

A stack of various coins, including silver and gold, is shown in the background. The coins are stacked vertically, with some overlapping. The background is slightly blurred, focusing attention on the stack.

DEWEY & LeBOEUF

**Syndicated Lending and Rules on Tenders in Russia:
Can Syndicated Loans Challenge Bilateral Loans?**



**Presentation to
Syndicated Lending in Russia - 2011**

September 29, 2011

**Dmitry Gubarev
Partner, Moscow Head
of the Banking & Finance Practice
Dewey & LeBoeuf**

**Anton Kukoba
Head of Syndicated Lending
and Securitisation Department
ZAO Raiffeisenbank**

Introduction: rationale of approach and relevance of the topic

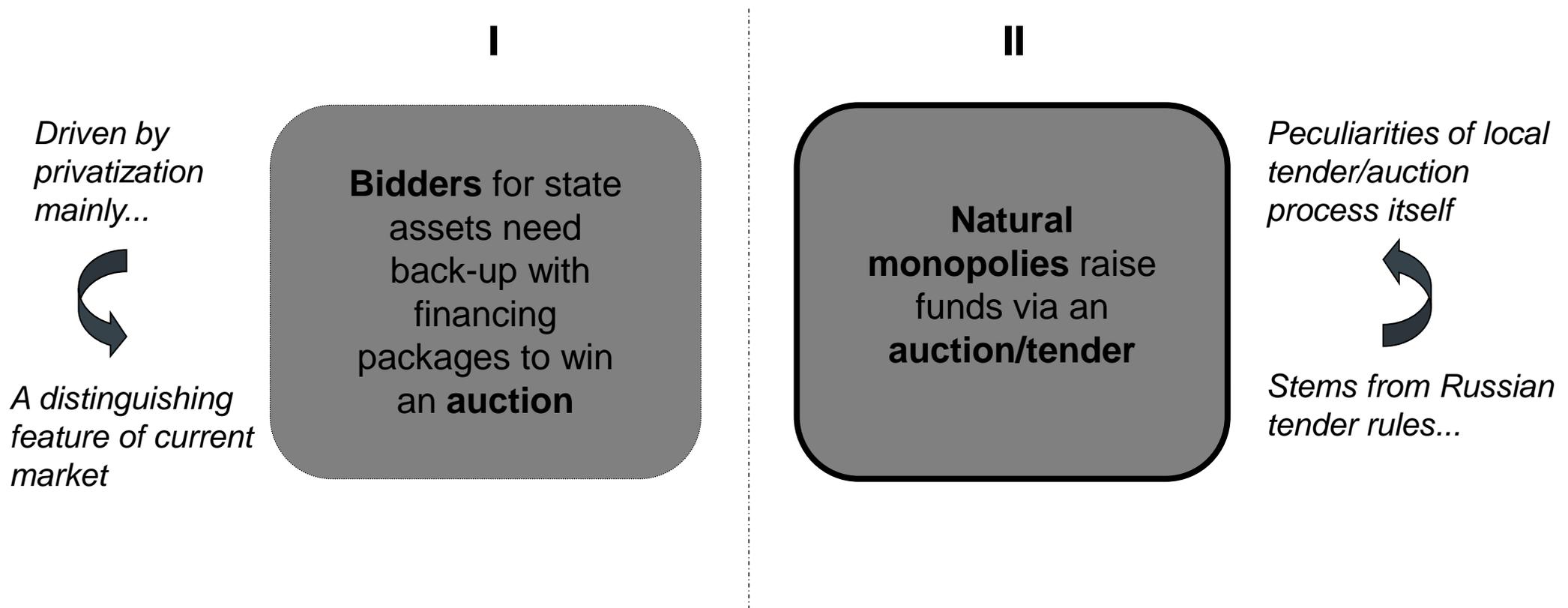
- Questions raised are many and need to be elaborated from both **commercial** and **legal** perspectives:
 - Syndication expertise in standard market deals (applicable facility structures, syndicate make-up, etc.)

plus...
 - Legal competence in purely Russian law specifics (natural monopolies, FAS regulations, court practices, etc.)

equals ...a feasible lending tool
- Relevance of the topic is self-explanatory and undisputable:
 - Lack of knowledge re specific features of Russian law
 - Wrong perception of a fund raising process via a tender/auction as Russian state bank's "home playground" only (by foreign banks mainly)
 - Finding a new niche for foreign lenders: teaming up to finance Russian natural monopolies and those M&A transactions coming from privatizations via syndicated/club loans

Introduction: complex question requires comprehensive study

Complexity of the question should be handled by splitting it into **two major blocks**:



Block 1: a buzz word 'Privatization'...

Privatization is on track: in summer 2010, the Russian government announced its plans for the sale of significant stakes in a number of large state-controlled companies. The planned privatization is targeted to stakes in such companies as VTB, Sberbank, Russian Railways, RusHydro and Rosneft and aims at the next 5y horizon.

Ambitious plans – are announced figures achievable? – Questionable, but amounts are huge...

- The government expects to get roughly **\$10 bln** yearly.
- Privatization proceeds in 2009 accounted for circa **RUB 1,93 bln** only.
- Budget inflows from privatization expected by the government in 2011 amount to **RUB 297 bln**.
Figures achieved in early 2011: **RUB 103 bln**

Significant M&A activity has been seen in 2010: total M&A transaction volume in 2010-1Q 2011 accounted for circa USD 130 bln

Breakthrough phase of development of the M&A market backed by **government's active support** (reduction in the number of 'strategic' industries). Giving green light to **PepsiCo's** acquisition of **Wimm-Bill-Dann** was one of the first positive signals to foreign investors.

Market outlook in 2011 and through 2012 will be defined by **jumbo** deals as a result of the **privatization** of large state companies.

Block 1: financing a jumbo deal

- To which extent can syndicated lending be attributable?
 - Financing jumbo deals by bank's joint efforts vs bilateral solutions by Russian state banks
 - Commercial banks face some difficulties: political aspects (tenders made up to fit state banks' lending criteria), unbeatable RUB loans for a long run
 - Teaming up with state banks: syndicated loan as a flexible instrument, which can be easily tailored to allow for complex financing solution
- State banks and commercial foreign banks under one umbrella:
 - Facility under English law, LMA based docs
 - allow for*
 - a structure with a number of Tranches (RUB by state banks, USD and EUR by foreign banks) with different tenors (state banks going for a long run and acting as anchor lenders) and a joint security package (share pledge of the target)
 - Bidder/Borrower gets well-structured and diversified (by lender portfolio and currency) debt

Block 2: participating in a tender/auction (Lender as a bidder)

- Can this become a new niche for syndicated lending to be seized by foreign and/or local commercial banks?
- Can common structures be used?
 - Syndicate of banks to participate in a tender as a Bidder
 - Sole underwriting and further sell down/syndication (simple technique of transfers to be used)
 - Sub-participation
- What does Russian law and court practice say about each of the above?

Russian Tender Rules

Now:

- "subjects of natural monopolies" ("*субъекты естественных монополий*") can attract loans only through tenders or auctions (*Article 18 of Federal Law On Protection of Competition*); rules being the same as the rules for state and municipal entities
- failure can lead to declaring the relevant transactions invalid on the basis of a claim of, *inter alia*, the antimonopoly authority

Possible future:

- Special rules for subjects of natural monopoly, state-owned companies and state corporations

What if We Don't Want to Tender?

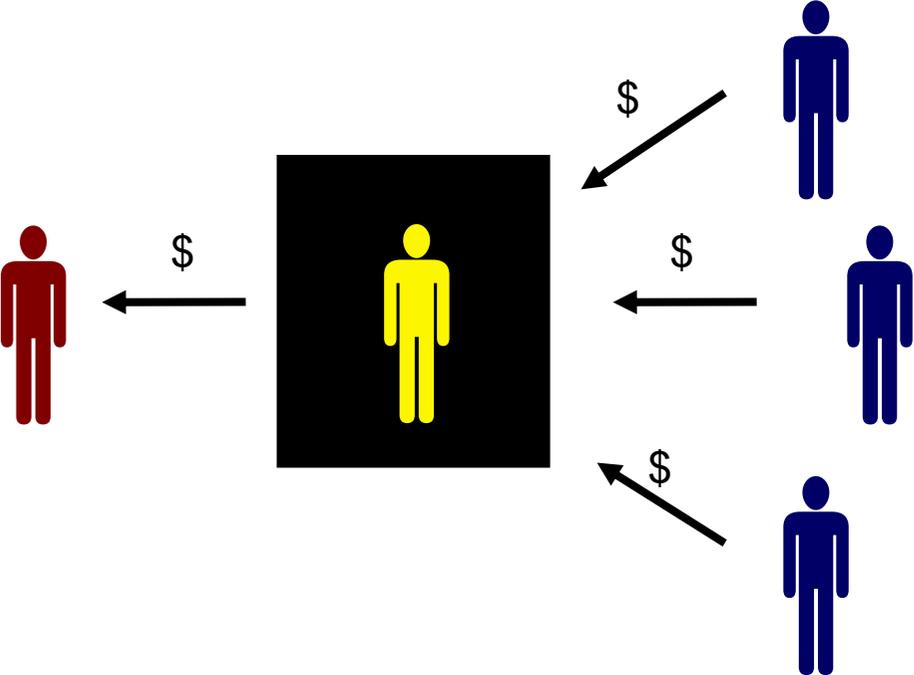
- Purpose of the loan
- Lending through an SPV

Ok... We are Going Through Tender! Can We Do It All Together?

- Can syndicates participate in the tender? Simple answer is no.
- Obvious solutions:
 - the arranger takes the loan to its books and then sells it down (still unlikely to work)
 - sub-participation (should be ok)

Ok... We are Going Through Tender! Can We Do It All Together?

- **Sub-participation**



Ok, ok, I am Going Through Tender... Alone

- **Under current rules:**
- Open tender (*открытый конкурс*) (???)
 - *Not less than 30 days to apply*
 - *Not more than 30 days to declare the winner*
 - *Not less than 10 days to enter into a contract*
- Open auction (*открытый аукцион*)
 - *Not less than 20 days to apply*
 - *Not more than 10 days to decide on the list of the bidders*
 - *Not less than 10 days to enter into a contract*

Ok, ok, I am Going Through Tender... Alone

- **Possible future:**
- Special procurement rules for subjects of natural monopolies, state-owned companies and state corporations:
 - Open tender
 - Open action
 - Other?

Can Syndicated Loans challenge bilateral loans?

- **When participating in tenders: YES - but not in a simple way...**
- **... And this needs to be tested by the market**
- **Current market turbulence hampers this potential testing process**

Thank you for your attention

any questions ?