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**LEGAL REGULATION OF COMMODITY, FINANCIAL  
MARKETS AND COMPETITION**

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*Abstract*

The article explores issues related to the possible failure of financial markets. To prevent negative consequences, administrative, institutional, legal measures have been developed and proposed. Legal impact, regulation is proposed to be implemented at two levels. At the first level and stage, all three categories of public measures can be applied by state authorities (the Government of the Russian Federation, the Bank of Russia, the Federal Antimonopoly Service) through state rulemaking. Business entities can develop and apply at this stage norms that do not contradict public law. The second level is the mechanism of private rule-making of legal entities. Subjects can adopt rules regulating the institutional framework, local acts. To address gaps and insolvency, government bodies and entrepreneurs can jointly organize the impact and regulation of public relations through a mechanism of interaction and consultation. The adopted acts will relate to state rule-making and can regulate all three areas of regulation – administrative, institutional, legal. These approaches are determined by the need to conduct a competitive policy and eliminate antitrust behavior in the markets. An option is proposed to solve the problem of unwanted selection in the insurance industry. This requires the development of a unified state portal where insurance services are provided. Legal mechanisms for mitigating risks when concluding distance contracts are proposed. Mechanisms are developed and the norms of institutional and legal regulation of the activities of legal entities in the field of financial, insurance, exchange trading are proposed.

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**Keywords:** Legal regulation, market failures, market competition.



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## 1. Introduction

At the present stage of development of the international economic system, an important element of entrepreneurs' activity is efficiency, economic feasibility of spending budget funds, and ensuring competitive advantages. These factors should lead to the occupation by national manufacturers of a regional niche in technological production (technological chain) in the framework of international cooperation. To ensure industrial production, it is necessary to solve the problems of the initial loan for the manufacturing sector, to ensure a reduction in interest rates on loans and transaction costs. This can be achieved through institutional reforms and the publication of rules, as well as changes in social practices. It is proposed to analyze the state and legal regulation of the financial sector of the economy, financial markets.

## 2. Problem Statement

To ensure sustainable social development and increase welfare, it is necessary to study the motives of the state's economic behaviour. In the process of legislative and economic activity, the state can influence the commodity, financial, insurance markets. In this case, the question arises of the effectiveness of the rules, the norms on the basis of which the regulation takes place.

When transferring powers to the state, the functions of adopting norms and creating institutions in the field of economics and entrepreneurship, it is necessary to take into account that there are economic laws that affect the processes taking place in society. So, during the process of transitions to different stages of the economic cycle, market insolvency processes appear. To prevent and eliminate violations, it is proposed to use decision algorithms that are developed in economic theory.

In carrying out business activities, legal entities may engage in private rule-making. By developing norms, local acts, actors can indirectly influence the market and contribute to increasing or decreasing its effectiveness. In the latter case, the state can prevent market failures and crises by creating inclusive institutions and pursuing economic and legal policies.

## 3. Research Questions

Market failure may be due to the lack of completeness of information and asymmetry of information. In this case, it is proposed to create an institution in the form of a contingent liability market (options market), to organize trading in futures contracts (futures market).

Under such market conditions, the state (government, regulator) needs to provide the following competencies for the distribution of risks between consumers: – on the publication of rules on insurance of investments, deposits, on information support (transparency) of financial and credit organizations, entrepreneurs in their financial transactions in the markets; – to ensure control over the production and marketing of goods and services (through the creation of a federal authority and the introduction of standardization and certification); – through participation in the production of certain goods, works, services; – using the financing mechanism of long-term projects.

There are several main problems that arise in the commodity, financial, and insurance markets due to information asymmetries (Handel, Hendel, & Whinston, 2015; Lauer mann & Wolinsky, 2016):

- the problem of adverse selection;

- the problem of moral hazard risk;
- the problem of costly state verification.

These economic structures must be taken into account when modeling the legal field, when implementing antitrust policy. For this, it is necessary to eliminate unlawful behavior at the pre-contractual stage of the conclusion of the transaction, eliminate the prerequisites, the reasons for non-fulfillment of obligations by business entities, and reduce the number of tort (disputes) in the markets. The author investigated the legal problems of contractual legal relations between business entities, as well as the problems of public legal relations and the institutional environment when conducting competition policy by public authorities.

#### **4. Purpose of the Study**

The purpose of the study is to identify the theoretical foundations for the implementation by governments, regulators, antitrust authorities of different countries of economic, legal policy and eliminate market insolvency. The author conducted a comprehensive analysis of public relations in the financial markets. It is noted that market relations can be subject to cyclical crises, failures. As a result of these negative phenomena, it is impossible to increase economic growth in the state, increase incomes, profit from entrepreneurs, and improve the well-being of households. The result is a decrease in the influence of the state on the international economic system and production relations.

In connection with these circumstances, it is proposed to consider economic and institutional measures of the impact of public authorities (Government of the Russian Federation, Bank of Russia, FAS) on financial markets, the sector of financial organizations, to identify possible legal problems, to find recommendations for their elimination.

#### **5. Research Methods**

To solve the problems, the author applied general scientific research methods: content analysis, extrapolation, systematization and generalization of methods. Special legal methods were used: formal legal method, methods of interpreting law (systematic, logical), legal modeling, legal forecast. This methodology made it possible to conduct an interdisciplinary study and formulate conclusions that are focused on solving the problems of legal science in the field of business.

#### **6. Findings**

We offer solutions.

I. In the work of Dengov and Melnikova (2013) investigated examples of adverse selection in the insurance business, tax legal relations. To overcome the problem, we propose an increase in the number of parameters by which actuaries calculate tariff rates. To do this, you can develop:

- a) in the framework of private rulemaking, standard contracts between the insurer and the actuary. This can be done by self-regulatory organizations within their competencies;
- b) either make changes to paragraph 5 of Art. 4 of the Federal Law of 02.11.2013 No. 293-FL "On Actuarial Activities in the Russian Federation" (2013), which provides a list of the essential conditions of

a civil law agreement on the implementation of actuarial activities (indications of the standards of actuarial activities and statistical data that will be applied in the implementation of actuarial activities). For example, factors can be obtained on the basis of data on medical examinations: smoking, the number of visits to doctors (for life insurance). In the case of using factors of medical diagnoses, it is necessary to additionally solve the problem of disclosing medical secrets by a medical institution, and transferring data to an insurer.

II. Another option to solve the problem of unwanted selection in insurance may be the development of a unified state portal where insurance services are provided. As a result of this approach, insurance activity on the market (for selected types of insurance) will be able to be carried out by one insurer based on standard contracts.

III. The modern law and order uses constructions for concluding transactions and contracts via the Internet, which increases risks. To reduce them, you can try to implement foreign legislation. For example, Directive No. 2011/83/EU of the European Parliament and of the Council of the European Union “On consumer rights, amending Directive 93/13/EU of the Council of the EU and Directive 1999/44/EU of the European Parliament and Council of the EU and repealing Council Directive 85/577/EU of the Council of the EU and Directive 97/7/EU of the European Parliament and of the Council of the EU” (2011). The EU Directive defines “distance contracts” (organized schemes for remote sales of goods or remote services, which should include schemes offered by third parties through online platforms used by sellers (performers) but not being them). There are obligations for owners of online platforms (information intermediaries) to provide all necessary information about a product (service) before concluding an agreement; information about the seller (contractor) in whose interests he acts (name, actual address, phone number, fax number, email address). The development of the domestic mechanism of state regulation, regulatory support on the issue under consideration will allow to benefit the state, as well as business entities.

The article by Kosareva (2016) “The problem of adverse selection in the online auction market” is devoted to the economic analysis of the online auction market. The article notes the development of entrepreneurship in the segment of retail sale of goods through the provision of Internet services, the creation of Internet sites. The author notes the problems of the quality of services and the quality of the circulating (alienated) goods, the lack of legal liability for goods sold on Internet sites. To eliminate them, it is proposed to create an institution, a seller’s reputation system. Currently, such an institution refers to private rule-making (the custom of business turnover). Note that an additional mechanism may be the development of standards on the liability of the aggregator (legal entity) for the actions of sellers (an analogue of the institution of non-contractual liability for harm).

It is also necessary to touch upon the legal problems of the content of contracts for distribution by manufacturers of their products via the Internet (retailers). The issues of Internet transactions and possible limitations of vertical agreements in European law are of interest. Manufacturers began to introduce restrictions in contracts for the distribution of their products via the Internet (due to the lack of costs, intermediaries suffer from pricing – a fair price). Theoretical questions arise about the nature of contractual restrictions for online sellers. They can be considered as restrictions on the object or restrictions on the effect (Zelger, 2018). In foreign practice, manufacturers began to use automatic price

adjustment algorithms (analysis of deviations from the recommended price) to prevent a decrease in financial revenues from branded points of sale.

Using programs to change the price of an intermediary can be interpreted as a civil violation only if there is no right to act in the contract. In civil law, its use for market research and the adoption of an internal decision by the manufacturer is allowed (for example, a local act on changing pricing, selling prices, developing new material conditions in a contract – a “vertical” agreement). Even without the availability of conditions for this in the contract between the manufacturer and the seller. To prevent market failure, a traditional claim form for eliminating improper performance of the contract is possible.

The question must be asked whether the conditions for automatic price adjustment (a person who does not have a subjective right to a product after alienation) are a deterrent to competition in the market (for example, within the geographical boundaries of one of the levels of the commodity market)? In the field of public relations, the use of algorithms, unreasonable actions of subjects to change prices can be interpreted as anticompetitive behavior of the subject (abuse of a dominant position). In 2018, the European Commission examined the case and imposed a fine of 111 million euros on electronics manufacturers Pioneer, Asus, Denon, Marantz, and Philips for such actions. It is possible in Russian law to reach such agreements and to include such essential conditions in the contract. For this, it is necessary to have an agreement between both parties on direct price control. Suppose that they can be interpreted as limitations. To interpret this condition as contrary to the civil law principle of freedom of contract, additional research is required. At the same time, considering the agreement from the position of ensuring the stability of the entire market, of all its participants, it should be noted that the ban may be extended to such agreements as to actual acts contrary to competition.

If we allow the creation of an Internet platform (portal), where contracts for the provision of economic and legal services (public property contracts for the provision of actual, legal, financial services) can be concluded, then it seems advisable to consider the exclusion of restrictions on the conclusion of “vertical” agreements for financial organizations from antitrust laws. Further development of legislation and practice depends on the position of the antimonopoly authority.

The rules will reduce the asymmetry of information in the markets, will achieve a fair distribution of benefits, costs when doing business using Internet platforms, information aggregators. Within the framework of a single legal space, such tasks are easier to achieve. For example, creating a single national operator.

IV. The state can expand the scope of application of innovations, new technologies through the use of artificial intelligence systems in financial, insurance, and stock trading. Marwala and Hurwitz (2017) found that the use of computer programs can reduce the asymmetry of information on the market.

There are several solutions to the problem:

– Institutional (Mullings, 2018). Some aspects of the issue were investigated by Acemoglu, Akcigit, Alp, Bloom and Kerr (2018). The authors investigated a model of innovation at the company level, productivity growth and redistribution, which includes endogenous entry and exit. They showed how the level of taxation affects the dynamics of entry and exit of a company, output and R&D. Using their approaches will create successful national technology, banking companies that can specialize in financial services for different states. At the same time, building inclusive institutions of advanced

development in the territory of the Russian Federation, it is necessary to take into account that it is advisable to maintain a balance with the traditional production sector in order to ensure budget revenues and employment. Arkolakis, Ramondo, Rodríguez-Clare, and Yeaple (2018) created a quantitative model of the general equilibrium of trade and multinational production (MP), in which countries can specialize in innovation or production. Their analysis shows that the state needs to meet the needs of the domestic market, comparative advantages in comparison with other regions within the international division of labor. This approach is relevant for the development of competition in the commodity, financial, insurance markets. As a recommendation, one can propose the optimization of taxation and the legal regime for the use of intangible assets by financial organizations and non-bank financial organizations. You can also propose the creation of a unified national information system where contracts can be concluded. The marginal costs of companies will be reduced to a minimum, theoretically, to zero. The state will control and exercise oversight functions over entities that operate using new technologies. In this case it is necessary:

a) create regulatory support for business processes in the form of state regulation of entrepreneurial activity (state rulemaking) – control, supervision, antitrust requirements,

b) to develop civil law standards, institutions that ensure the joint use of civil rights objects and the activities of competitors in the framework of contractual relations (private rulemaking) – model agreements (the external environment of the organization); internal acts on accounting and tax policies, requirements for professional activities, ethical standards for employees of legal entities, rules (algorithms) for working with competitors and consumers (internal environment of the organization based on the “Mckinsey 7S model”).

– Legal. Ulyssea (2018) developed and evaluated an equilibrium model in which heterogeneous firms used two boundaries of informality: they did not register their business – extensive margins; and hired workers “out of the register”, intensive margin. The use of data on possible mechanisms of work in the markets allows us to conclude the importance of legal influence and the prevention of such situations in order to provide information on the markets. This approach seems reasonable. In this case, it is necessary to improve the mechanism for recording information, databases and their use in business activities by credit and financial organizations.

Another possible problem needs to be identified. In the process of entrepreneurial activity of subjects, illegal agreements (cartel agreements, secret agreements, implicit agreements) may be reached and anticompetitive behavior may be observed. These facts may be the result of the operation of computer programs owned by companies, which is not punishable by applicable law. The boundaries between implicit collusion, concerted actions and parallel behavior in oligopolistic markets in a competitive environment according to the Bertrand model are difficult to establish and prove. As long as there is no normative regulation on programs, we propose another regulation mechanism. A solution has been proposed by Polemis and Oikonomou (2018). The authors propose to conduct an economic analysis in combination with the use of modern econometric methods, which allow to reveal the mechanism of tacit collusion (concerted actions, parallel behavior). In Russia, no regulatory acts have been developed at the moment.

To perform this task, it is necessary to develop regulatory support for the use of new technological processes. In the field of financial and credit activities, it is possible to improve the mechanism for providing information on the services provided and on the legal entities that provide them. For example, it is proposed to create a single portal, an aggregator – an information resource for providing the results of intellectual activity for use in the financial market and/or an aggregator – an information resource for the provision of financial services. In the field of exchange trading, it is necessary to increase the efficiency of the rules of the exchange, develop forms for specifying the futures contract, expand the list of exchange commodities, improve civil law, securities law, and the practice of FAS enforcement. The consequence of these changes will be the formation of conditions in the markets close to perfect competition, the improvement of state administration of markets, as well as an increase in tax revenues to the budgets from the legalization of transaction processes. In the future, it is necessary to increase the effectiveness of civil legislation (sections: general provisions on the contract, types of obligations) and local acts of entities (regulations, rules for the provision of services using an automated accounting system, ensuring electronic document management between entities). In addition, it is necessary to improve procedures, rules for entering the market (accreditation with the Bank of Russia), standards of entrepreneurial legislation on clearing activities and organized tenders.

## 7. Conclusion

Implementation of the proposed solutions to problems will provide complete, symmetrical information on the markets. It can be assumed that in view of this, the effectiveness of law enforcement and the activity of inclusive institutions in social and economic relations will also increase. The consequence of this will be an improvement in the use of corporate finance in business and a reduction in the burden on the expenditure side of the balance sheet of legal entities.

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