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Published in the Russian Federation
European Researcher. Series A
Has been issued since 2010.
E-ISSN 2224-0136
2020, 11(2): 126-131

DOI: 10.13187/er.2020.2.126
www.erjournal.ru



Legal Problems of Retail Network Development in the Period of Global Socio-Economic Threats Caused by the Coronavirus Pandemic

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Abstract

Providing the population with affordable food is one of the strategic tasks of the state at a time of global socio-economic threats, such as the spread of coronavirus infection. Retail chains act as a vital channel for supplying food to the population, thus avoiding a decline in the quality of life of the population and the growth of social tension. At the same time, the prohibitions contained in the legislation on their organic growth of retail chains, aggregate remuneration, and mandatory payment terms for delivered products may create obstacles in solving this task, primarily in sparsely populated, remote and hard-to-reach areas.

In the article the authors suggest the main directions of changes to the Russian law on trade, which will eliminate excessive administrative barriers and unreasonable restrictions for the development of trade networks, as well as ensure a balance of interests of entities engaged in trade activities. Removing excessive administrative barriers will help to find the most cost-effective ways of interaction between economic entities.

Keywords: food, non-foods, trading networks, retail, suppliers, pandemic, organic growth of the distribution network, antitrust legislation, the Law on Trade, business law, regulation.

1. Introduction

The national security strategy of the Russian Federation ([Ukaz Prezidenta..., 2015](#)), provides that improving the quality of life of Russian citizens is a national priority. The doctrine of food security ([Ukaz Prezidenta..., 2020](#)) also refers to the national interests of the state in the field of food security sufficient food supply for Russian citizens.

The development of large retail chains is one of the key factors in providing the population with affordable food products. During the period of global socio-economic threats caused by the coronavirus pandemic, the strategic importance of retail chains became apparent.

A large retailer, in contrast to small and medium-sized retailers, is able to provide food to the General population and has a margin of safety to overcome the crisis.

A large retail network is the primary sales channel for large manufacturers and suppliers, providing them with financial stability.

Large suppliers in extraordinary conditions can provide regular stable supplies of goods in large volumes necessary for the operation of retail chains. Because of this, competition between small and large suppliers is impossible in principle. It's not so much about "price requirements of retail chains, but functional ones".

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The interaction of large suppliers and large networks during the pandemic helps to avoid shortages of goods and deterioration of the quality of life of the population.

World experience has examples of the positive impact of network trading on the socio-economic indicators of countries. For example, retail due to high price flexibility, have a positive effect on reducing product inflation. In the Russian Federation, this was especially important in specific periods. For example, during the acute phase of the crisis at the end of 2008 and the beginning of 2009, retail restrained the growth of prices for their assortment, which affected inflation in general ([Prikaz Ministerstva promyshlennosti..., 2014](#)).

2. Materials and methods

The study is based on an analysis of the legal regulation of retail chains, as well as the practice of its application.

During the study, methods of analysis, synthesis, induction, and deduction, as well as legal modeling, were applied.

3. Results and discussion

A vibrant and competitive retail sector is important to consumers, businesses, and, therefore, the entire economy. In this regard, it is advisable to point out the problems of retail development in the European Union. The size of the companies and jobs involved, as well as the contribution to the EU's added value, make retail trade a key factor in stimulating long-term economic growth. Driven by growing consumer needs and technological progress, this sector has rapidly transformed and is a catalyst for innovation and increased labor productivity. EU households spend up to one-third of their budget on retail products. Through the price, choice, and quality of the products offered, the retail sector affects the quality of life of the population in the EU. A well-functioning retail sector will result in positive side effects for the economy. However, this requires a favorable business and regulatory framework that meets the needs of both online and offline retailers and helps to respond to challenges affecting the retail sector at the global level ([Kozyreva, 2018](#); [Alekseeva, Bandurina, 2016](#)). Retailers face many limitations to one degree or another in terms of creating stores (for example, regarding the size and location of a store or obtaining a specific permit) and operations (for example, opening hours, promotions and sales channels, taxation, sourcing). The legitimate objectives of public policy can justify many of these restrictions, but their accumulation can create disproportionate barriers for new entrants and, therefore, affect sector productivity. Retailers emphasize that the regulatory framework must be reliable and flexible in the future to allow enterprises to adapt to changing reality quickly ([A European retail..., 2018](#)).

Many Russian retailers during the pandemic decided to sell food staples without a trade margin ([FAS, 2020](#)).

Elimination of excessive economically unreasonable regulation, including antitrust restrictions in the field of trade, will contribute to the formation of a real competitive environment, normalizing the balance of interests of all participants in trading activities.

This goal can be achieved by limiting state interference in trading activities, eliminating legal uncertainties in the legal regulation of the rights and obligations of suppliers and distribution networks, establishing fair antitrust regulation taking into account real market conditions, and removing excessive restrictions on the organic growth of distribution networks ([Budnikova et al., 2019](#)).

Federal Law of December 28, 2009, № 381-FZ "On the Basics of State Regulation of Law on Trade Activities in the Russian Federation" (from now on referred to as the Law on Trade) ([Federal'nyi zakon..., 2019](#)) as amended is non-systemic and is not balanced in terms of interests of entities falling within the scope of the law.

The strategic task of providing the population with affordable food during the period of global socio-economic threats is impossible without the development of a large trading business.

There is an objective need to lift the restrictions established by the Law on Trade on the organic growth of retail chains, which impair the ability to provide the population with food and non-food products, including in remote and remote areas.

Retail chains are a strategically important channel for supplying food to the population. However, the restrictions provided for in articles 9 and 13 of the Law on Trade do not allow large suppliers and large retail chains to determine the terms of delivery of goods, which can cause a

shortage of food products and, in the context of a pandemic, pose a threat to food security. One of the instruments of removing restrictions on the development of retail chains can be the removal of large retail chains and large suppliers from the relevant restrictions of the Law on Trade. Sales may increase due to an increase in the number of units generating sales (for example, the opening of new stores), as well as due to an increase in the sales rate in existing stores (Curtis et al., 2013). The provisions of article 9 and article 13 of the Law on Trade should not apply to relations arising between economic entities engaged in trade activities, including economic entities engaged in trade activities through the organization of a trade network and economic entities engaged in the supply of food products whose revenue (their group of persons determined in accordance with antitrust legislation) from the sale of goods for the last calendar year exceeds two billion rubles. It is proposed to exclude in the relations of these economic entities regulatory requirements that create obstacles to the development of large retail chains in relation to determining the terms of payment for food products; the maximum amount of the total remuneration of the retail network, which is five percent; the ban on concluding intermediary agreements between the supplier and the retail network.

With the introduction of restrictions in Art. 9 of the Law on Trade (from 2016 to 2019), there was a decrease in the profitability of retail, shareholder value, an increase in the debt burden, and the background of a favorable market situation domestic manufacturers. Moreover, the profitability of retail chains is quite low in comparison with the profitability of suppliers (7-25 % depending on the industry, according to Russian Federal State Statistics Service). According to the reports of retail IFRS reporting in the period from 2014 to 2018, it fell from 6 to 0-3 %, and in some cases, became negative. In general, a decrease in profitability affects the investment attractiveness of the industry, affecting the market value of companies. The processes of trade modernization are inhibited. Reduced profitability reduces tax revenues to budgets. The debt overburden of retail is growing at the same time since low profitability forces borrowed funds out to survive in a competitive environment. These indicators indicate the industry's crisis and the need to remove the restrictions as soon as possible.

The application of restrictive rules designed to regulate relations between suppliers and large retail chains without taking into account the profitability of the business of retail chains and market conditions creates an additional administrative burden. The prohibitions contained in the Law on Trade relate mainly to the activities of retail chains and do not apply to other participants in trade activities, which indirectly indicates discrimination of retail chains as market entities. With a high level of competition in the trade sector and relatively low market concentration, it is necessary to ease the antitrust regulation of the industry.

The Law on Trade establishes mandatory terms for payment for goods, limits the organic growth of retail chains to twenty-five percent of the volume of sales of food products within the borders of districts and subjects of the Russian Federation, and limits the amount of total remuneration for a retail network to five percent. These restrictions do not depend on the fact that the dominant position of the trading network has been established or that such a position has been abused. The Law on Trade mainly regulates relations for the supply and promotion of food products, almost without affecting the non-food sector, which does not correspond to the object and purpose of the Law's regulation and indirectly restricts the growth of trade in non-food products. The current regulation does not take into account the fact that, as a rule, non-food products are also present in the assortment of the trading network. The retail trade turnover of food products, including beverages, and tobacco products, is comparable in terms of the volume of retail trade in non-foods, according to Russian Federal State Statistics Service. The Ministry of Commerce and Industry of Russia took the initiative to oblige retail chains to increase the share of domestic light industry products to 40 % (TPP prosit..., 2020). Its implementation will inevitably require retail chains to increase their retail space, which will become difficult given the current restriction on organic growth enshrined in part 1 of article 14 of the Law on Trade.

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Ultimately, such an unbalanced regulation is detrimental not only to the interests of retail but also does not contribute to ensuring national security interests. The current version of the Law on Trade unjustifiably restricts freedom of economic activity (part 1 of article 8 of the Constitution of the Russian Federation). Freedom of contract, in general, unjustified interference in the civil law sphere, is carried out with a clear priority for the interests of suppliers. Balancing market participants' interests with equal market power require the same regulatory impact on their market behavior. In this regard, one of the options for the development of legislation on large retail may be the removal from under the action of the restrictions established in Art. 9 and 13 of the Law on Trade of Large Participants (Suppliers and Distribution Networks), whose revenue (their group of persons determined under antitrust laws) from the sale of goods for the last calendar year exceeds two billion rubles. Removing these restrictions will allow us to maintain a competitive environment in which self-regulatory mechanisms will be in demand. At the same time, restrictions for large suppliers or networks, in the implementation of supply activities with small and medium-sized businesses, should be maintained.

The norm of part 4 of art. 9 of the Law on Trade in terms of determining the range of entities falling within its scope. The wording "business entity engaged in trading activities" may be replaced by the words "business entity engaged in trading activities through the organization of a trading network". This change is because the current norm of Part 4 of Art. 9 of the Law on Trade allows extending its effect not only to the contract for the supply of food products but also to other types of contracts, for example, a distribution contract, as well as distance trading. Uncertainty of legal regulation regarding the total remuneration and its limit value paid by the supplier of the distribution network creates obstacles for the development of distribution networks. Currently, Art. 9 of the Law on Trade limits the payment of remuneration and services to five percent of the turnover for retail chains, distributors, and online stores. The prohibition on the inclusion in the price of the contract for the supply of food products of "other types of remuneration" not stipulated by the Law on Trade applies only to retail chains (Part 6. Article 9). At the same time, the content of this concept is uncertain, which on the one hand creates a problem of compliance with the requirements, and on the other hand, the problem of proving the violation by the Supervisory authority.

Thus, the distributor and the subject of distance trading are not subject to a ban on organic growth, as enshrined in Art. 14 of the Law on Trade, which is associated with restrictions under Art. 9 of the Law on Trade.

The need for exclusion from the action of Part 4 of Art. 9 distribution agreements were supported by the Federal Antimonopoly Service in the Report on the Competition in the Russian Federation – 2015 (FAS, 2015).

The establishment of the limit value of the aggregate remuneration of five percent primarily affects the interests of buyers and large suppliers, introducing innovations into the market since it is impossible to conduct promotions with significant discounts. The total amount of remuneration before the introduction of restrictions was compensation by the supplier of the loss of the trading margin by the trading network to promote the supplier's goods. Exceeding the amount of aggregate remuneration entails an administrative fine. Also, the absence in the Law on Trade of the definition of "logistics service" (Mikhailuk, 2016), the cost of which is taken into account to determine the aggregate remuneration of the supplier, leads to the refusal of retail chains to provide transportation services, which entails an increase in transportation costs for small and medium-sized businesses by an average of twenty percent. In this regard, the Law on Trade must be amended to exclude transportation services from under Art. 9.

Law on Trade (Part 12. Article 9) contains a proscription on forcing the counterparty to conclude a contract for the provision of services for a fee. The imposition of conditions, the imposition of the conclusion of a contract, in any case, contradicts the principle of freedom of contract and is not allowed under the civil legislation, clause 1, art. 421 of the Civil Code of the Russian Federation (Grazhdanskii kodeks..., 1994). Besides, the conclusion of mixed and unnamed contracts is permitted by the Civil Code of the Russian Federation (clauses 2 and 3 of Article 421). This norm creates excessive regulation, introducing an unreasonable legal restriction, duplicating civil law mechanisms.

The abolition of the limitation of aggregate remuneration in relations between large suppliers and retail chains will allow a fair distribution of costs and revenues using market mechanisms, as well as will allow in the interests of consumers to promote new products and conduct promotions with significant discounts.

The Law on Trade (part 7 of article 9) provides for the timing of payment for the goods. The regulation of these terms also has adverse effects, increasing the cost of working capital (due to small batches of goods and attracting credit), creating artificial obstacles to mutually beneficial cooperation between suppliers and retail chains. Unreasonable interference in contractual relations negatively affects contractual practice. Ultimately, a decrease in the volume of procurement lots from the supplier, caused by a reduction in the payment term for the delivered goods, also leads to an increase in the consumer's cost of goods.

Restrictions on the timing of payment of the delivered goods for the distribution network lead to a limitation of the assortment and quantity of goods, which ultimately violates the interests of the suppliers themselves. Limiting the batch size leads to the need for the more repeated carriage of goods, the cost of transportation of goods increases, and the amount of time spent on paperwork increases due to the need to more often draw up documents for delivery.

In connection with the establishment of deadlines for payment of food products by trade organizations to a supplier, depending on the expiration dates of the specified products, the problem arose of determining the payment term for "mixed" batches, when the same batch of products for which the contract is drawn up and billed can be presented goods with different expiration dates.

The establishment of tight payment deadlines also causes suppliers to lose an additional distribution channel geographically more remote from the distribution network. In remote areas, shorter payment periods make it impossible to deliver.

In territories, communication with which is carried out only during the navigation period and only with certain types of transport, the turnover of products can reach 180 days. Because of established in h. 7 Article. 9 of the Law on Trade, the timing of payment for the delivery of goods, trade enterprises are forced to deliver products in small batches, reduce the range and volumes of delivery to navigation since the provision of a delay may result in the imposition of an administrative fine. This has already led to a significant increase in the cost of production, since the undelivered amount of food is imported during the inter-navigation period by air. The introduction of appropriate amendments to the Law on Trade will exclude the validity of Part 7 of Art. 9 of this law in the relationship of large suppliers and distribution networks, which will allow for the deferral of payment for delivery, assortment, affordable price due to a larger consignment, as well as the volume of delivery to hard-to-reach areas.

4. Conclusion

In order to solve the priority strategic task of providing the population with affordable food and non-food products, including in the period of global socio-economic threats, it is necessary to develop large retail networks. At the same time, the prohibitions on their organic growth contained in the legislation, aggregate remuneration, and peremptory deadlines for payment for delivered products can create obstacles to this priority, especially in sparsely populated, remote and inaccessible areas. It is necessary to develop a roadmap of the main directions of changes to the Law on Trade, which will remove excessive administrative restrictions on the development of retail chains. Many players are entering with different retail formats. As a result, competition is becoming very tough (Das, Kumar, 2009).

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