

**Speech by**  
**A.A. Shakkaliyev, Member of the Board (Minister) in Charge of**  
**Competition and Antitrust Regulation**

**07.07.2021**

***Session International Experience and Best Practices  
in Competition Law Enforcement against Cross-border Cartels***

*Chair/Moderator: H.E. Ms. Maimuna Kibenga Tarishi (Tanzania)  
Permanent Representative in United Nations, Geneva*

*Question from the moderator: Please share your experience in dealing with cross-border cartels at the regional level.*

**Dear Chairwoman!**  
**Dear Ladies and Gentlemen!**

Thank you for giving me the floor.

The Eurasian Economic Commission is a relatively young integration association and being a supranational organization, it understands the importance of international cooperation in cross-border cartels investigations. And it is of a big importance to share our experience in this field.

With your permission, I will continue in Russian.

Cartels are considered to be the most dangerous type of anticompetitive practices and it is extremely difficult for competition authorities to detect, investigate and prosecute the offenders, especially when such abuses occur in cross-border markets.

Different approaches and a lack of open exchange of information between competition authorities around the world limit the ability to identify and prosecute such infringements.

Therefore, I think that we, as a supranational authority for cross-border market surveillance, need to work closely with competition authorities from other countries.

Today I would like to give you a brief overview of our practice in cross-border cartel investigations.

The competence of the Eurasian Commission comes into play when violations affect markets of two or more member states of the Eurasian Economic Union, i.e. Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia. In such cases, the Commission works closely with national competition authorities.

The Treaty on the Eurasian Economic Union is the basis for such cooperation between us and provides a regulatory framework for a proper and mutually beneficial cooperation.

We have also adopted procedural documents which clearly set out rules for interaction and cooperation between the Commission and national competition agencies at each stage: reviewing applications, conducting investigations and examining cases.

The Eurasian Economic Union law also provides for the possibility for the Commission to participate in procedural actions carried out by national competition authorities on their markets and regulates the exchange of information.

This is why the assistance of national competition authorities at all stages of the Commission's work (*applications, investigations, cases*) is important.

Here is an example of our practice in the cochlear implant system market. The investigation was triggered by documents transferred to the Commission by the Republic of Kazakhstan. This is so far the only cartel that has been proven by the Commission.

As we managed to establish, medical device vendors from Eurasian Union countries, having contracts with Cochlear, a speech processor supplier from Western Europe, agreed with each other to sell medical devices on 'their' territory. As a result, a "bad culture" of sales developed - prices on the markets of different countries varied dozens of times, and the rights of the buyer were limited to one territory out of 5 countries.

So, a Belarusian company sold exclusively in Belarus, a Kazakh company in Kazakhstan and a Russian company in Russia.

The outcome of this case was the decision of the Eurasian Commission to establish cross-border cartel collusion of distributors in the cochlear implant systems market.

*For information: a fine of 4,874,278.76 roubles (EUR 56,461.5) was imposed, of which RUB 4,195,148.47 (48,594 euros, 86%) has been paid. Some of the parties to the agreement have terminated their previous agreements by officially notifying the Commission.*

This example shows that systematic behaviour by multinational companies has developed. They have become smarter - they do not open representative offices or branches but work through distributors.

In fact, they coordinate the activities of their distributors, introducing or encouraging unfair business practices that end up negatively affecting our markets. Through their actions, these multinational companies contribute, for example, to the territorial division of the market, refusing to enter into contracts with certain customers.

However, not all jurisdictions have extraterritorial authority to enforce competition law, and it is virtually impossible for many agencies around the world to collect a fine in a foreign jurisdiction.

The Commission, despite its powers to prosecute cross-border violations, in fact lacks the authority to consider cases against companies registered outside the territories of the Eurasian Union. And a paradoxical situation has developed where we punish our companies, but it is the "instigator" who remains unpunished.

This practice prevents fair competition and allows unfair market players to continue violating the generally established principles and rules of competition. This is contrary to all internationally developed approaches.

We are therefore actively working on the issue of giving the Eurasian Commission competition powers over third countries.

In the absence of extraterritorial powers, we feel that it is very important to interact through UNCTAD's Working Group on Cross-Border Cartels.

Such collaboration will facilitate the exchange of experiences and information on best practices and effective procedures in cross-border cartel investigations, consultations among countries, especially those that have encountered problems in investigating cross-border cartels, and of course support for developing and young agencies.

Thank you for your attention!