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



Presentation to  
Syndicated Lending in Russia - 2011

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# Introduction: rationale of approach and relevance of the topic

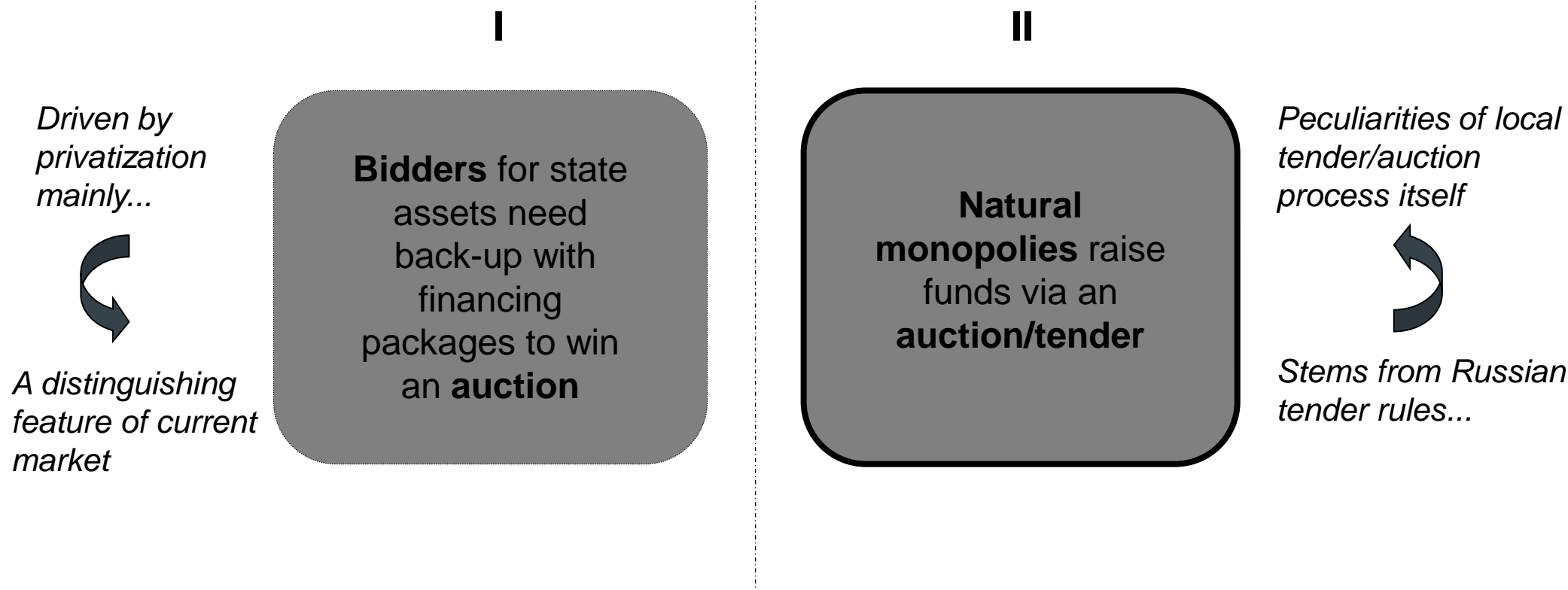
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- Questions raised are many and need to be elaborated from both **commercial** and **legal** perspectives:
  - Syndication expertise in standard market deals (applicable facility structures, syndicate make-up, etc.)  
*plus...*
  - Legal competence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

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



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

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**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

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- 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)

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- 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

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## 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?

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- Purpose of the loan
- Lending through an SPV



# Ok... We are Going Through Tender!

## Can We Do It All Together?

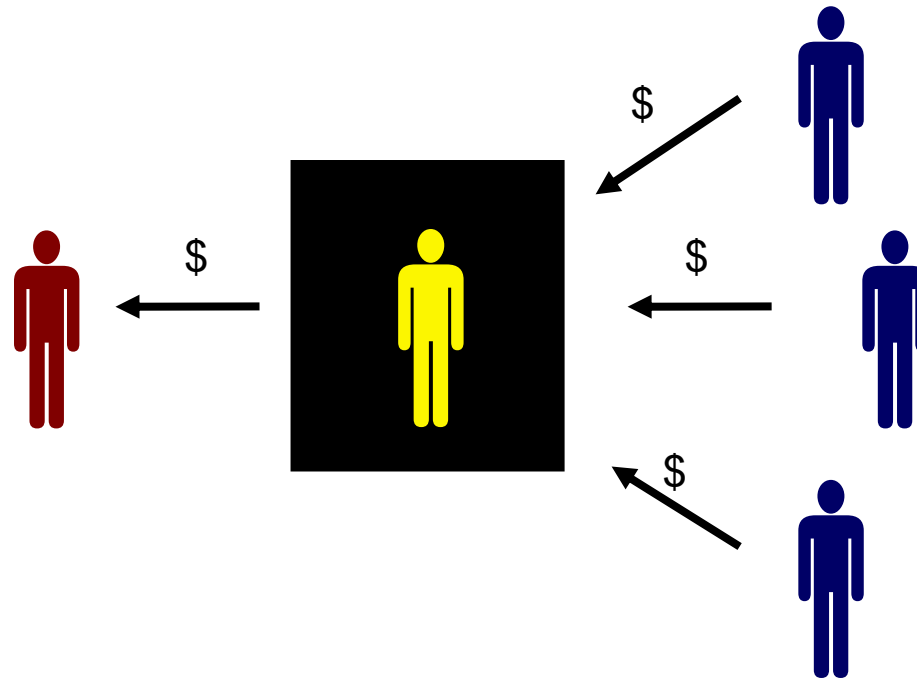
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- Can syndicates participate in the tender? Simple answer is no.
- Obvious solutions:
  - the arranger takes the loan to its books and then sells it down (still unlikely to work)
  - sub-participation (should be ok)

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

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- **Sub-participation**



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

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- **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

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- **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?

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- **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

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**any questions ?**