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Reiderstvo:

Asset-Grabbing in Russia

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SUMMARY POINTS

- The illicit acquisition of a business or part of a business in Russia (known as *reiderstvo* or asset-grabbing) is widespread and one of the risks of doing business there.
- The common ingredients of *reiderstvo* are the complicity of any or all of the tax, security, law-enforcement and judicial authorities, and the use of charges that are either freely invented or examples of the highly selective use of accusations that could have been levelled at many other business people but were not.
- *Reiderstvo* is made possible by corruption and contributes to market-entry barriers and the insufficient restructuring of incumbent firms.
- The lack of protection of property rights that makes *reiderstvo* possible is one of the risks that make investment in Russia less attractive than it would otherwise be. This contributes to the modest level of fixed investment as a share of GDP, to the net outflow of private capital in all post-Soviet years except in 2005–07 and to the weakness of competition. The disincentives to invest apply to foreign as well as Russian firms.
- Since early 2012 the phenomenon of asset-grabbing has been widely publicized in the Russian media, and calls to reform law enforcement and the courts, and to protect property rights have become commonplace.
- *Reiderstvo* has elicited significant civil resistance. Business associations have played a role in launching counter-measures. The state has intervened to try and guide the campaign against *reiderstvo* but it does not monopolise that campaign as it does the broader, official 'anti-corruption campaign'.
- At the same time, developments over the amnesty for economic crimes, the role of commercial courts and the management of tax charges show just how powerful the forces ranged in favour of the status quo can be.

INTRODUCTION

Reiderstvo (literally 'raiding') is now a well-known term in Russian. It does not mean 'corporate raiding' in the English or American sense. Corporate raiding in the West is usually an activity conducted within the bounds of the law. *Reiderstvo* means the acquisition of business assets by means that involve manipulation and distortion of the law, albeit often with the active involvement of law-enforcement officers and the courts. The implication is that this involvement is corrupt. I translate it here rather loosely as 'asset-grabbing'. *Reiderstvo* is sufficiently widespread to be seen as one of the risks of doing business in Russia,¹ and to have elicited counter-actions both from business and from the state.

In this paper I shall describe the phenomenon, offer some evidence on its extent, with some international comparisons, consider its likely effects on Russian economic growth, and discuss the reactions of the business world and the state to it. Those reactions are of particular interest. They shed light on the process of social and political change in Russia, and in particular the ways in which business, including small business, can assert its interests when they clash with those of corrupt officialdom. This process of change can be seen as perhaps part of a more fundamental, long-term shift in the direction of a more open society.²

Michael Rochlitz, using a data-set of 312 cases of asset-grabbing ('illegal corporate raiding' in his terminology) between 1999 and 2010, finds that the role of the state in these cases has increased over time and that their regional incidence is related to the political character of the regional regime.³ Here I am more concerned with its current implications for the economy and with the civil-society and state responses to it. The civil-society response offers some clues to the scope for change in what Alena Ledeneva has termed Russia's *Sistema*.⁴

THE PRACTICE OF ASSET-GRABBING

Asset-grabbing or *reiderstvo* is defined here as the illicit acquisition of a business or part of a business, usually with the assistance of corrupt actions by law-enforcement officers and courts. It is commonly initiated by a business rival of the firm targeted. President Vladimir Putin's 'business ombudsman', Boris Titov,⁵ has said that this is the case for 80 per cent of 'improper cases' brought against business people.

A typical story is that of a businessman who is charged with an 'economic crime', and who is arrested and put in pre-trial detention or at least faces the threat of pre-trial detention. The case may or may not go to trial, but one of two outcomes is likely: a deal is struck, the assets sought by the raider are handed over and the accused is released; or the accused goes to prison and the assets are acquired by the raider while the victim is, for practical purposes, out of action. It appears that only state-controlled entities and companies controlled by close associates of the leadership are safe from this.

The phenomenon is not confined to Russia. In Kyrgyzstan, for example, it has been seen as a successor to earlier 'racketeering' by officials who offered protection at a price against the exactions they would otherwise levy against private businesses. The acquisition of business assets

1 See, in particular, Ilja Viktorov, 'Corporate Raiding in Post-Soviet Russia', *Baltic Worlds*, VI: 2 (September 2013): 4–9, where the focus is on the origins and evolution of the phenomenon.

2 Andrey Yakovlev, Anton Sobolev and Anton Kazun, in 'Mozhet li rossiiskii biznes ogranichit' davlenie so storony gosudarstva?' [Can Russian business limit pressure from the state?], *Vysshaya shkola ekonomiki*, Moscow, preprint WPI/2014/01, treat this organized response as a development of public collective action contributing to a possible shift of Russia from a Northian 'limited-access order' to an 'open-access order'.

3 Michael Rochlitz, 'Corporate raiding and the role of the state in Russia', *Post-Soviet Affairs*, 5 December 2013.

4 Alena Ledeneva, *Can Russia Modernise? Sistema, Power Networks and Informal Governance* (Cambridge University Press, 2013). See also Vadim Kononenko and Arkady Moshes (eds), *Russia as a Network State. What Works in Russia When State Institutions Do Not?* (Palgrave Macmillan, 2011); and Philip Hanson and Elizabeth Teague, 'Liberal Insiders and Economic Reform in Russia', Chatham House, 2013. *Sistema* is a conglomerate owned by Vladimir Yevtushenkov, described by *New Times* as an 'authorized oligarch' of then president Dmitrii Medvedev ('Ikh Dom Rossiya' [Their home is Russia] http://newtimes.ru/2011_06/SX_1200x6032u.jpg).

5 As cited by Joshua Yaffa, 'Signs of a Russian thaw (toward business)', *New York Times*, 29 December 2013.

by quasi-official action is said to have become widespread in the 2000s.⁶ Kyrgyzstan, like Russia, developed a private sector comparatively early following the break-up of the Soviet Union, in an environment of a weak rule of law. It is likely that the phenomenon would be less widespread in countries such as Uzbekistan and Belarus, where the state has directly controlled more of the economy in post-communist times.

In Russian practice there are many variations, and the asset-grab may not always succeed, but common ingredients are the complicity of any or all of the tax, security, law-enforcement and judicial authorities, and the use of charges that are either freely invented or examples of the highly selective use of accusations that could have been levelled at many other business people but were not. In the practice of the law-enforcement agencies, the now-frequent use of accusations of 'theft', with a highly implausible link to pricing behaviour, may have grown out of the 'successful' experience of the Yukos cases.

One well-documented case involves Ruslan Telkov, a trader in fabrics with (in 2011) 18 people on his payroll, and three warehouses. He had been selling Chinese-origin fabrics at \$5 per linear metre, against his local competitors' \$12. They had warned him to raise his prices or he would be in trouble. Subsequently one of his warehouses was raided, most of his stock was confiscated and he was charged with copyright violations. The evidence reportedly was at least partly faked. He was arrested, put in pre-trial detention for a year and offered a suspended sentence if he pleaded guilty. This would still have entailed the loss of most of his stock. He refused the deal. His case was brought to Titov's attention, and the ombudsman took it up. In January 2013 Telkov was released from pre-trial detention but the charges were not dropped.⁷

Since early 2012 the phenomenon of asset-grabbing has been widely publicized in the Russian media. Few individual cases, however, can be followed in detail from that source. One that can be followed, though its outcome remains mysterious, involves Mikhail Gutseriev's ownership of the mid-ranking oil company Russneft. In 2007 the company began to be subjected to the battery of official pressures that signals a large-scale asset-grab, including claims for back taxes and the withdrawal of licences. In 2008 its licence to develop fields in the Tomsk region of Siberia was withdrawn and its stake in another field was frozen by official action. The commentator Stanislav Belkovskii asserted in August of that year that the fight for Russneft was between Oleg Deripaska, owner of Rusal, the world's largest aluminium company, and Igor Sechin, then a deputy prime minister as well as chairman of the state oil company, Rosneft.

Gutseriev concluded an agreement to sell Russneft to Deripaska and moved to London. The Federal Anti-Monopoly Service then failed for a record length of time, throughout 2009, to give its approval to the deal. Deripaska meanwhile was struggling to cope with debts of about \$25 billion. In late 2009 and early 2010 some of the charges against Gutseriev were dropped and others ceased to have effect when the so-called offence of 'unlawful entrepreneurship' was decriminalized. In June 2010 Gutseriev was back in Russia and back in charge of Russneft, though he sold 49 per cent of the business to Sistema.⁸

In the Russneft case, the victim of the raid made a come-back, though what deals and what concessions were made along the way remains obscure. Indeed, it remains unclear to outsiders who initiated the raid. This may well have been a case with an admixture of politics, related in some way to Gutseriev's earlier political activities, rather than an example of 'pure' asset-grabbing. At any event, the comments on it by Belkovskii (and others) while it was still in play indicate how hard it can be even for supposedly knowledgeable observers to determine what is really going on in such combats.

6 Johan Engvall, *The State as Investment Market* (Uppsala: Uppsala University, 2012), pp. 147, 150. Engvall cites (p.150) an article that claims most such asset-grabs were followed by the selling-on of the asset: Oleg Pankratov, 'Reiderstvo kak novoe yavlenie v ekonomike Kyrgyzstana' [Asset-grabbing as a new phenomenon in the economy of Kyrgyzstan], *Nalogi i pravo*, 9, 2009. This would make sense if the whole operation, including the re-sale, was planned in advance with a competitor of the targeted firm.

7 The details are set out in Yaffa, 'Signs of a Russian thaw'.

8 For details of the Russian sources for this account, and for a little more background, see Philip Hanson, 'Networks, Cronies and Business Plans: Business-State Relations in Russia,' in Kononenko and Moshes, *Russia as a Network State*, pp. 120–21.

For example, Gennadii Seleznev, a former speaker of the Duma, observed at an early stage in this saga, when it looked as if Gutseriev was going to lose: 'This was a battle, not against Gutseriev, but for his asset. I wouldn't rule out it happening today to Deripaska and tomorrow to Rosneft.'⁹ In fact it is difficult to imagine any group having the political resources and the collective nerve to aim at these particular targets, but, with that qualification, the point is well made: very few businesses are safe from this kind of attempt.

THE SCALE OF ASSET-GRABBING

How big is the problem? The first point to make is that there are a large number of articles in the Russian Criminal Code that have been referred to as dealing with 'economic crimes'. These are the articles under which court cases are typically brought with the aim of grabbing assets. Some of the articles deal with behaviour that would be treated as criminal in most countries: for example, swindling or fraud (*moshenichestvo*, Article 159), embezzlement or misappropriation (*prisvoenie* or *rastrata*, Article 160), and robbery with violence (Article 162). Others are perhaps more doubtful, but all can be misused in a corrupt system. In the Criminal Code adopted in 1996 there were 50 articles that came under Section VIII, 'crimes in the sphere of economics'.¹⁰

Some unknown proportion of the cases brought under these headings will consist of genuine attempts to obtain convictions for real crimes. The number of cases brought under 'economic' crimes has been variously reported at about 50,000 a year in recent years; and, in 2012, 150,000 cases were started, 30,000 went to court and 5,000 were reported to be closed.¹¹ The figure of 30,000 is close to that given in a detailed report by the press agency RIA Novosti (31,028), though this covers cases brought under only 10 articles of the Criminal Code.¹²

There is one oddity about these numbers to which I shall return, but first the numbers of cases brought annually to court, whether 30,000 or 50,000 in recent years, need to be put in comparative context.

We focus on tax evasion, fraud and misappropriation of funds, one country for which white-collar crime under these headings is reported in some detail is Sweden.¹³ The Swedish data for 2012 show reported offences under four headings whose terminology, at least, corresponds to that of several leading 'economic crime' articles in the Russian Criminal Code.¹⁴ The same report gives the number of prosecutions for some of these crimes in 2010. Later data on prosecutions were not given. From these data one can derive an order-of-magnitude estimate of total Swedish prosecutions for 'economic crimes' in 2010.

9 Quoted by Irina Reznik in *Vedomosti*, 30 July 2007.

10 See *The Criminal Code of the Russian Federation*, <http://www.russian-criminal-code.com/PartII/SectionVIII/Chapter21.html>, and see also the two subsequent chapters.

11 The first number is from Yulia Yakovleva, "Delovaya Rossiya" predlagayet perepisat' stat'yu o moshenichestve', [Delovaya Rossiya proposes the revision the (Criminal Code) article on swindling], *RBK Daily*, 11 March 2012. The second is Boris Titov, quoted in Andrei Vinokurov, 'SK kak faktor investklimata', [The I[nvestigations] C[ommittee] as a factor in the investment climate'], *Polit.ru*, 13 September 2013.

12 <http://ria.ru/infografika/20130702/946870208.html>.

13 British crime statistics are less helpful, though they are excellent on things like the incidence of reported bicycle theft, by post code.

14 Brå (Swedish National Council for Crime Prevention), 'Economic Crime', <http://www.bra.se/bra/bra-in-english/home/crime-and-statistics/economic-crime.html>.

Table 1: Some Swedish economic crime data for 2010 and 2012

Offence	Number reported in 2012	Number prosecuted in 2010
Tax offences	15,800	400
Accounting crimes	11,100	<i>281</i>
Misappropriation of funds	2,755	<i>69</i>
Fraud	128,000	3,200
Total	157,655	3,947

Note: Numbers in italics in the right-hand column are estimated on the assumption that the ratio of 2010 prosecutions to 2012 reports was the same as for tax offences.

Source: Brå (Swedish National Council for Crime Prevention), 'Economic Crime', <http://www.bra.se/bra/bra-in-english/home/crime-and-statistics/economic-crime.html>.

The apparently low ratio of prosecutions to reported economic crimes in Sweden may well be connected with the requirement that a case must have a strong chance of success before it is allowed to go ahead. According to the Swedish National Council for Crime Prevention, only 23 per cent of cases involving tax offences reported are tied to an individual suspect.¹⁵ Such due diligence in pursuing prosecutions does not seem to be quite the norm in Russia.

If the estimated Swedish number of prosecutions is scaled up to reflect the size of the Russian population – that is, from 9.5 to 143.5 million (assuming a straight-line relationship between population size and prosecutions and multiplying by 15.1) – the number of such crimes that a hypothetical Sweden with a population the size of Russia would have prosecuted in 2010 is 59,600. That illustrative calculation puts the number of prosecutions for economic crime frequently cited for Russia in recent years, of around 50,000 'cases brought' a year, in perspective. The numbers, rough as they are, suggest a pretty similar order of magnitude. One can, however, be reasonably confident that asset-grabbing Russian-style is not a common phenomenon in Sweden. One relevant indicator of the difference between the two countries is the World Bank's rule-of-law and control-of-corruption assessments (see Table 2).

Table 2: Russia and Sweden: selected governance scores in 2012 (range -2.5 to +2.5)

	Rule of law	Control of corruption
Russia	-0.8	-1.0
Sweden	1.9	2.3

Source: World Bank, 'Worldwide Governance Indicators', <http://info.worldbank.org/governance/wgi/index.aspx#reports>.

If one makes the strong assumptions that no cases brought under the selected 'economic crime' headings in Sweden were predatory in motivation and management, and that, allowing for population-size, the order of magnitude of 'economic crime' prosecutions was similar in the two countries, two conclusions follow.

First, some proportion of Russian prosecutions is motivated by asset-grabbing and is socially damaging in a way that has no counterpart in a rule-of-law society like Sweden. Second, the larger this proportion is, the larger too is the proportion of law-enforcement and court time that is not

¹⁵ Ibid.

being deployed to deal with genuine cases of economic crime. There is, after all, no reason to believe that the incidence of real offences under these headings is likely to be lower in Russia than in Sweden. At present nothing much more can be said about the size of this proportion than that it is large enough to have captured a great deal of media and business attention. However, the strong assumptions about the prevalence of due process in Sweden, though in line with assessments such as those by the World Bank, may be too favourable to the Swedish side of the comparison between the two countries. But even if some Swedish prosecutions for economic crimes are predatory in nature, it seems reasonable to assume that the proportion is much smaller than in Russia.

One last point should be made about the scale and nature of *reiderstvo*. The number of cases started in Russia in 2012 (150,000), the number closed (5,000) and the number brought to trial (30,000), quoted by Titov,¹⁶ leave 115,000 unaccounted for. Where, Titov asked, are these cases? The retired Supreme Court judge Vladimir Radchenko replied enigmatically that corruption had a lot to do with this oddity about the numbers.¹⁷ This suggests that a large number of deals are cut whereby the victims of these charges buy themselves out of trouble.

CONDITIONS FOR ASSET-GRABBING AND ITS ECONOMIC CONSEQUENCES

If many victims of *reiderstvo* buy themselves out of trouble – often, presumably, by surrendering the assets that the raider is after – the further implication is that many deals are cut at the stage when the victim is either about to face pre-trial detention or is already detained pending trial. This is probably one of the conditions that have allowed asset-grabbing to be so widespread. The following seem to be the main conditions for its prevalence.

- Many police officers, tax officials and judges can be bought.
- There is a Soviet legacy of popular distrust of business.
- Pre-trial detention is the norm, and is lengthy and harsh, providing both time and incentive for the victim to cut a deal.
- The business world or, more precisely, those parts of it that do not benefit from asset-grabbing, is short of means to fight back against the predators.

The last of these conditions may recently have been changing and will be examined in more detail below. The other conditions are deeply embedded but not beyond the possibility of change.

The consequences of asset-grabbing are clear, at least in direction, if not in quantity. The lack of protection of property rights is one of the risks that make investment less attractive than it would otherwise be. This contributes to the modest level of fixed investment as a share of GDP in Russia (about 21 per cent, low for a country that could be ‘catching up’ with the richer countries), to the net outflow of private capital in all post-Soviet years except in 2005–07 and to the weakness of competition.

The disincentives to invest apply to foreign as well as Russian firms, as the experience of Hermitage Capital Management (UK-based) and Telenor (of Norway) has demonstrated. The Hermitage affair, which led to the death of the lawyer Sergei Magnitskii while he was in pre-trial detention, began as a raid organized or part-organized by police officers in an attempt to steal subsidiary companies of the Western investment fund Hermitage Capital Management, and morphed into a tax scam.¹⁸ Telenor has faced a number of challenges to its stake in the mobile-phone company VimpelCom from its main partner in that company, Altimo – the telecoms arm of the Alfa Group, the banking, telecoms and oil conglomerate. Telenor’s Executive Vice-President,

16 In Vinokur, ‘SK kak faktor investklimata’.

17 Ibid. Presumably many cases were still pending at the end of the year, but unless the total number started in 2012 was enormously higher than in previous years one would not expect such a very large gap between numbers started and numbers halted or brought to trial.

18 ‘Testimony of William Browder, CEO, Hermitage Capital Management,’ US Commission on Security and Cooperation in Europe, 23 June 2009.

Jan Egvard Thygesen, at one point referred to an 'escalation of the attempts to steal our VimpelCom shares with the aid of Russian courts'.¹⁹

It is likely that the investment rate and competition would both be stronger in the absence of widespread asset-grabbing, and that Russia's trend rate of growth would therefore be higher. Just how much difference the disappearance of asset-grabbing would make is a matter of speculation. Business in Russia faces a host of challenges. It is not self-evident that poor rule of law and weak control of corruption constitute a binding constraint on growth; however, as other sources of growth have weakened in recent years, an improvement in the business environment looks increasingly like the only route to improved performance. What is clear is that these weaknesses, of which the practice of asset-grabbing is a symptom, are widely seen as important constraints on the country's economic performance. The interim report of the very large group of Russian specialists commissioned by the government to revise the national economic strategy to 2020 (and subsequently ignored) listed the following institutional problems that needed to be addressed:

- The inequality of rights among market participants;
- Barriers to market entry for new companies;
- The distorting effect of the 'state and monopoly' sectors;
- Excessive and ineffective regulation;
- Corruption; and
- Insufficient restructuring of established firms, which receive state support in one form or another.²⁰

The word *reiderstvo* does not appear in this list, but it is a practice made possible by corruption and is contributing to both market-entry barriers and the insufficient restructuring of incumbent firms. The first item on the list, the 'inequality of rights among market participants', is exemplified by a number of phenomena, of which asset-grabbing by raiders from less well-connected victims is one.²¹

Complaints specifically about the practice of asset-grabbing are examined in the next section, but it is worth noting that calls to reform law enforcement and the courts and to protect property rights have become commonplace. For example, Aleksei Kudrin, the former finance minister and now the leader of the (non-state) Committee for Civil Initiatives, said on 18 November 2013 that there would be no economic growth in Russia unless accumulated problems were addressed, 'especially in law enforcement and the judicial system'.²²

A vivid expression of this view can be seen in the open letter of support from a number of business people for the anti-corruption campaigner Aleksei Navalny when he was a candidate to be mayor of Moscow in 2013. They declared:

We are entrepreneurs of the knowledge economy [...] The rule of law, independent courts and free elections are for us not abstract values but the most important mechanisms

¹⁹ This was part of a statement on the Telenor company website, www.telenor.com, removed after a deal was reached with Telenor's Russian partner Altimo; last accessed 20 March 2009. See T. Dzyadko and A. Golitsyna, 'V Nyu-York za pravdoi,' [To New York for truth], *Vedomosti*, 11 June 2009. An anonymous reviewer raises the possibility that Altimo may have had some justification for its actions against Telenor. At all events, the manner in which the Alfa Group acted was far from transparent.

²⁰ *Provezhutochniy doklad o rezul'tatakh ekspertnoi raboty po aktual'nyim problemam sotsial'no-ekonomicheskoi strategii Rossii na period do 2020 goda*, [Interim report of the results of expert work on the current problems of the socio-economic strategy of Russia for the period to 2020], p. 26. <http://kommersant.ru/content/pics/doc/doc1753934.pdf>.

²¹ That is, less well connected to 'the authorities', whether at federal, regional or local level, and therefore less able to buy the compliance of law-enforcement agencies and courts.

²² Mikhail Sergeev, 'Kudrin napishet "povestku dlya Rossii" bez nyneshnei vlasti' [Kudrin will write an "agenda for Russia" without (the participation of) the current authorities], *Nezavisimaya gazeta*, 19 November 2013.

ensuring honest competition and protecting us from the arbitrary behaviour of the authorities.²³

The signatories, mostly in IT, went on to pledge their support for Navalny as long as he continued to campaign for a proper rule of law. The references to 'honest competition' and to the 'arbitrary behaviour' (*proizvol*) of the authorities strongly suggest that asset-grabbing is a major concern. The declaration appears to be an indicator of resistance to this practice, though that is not the signatories' only concern.

CIVIL SOCIETY DEFENDS ITSELF (WITH STATE HELP)

The resistance provoked by asset-grabbing has in turn has provoked counter-measures. If there is a prospect of step-by-step improvement in the business environment – and in the liberalization of Russian society more widely – this particular combat may shed some light on how things might develop.

The organized resistance was begun by Yana Yakovleva's organization Business Solidarity in 2008²⁴ and followed up by the business association Delovaya Rossiya, headed by Boris Titov, through Delovaya Rossiya's 'Social Procedural Centre', Business against Corruption (BPK in its Russian acronym). This centre has set up a register of complaints against corrupt asset-grabbing, which it does its best to verify and contest. Its actions against asset-grabs consist of assessing them and reporting them, with supporting evidence, to the responsible authorities. The snag is that the responsible authorities tend to be the same government agencies that are involved in the asset-grabs in the first place, and the supervisory council of the BPK centre includes representatives of 65 state agencies and departments.²⁵ Between February 2011 and November 2013 it reviewed 85 cases, found official wrong-doing in most of them but succeeded in getting only a few business people released.²⁶

Indeed the establishment of BPK in February 2011 was facilitated by a directive of then prime minister Vladimir Putin (VP-P13-7216) of October 2010, calling for some such entity to be set up.²⁷ Thus the collective action against asset-grabbing is itself conducted by a quasi-state agency.

This state-supported resistance may have made some progress. In 2009–11, President Dmitrii Medvedev secured some liberal changes in the law. These included de-criminalizing so-called 'unlawful entrepreneurship' and (in principle) ending pre-trial detention for those accused for the first time of tax offences.²⁸ In June 2012 Titov was appointed ombudsman for business.²⁹ Some commentators expressed scepticism about his role but there is evidence that he has pushed hard for improvements. As ombudsman, he has campaigned for further changes in the Criminal Code and for an amnesty for a significant number of arrested entrepreneurs.

23 'Sotsial'niy kontrakt predprinimateley i politika Alexeya Navalnogo' [The entrepreneurs' social contract and Alexey Navalny's policy], 6 October 2013, <http://entrepreneurs.navalny.ru>. At 26 August, shortly before the mayoral election, the declaration had 201 signatories.

24 Yana Yakovleva is a businesswoman who had suffered persecution herself. On her experience of arrest and pre-trial detention, and her subsequent radicalization, see Gregory L. White, 'Once-jailed Russian executive pushes law change', *Wall Street Journal*, 30 December 2009. She set up Business Solidarity in 2008.

25 'Nablyudatel'niy sovet TsOP BPK pristupil k rabote' ['The Supervisory Council of the Social Procedural Centre Centre, Business Against Corruption, has begun work'], [nocorruption.biz](http://www.nocorruption.biz/?p=484), <http://www.nocorruption.biz/?p=484>; see also other information on this website.

26 See Yakovlev et al., 'Can Russian business limit pressure from the state?', p. 26.

27 For a detailed account of the development of Business Solidarity and of the BPK and its work, see *ibid.*, section 4.

28 See White, 'Once-jailed Russian executive pushes law change', and Margarita Papchenkova, Maksim Tovkaylo and Liliya Biryukova, 'Medvedev: "Navozbuzhdat" mozno vsye, chto ugodno' [Medvedev: "Launch any (case) you like"], *Vedomosti*, 13 November 2013.

29 Filipp Sterkin, 'Zachem nuzhen biznes-ombudsmen?' [What's the point of a business ombudsman?], *Vedomosti*, 25 June 2012.

The amnesty

On 2 July 2013 the State Duma, guided by Putin's presidential administration, passed a directive offering an amnesty to first offenders under 20 economic-crime articles, on condition that they provide compensation for alleged losses. It went into effect two days later.³⁰ Before the amnesty was passed, it was thought that perhaps about 10,000 people might benefit.³¹ This was said to be only a small part of the (unknown) numbers in custody for alleged economic offences, because of the restrictive conditions (only first offenders able and willing to 'reimburse' the losses they had been accused of causing).

The outcome has been even smaller than predicted: 1,284 persons released by 1 November 2013. It may be that the partial exclusion of Article 159 (swindling), as well as the stiff conditions of reimbursement and the limitation to first offenders, accounts for the release numbers being so modest.³² It looks as though those opposed to an effective amnesty managed to reduce the numbers released to a trickle, in part by stiffening the conditions for release in the drafting of the directive and in part by foot-dragging in implementation.

The status of the commercial courts

Another contentious measure is the planned merger of the regular and the commercial court systems under a single supreme court. Russia's commercial or arbitration (*arbitrazhnyi*) courts, established in 1992, lack the Soviet heritage of the regular courts, which deal with criminal cases, and have a better reputation in the business world. One might question whether this organizational distinction between the two kinds of courts, one not found in some countries, is in some fundamental sense desirable. But the difference in reputation, in current Russian practice, makes the new arrangement look like a step backwards. The reputation is based on the fact that in the commercial courts the state can and quite often does lose, most notably in tax disputes.³³

One indication of the difference of approach is the following. A Russian commercial court would treat the price in a sale from A to B agreed by both parties as a matter not of the court's concern. The Investigations Committee (*Sledstvenniy komitet*, SK), however, is apt to introduce its own judgments about whether a price was 'too low' or 'too high',³⁴ and include that in its assessment of a case, for example, under Article 160, covering 'embezzlement'. The Kirovles case brought against Navalny and his co-defendant, Petr Ofitserov, was based on a judgment that an entity associated with Navalny bought timber below 'the true price' and sold it at (presumably) the 'true price'.³⁵ Therefore the main threat to business people of corrupt asset-grabbing comes through the criminal courts, not the commercial courts.

For this reason Yana Yakovleva of Business Solidarity was fearful that the planned court merger would alter the approach of all lower-level courts to the disadvantage of business. This merger follows from a bill brought to the parliament in October 2013 by President Putin.³⁶ The concern arises despite the fact that lower-level commercial courts continue in existence, in part because the head of the Supreme Arbitration Court, Anton Ivanov, a close associate of Medvedev and a source of court reform was stepping down.

30 *Postanovlenie Gosudarstvennoi dumy RF* ot 02.07.2013 No. 2559-6 GD, '*Ob ob"yavlenii amnistii*' [On the announcement of an amnesty], Directive of the State Duma of the Russian Federation of 2 July 2013, No. 2559-6-GD.

31 Yana Milyukova and Aleksey Topalov, 'Putin vyshel s amnistiyei' [Putin has come out with an amnesty], *gazeta.ru*, 21 June 2013.

32 Ekaterina Shul'man, 'Amnistii, volki i kormovaya baza,' [Amnesties, wolves and the feeding trough] *Vedomosti*, 8 November 2013. According to this source, 10,000 people were serving sentences under Article 159.

33 'Russian court reform highlights centralising trends', Oxford Analytica Daily Brief, 17 January 2014.

34 Yana Yakovleva, 'Vse otnosheniya stanut ugovolno-pravovymy' [All dealings will come under criminal law] *Vedomosti*, 27 November 2013.

35 For a view by a British lawyer that there was a real case to answer, see 'An Examination of Navalny's Trial and Conviction' <http://darussophile.com/2013/07/31/alexander-mercouris-on-navalny/#more-10327> However, this defence of the prosecution takes no account of the ambiguity characteristic of the wording of much of the Criminal Code, which facilitates selective implementation of cases for extra-legal reasons.

36 'Arbitrazh budet uprazhden' [Arbitration will be abolished], *Vedomosti*, 23 November 2013.

This change is important for reasons that go beyond asset-grabbing. It is not certain that the lower-level commercial courts will necessarily function differently under the new, single supreme court. Nonetheless, commercial courts will probably be weakened, and this looks like a victory for the law-enforcement agencies and a loss for potential victims of *reiderstvo*. For the small or medium-sized business, this may be particularly important. Big companies are more likely to be able to use international arbitration, e.g., in Sweden.

The role of the tax service

Another controversy with a bearing on *reiderstvo* has involved the roles of the Federal Tax Service (FNS) and the law-enforcement agencies in initiating charges of tax offences. One of Medvedev's liberalizing measures as president had been to prohibit the latter from launching such cases. It remained up to the FNS alone to do this. The FNS is not a paragon of virtue, but the change, according to the co-chair of Delovaya Rossiya, had brought a reduction in the number of fake charges of tax offences.³⁷

Putin's original bill had envisaged a simple return of the power to launch tax cases to the Investigations Committee and other law-enforcement agencies. It seems to have been prompted by tax revenues falling below target as the economy slowed in 2012–13, which led Putin to complain that the earlier liberalization measures had failed. Medvedev fought back. The government consulted the Russian Union of Industrialists and Entrepreneurs (RSPP) and introduced amendments requiring that any tax cases brought by the law-enforcement agencies must be preceded by consultation with the FNS. Whether FNS agreement to the case being brought is required is not clear. The outcome looks like a draw between liberals and the *siloviki* (senior officials or former senior officials of the security and 'power' ministries), but perhaps a marginal worsening of arrangements as far as business is concerned.³⁸

CONCLUSIONS

The scale of *reiderstvo* cannot be reliably assessed from published sources. Ilya Viktorov is probably right to say that a large-scale survey project – difficult but not impossible – could advance understanding of the phenomenon.³⁹ It appears, at all events, that asset-grabbing is sufficiently widespread to be a major concern for business and a constraint on levels of investment and competition, and therefore on Russian growth rates. Whether it is a binding constraint is not certain, but it is likely. It is certainly seen as part of an adverse business environment in Russia, and that adverse climate matters.

The practice has elicited significant civil resistance. Business associations have played a role in launching counter-measures. This has not remained a purely civic movement. Titov's appointment as a business ombudsman, Putin's support for the creation of something like the BPK centre and the involvement of state agencies in oversight of the BPK project raise questions about the independence of the business-defence movement. When the financial crisis hit in 2008–09, business people had less scope for cutting individual deals than during the boom and were more disposed to some form of collective action. At the same time the political leadership, or part of it, came to see more clearly the desirability of a better business environment. So the resistance was the product of some convergence of priorities. The state's role falls short of incorporating the anti-asset-grabbing movement into the much more ambiguous official anti-corruption campaign.

37 Anton Danilov-Danilyan, quoted in Margarita Papchenkova, 'Putin peredumayet', [Putin re-considers], *Vedomosti*, 26 November 2013.

38 Ibid. And for Putin's meeting with the head of the FNS, see 'Vstrecha s rukovoditelem Federal'noy nalogovoy sluzhby Mikhailom Mishustiny'm' [Meeting with Head of the Federal Tax Service Mikhail Mishustin], <http://www.kremlin.ru/news/19686>. In describing this as a victory for the *siloviki* I am not assuming that *siloviki* are a unified political force or that political divisions in Russia can always be reduced to straight fights between them and another team easily identifiable as 'liberals'. But in this case the division seems appropriate.

39 Viktorov, 'Corporate Raiding in Post-Soviet Russia'.

At the same time, developments over the amnesty for economic crimes, the role of commercial courts and the management of tax charges show just how powerful the forces ranged in favour of the status quo can be.

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