domination of Russian

[1] FAS Russia prepare "The Fifth Antimonopoly Package".- Rossiyskaya Federacia Segondya.-2016, No. 2, http://www.russia-today.ru/article.php?i=1802

[2] See also A.E. Abramov, A. D. Radygin. M.I. Chernova. Companies partially owned by the government in the Russian market: ownership breakdown and contribution to the economy. – Voprosy Ekonomiki, 2016, No. 12, pp. 61–87.

transactions abroad, and it was not until 2015 that foreign buyers with Russian assets took the lead in cross-border transactions. In 2015–2016, the construction and development sector took the lead in the value and in the total number of transactions (28% and 15% respectively).

The M&A market to GDP ratio reached a peak of nearly 20.46% in 2007, followed by decline to 7.14% in 2009. The ratio was high enough (nearly 18%) in 2013, dropped to an all-time low of 6.94% in 2014 and then rose slightly to 7.26% in 2015.

In terms of total volume, 2017 is expected to see further growth of M&A transactions in the global market, with a peak in developed countries, while emerging economies are anticipated to see a peak in 2018. The Russian market will most likely stay at the level as it is now, with growth not expected until 2017–2018.

In the period of 2010–2016, the M&A regulation changed substantially. In particular, a possibility of undertaking a comprehensive reorganization was introduced, regulatory norms regulating guarantees for creditors' rights in case of reorganization (in fact creditors' rights were restricted) were adopted, the scope of liability of owners and other persons who really can govern the acts of persons under reorganization were expanded, regulatory norms regulating the reorganization decision invalidation and implications thereof, the invalidation of the reorganization) were adopted. In addition, the powers of the publicly-traded company' registrar were secured with regard to the share repurchase procedure, and shareholders' agreement regulatory norms were introduced. Control over management was made more complicated, thus fitting the interests of managers, and amendments were made making it more difficult to deem a transaction to be a large transaction and hence being subject to a special transaction settlement procedure. At the same time, joint-stock company relationship models were made increasingly variable.

As regards the antimonopoly legislation, the adoption of some regulatory norms such as the warnings and cautions practice has long been awaited and anticipated. On the whole, relaxation of antimonopoly legislation was observed as, however, the share of the government and state-owned companies of the economy increased. At the same time, the antimonopoly regulation practice is still limited in the segment of major owners.