

GLOBAL
EDITION



GLOBAL MARKETING

TENTH EDITION

Mark C. Green • Warren J. Keegan



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Regional Economic Organizations: The EU Example

The overall importance of regional organizations such as the WTO and the EU was discussed in Chapter 3. The legal dimensions are important, however, and will be briefly mentioned here. The Treaty of Rome established the European Community (EC), the precursor to the EU. This treaty created an institutional framework in which a council (the Council of Ministers) serves as the main decision-making body, with each country member having direct representation. The other three main institutions of the community are the European Commission, the EU's executive arm; the European Parliament, the legislative body; and the European Court of Justice.

The 1987 Single European Act amended the Treaty of Rome and provided strong impetus for the creation of a single market beginning January 1, 1993. Although technically the target was not completely met, approximately 85 percent of the newer recommendations were implemented into national law by most member states by the target date, resulting in substantial harmonization. A relatively new body known as the European Council (a distinct entity from the Council of Ministers) was formally incorporated into the EC institutional structure by Article 2 of the 1987 act. Composed of heads of member states plus the president of the European Commission, the European Council's role is to define general political guidelines for the union and provide direction on integration-related issues such as monetary union.⁴⁹ Governments in Central and Eastern European countries that hope to join the EU are currently getting their laws in line with those of the EU.

The Treaty of Rome contains hundreds of articles, several of which are directly applicable to global companies and global marketers. Articles 30 through 36 establish the general policy referred to as "Free Flow of Goods, People, Capital and Technology" among the member states. Articles 85 through 86 contain competition rules, as amended by various directives of the 20-member EU Commission. The Commission is the administrative arm of the EU; from its base in Brussels, it proposes laws and policies, monitors the observance of EU laws, administers and implements EU legislation, and represents the EU to international organizations.⁵⁰ Commission members represent the union rather than their respective nations.

The laws, regulations, directives, and policies that originate in the EU Commission must be submitted to the European Parliament for an opinion and then passed along to the European Council for a final decision. Once the Council approves a prospective law, it becomes union law, which is somewhat analogous to U.S. federal law. Regulations automatically become law throughout the EU; directives include a time frame for implementation by legislation in each member state. For example, in 1994 the Commission issued a directive regarding use of trademarks in comparative advertising. Individual member nations of the EU worked to implement the directive; in the United Kingdom, the 1994 Trade Marks Act gave companies the right to apply for trademark protection of smells, sounds, and images and also provided improved protection against trademark counterfeiting.

With the rise of the single market, many industries are facing new regulatory environments. The European Court of Justice (ECJ) is the EU's highest legal authority (see Exhibit 5-15). As the sole arbiter of EU law, it is responsible for ensuring that EU laws and treaties are interpreted uniformly throughout the union. Based in Luxembourg, it consists of two separate tribunals. The senior body is known as the Court of Justice; a separate entity, the Court of First Instance, hears cases involving commerce and competition (see Table 5-5).

Although the European Court of Justice plays a role similar to that of the U.S. Supreme Court, there are important differences. The European court cannot decide which cases it will hear, and it does not issue dissenting opinions. The court exercises jurisdiction over a range of civil matters involving trade, individual rights, and environmental law. For example, the ECJ can assess damages against countries that fail to introduce directives by the date set. The court also hears disputes that arise among the EU's 28 member nations on trade issues such as mergers, monopolies, trade barriers and regulations, and exports. In addition, the ECJ is empowered to resolve conflicts between national law and EU law. In most cases, EU law supersedes national laws of individual European countries.

Marketers must be aware, however, that national laws should always be consulted. National laws may be *stricter* than EU law, especially in such areas as competition and antitrust. To the extent possible, EU law is intended to harmonize national laws to promote the purposes defined in Articles 30 through 36. The goal is to bring the lax laws of some member states up to designated minimum standards, but more restrictive positions may still exist in some national laws.

Exhibit 5-15 The European Court of Justice (ECJ) is one of three courts that make up the Court of Justice of the European Union (CJEU).

Source: EQRoy/Shutterstock.



For example, Italy recently introduced the Reguzzoni-Versace Law, which is intended to regulate trade in textiles, leather, and footwear. It states that if at least two stages of production—there are four stages altogether—occur in Italy, a garment can be labeled “Made in Italy.” In addition, the country or countries in which the remaining production stages take place must be identified. Reguzzoni-Versace was *supposed* to enter into force October 1, 2010, but Brussels objected on the grounds that the law conflicts with Article 34, which prohibits national measures providing restrictions to trade in the EU. In the view of EU regulators, the Reguzzoni-Versace Law is “protectionist” and more stringent than EU law, which requires only that one main production stage take place in Europe.⁵⁵

Another recent case in Italy involved the University of Florence, which was sued by a lecturer from Belgium on grounds of discrimination. The Italian court was required to determine whether the facts of the case indicated that Italian law had been applied equally to both Italian and foreign academics. If the court found national law had, in fact, been applied equally, the case would end there. If not, the case would go on to the ECJ, which would make a ruling based on EU laws prohibiting discrimination on the basis of nationality.

TABLE 5-5 Recent Cases before the European Court of Justice/General Court of the European Union⁵¹

Country/Plaintiffs Involved	Issue
Taxi drivers (Spain)/Uber (United States)	The Court ruled that Uber is a transportation company. Uber had sought to be classified as a tech company.
Parfümerie Akzente (Germany)/Coty (United States)	The Court upheld the decision by American beauty products company to prohibit its authorized German distributor from selling Coty's brands on Amazon.de. ⁵²
EU/Ireland	EU Competition Minister Margrethe Vestiger sought to force Ireland to collect €13 billion in back taxes from Apple.
Facebook (Ireland)/privacy advocate Max Schrems	In 2015, the Court struck down the Safe Harbor Act following publication of documents leaked by Edward Snowden about surveillance by the U.S. National Security Agency.
Chocoladefabriken Lindt & Sprüngli AG (Switzerland)/Franz Hauswirth GmbH (Austria)	Lindt markets gold-foil-wrapped chocolate Easter bunnies (Goldhase), for which it owns a trademark. Lindt sued Hauswirth for trademark infringement after the Austrian company began marketing its own foil-wrapped bunny. The Austrian Supreme Court asked the ECJ to rule on "bad faith" in trademark matters. ⁵³
L'Oréal (France)/Bellure (France)	Perfume marketer L'Oréal sued rival Bellure for marketing "knockoff" perfume that mimicked the bottles, packaging, and fragrances of L'Oréal's brands. The ECJ ruled in favor of L'Oréal on the grounds that the similarity of Bellure's products to L'Oréal's constituted an unfair advantage. The Court of Appeal later upheld the ECJ's decision. ⁵⁴

Summary

The political environment of global marketing is the set of governmental institutions, political parties, and organizations that are the expression of the people in the nations of the world. In particular, anyone engaged in global marketing should have an overall understanding of the importance of *sovereignty* to national governments. The political environment varies from country to country, and *political risk* assessment is crucial. It is also important to understand a particular government's actions with respect to taxes and seizures of assets. Historically, the latter have taken the form of *expropriation*, *confiscation*, and *nationalization*.

The legal environment consists of laws, courts, attorneys, legal customs, and practices. *International law* comprises the rules and principles that nation-states consider binding upon themselves. The countries of the world can be broadly categorized as having either *common-law* legal systems or *civil-law* legal systems. The United States and Canada and many former British colonies are common-law countries; most other countries are civil-law countries. A third system, *Islamic law*, predominates in the Middle East. Some of the most important legal issues pertain to *jurisdiction*, antitrust, and licensing. In addition, *bribery* is pervasive in many parts of the world; the *Foreign Corrupt Practices Act (FCPA)* applies to American companies operating abroad. Intellectual property protection is another critical legal issue. *Counterfeiting* is a major problem in global marketing; it often involves infringement of a company's *copyright*, *patent*, or *trademark* ownership. When legal conflicts arise, companies can pursue the matter in court or use *arbitration*.

The regulatory environment consists of agencies, both governmental and nongovernmental, that enforce laws or set guidelines for conducting business. Global marketing activities can be affected by a number of international or regional economic organizations; in Europe, for example, the EU makes laws governing member states. The WTO will have a broad impact on global marketing activities in the years to come.

Although all three environments—political, legal, and regulatory—are complex, astute marketers plan ahead to avoid situations that might result in conflict, misunderstanding, or outright violation of national laws.

Discussion Questions

- 5-1. Why should global marketers be concerned by the various kinds of infringement on intellectual property?
- 5-2. Briefly explain the meaning of "expropriation," "confiscation," and "nationalization." What options are available for global companies to mitigate potential risks such as these?

- 5-3. There are an increasing number of international judicial institutions that produce decisions and opinions on a variety of matters related to international relations and trade. These international courts no longer restrict themselves to settling disputes; they have adopted a role in what could be described as global governance. Why is fair and impartial justice at the international level so important?
- 5-4. Establishing jurisdiction in international legal disputes is a tricky problem. How is jurisdiction usually established?

CASE 5-1 (Continued from page 161)

Travis Kalanick and Uber

One dramatic incident occurred in India, where Uber was banned in the Delhi region after a driver was accused of sexually assaulting a female passenger. Uber issued a statement expressing sympathy for the victim; Kalanick vowed to work more closely with the Indian government to improve procedures for conducting background checks of prospective drivers. Even so, it turned out that company executives had allegedly mishandled some of the victim's medical records.

From the start, Kalanick seemed to relish locking horns with lawmakers. As he told *The Wall Street Journal* in 2013, "We don't have to beg for forgiveness because we are legal. But there's been so much corruption and so much cronyism in the taxi industry and so much regulatory capture that if you ask permission for something that's already legal, you'll never get it. There's no upside to them."

By 2017, Uber was valued at \$68 billion—but the company's rapid growth had been accompanied by considerable negative publicity. These included the company's use of so-called Greyball software that allowed drivers to deny rides to passengers who worked for legal authorities. A number of top executives left the company. In addition, during a taxi strike at New York's John F. Kennedy airport, the company's surge pricing kicked in, and unhappy customers launched a #DeleteUber social media firestorm against the ride-sharing pioneer for price gouging.

Perhaps most troubling were allegations of sexism and sexual harassment at the company. These revelations came to light in February 2017 when a software engineer named Susan Fowler published a blog post in which she described the sexual harassment that she had endured at Uber. By the end of 2017, the #MeToo social media campaign by silence breakers had gained considerable momentum and ended the careers of several powerful figures from politics, media, and the entertainment industry.

More broadly, Ms. Fowler's act of speaking out was just one facet of growing public and government concern over the power of Big Tech companies such as Amazon and Google. Some observers noted that the "fourteen values" that guided the Uber organization—for example, "let builders build," "always be hustling," and "principled confrontation"—had created a toxic corporate culture.

To help address these issues at Uber, the company hired Frances Frei, a professor of service management at the Harvard Business School. Her title: Senior Vice President for Leadership and Strategy. Frei was tasked with overhauling Uber's corporate culture. To do so, she began teaching management skills that she says had been lacking as the company pursued ambitious growth goals. In her view, one of Uber's problems was that it underinvested in its people.

Another key figure is Chief Brand Officer Bozoma Saint John (see Exhibit 5-16). Hired by Kalanick in the summer of 2017, Saint John had an outstanding track record as a marketer at Pepsi, Beats Audio, and Apple Music. At Uber, she moved quickly to create local advertising tie-ins with the National Football League featuring Uber drivers who are sports fans driving friends to the stadium on game day. A second tie-in, with the National Basketball League, launched nationally. In Saint

John's view, the campaign, dubbed "Rolling with the Champion" and featuring ESPN SportsCenter co-anchor Cari Champion, positioned the Uber brand as "the official ride of pop culture."

A New Leader Steps In

In June 2017, founder Travis Kalanick stepped down as Uber's CEO. A 14-person executive team, including Professor Frei, ran the company until a new boss could be recruited. The new CEO, Dara Khosrowshahi, came on board in September 2017. He immediately set about the task of rebuilding trust in the brand among the general public as well as with government authorities. Khosrowshahi acknowledged that the company's notoriety had damaged its reputation and came at a cost. In an open letter, he wrote, "On behalf of everyone at Uber globally, I apologize for the mistakes we've made."

Transport for London Cracks Down

After just a few weeks on the job, Khosrowshahi was confronted by a new challenge: In fall 2017, Transport for London (TfL), the British regulatory authority, announced that it would not renew Uber's license. The agency had issued Uber its first permit to operate in London in 2012; the city quickly became one of Uber's most important markets. In 2013, Uber launched UberX, a lower-cost ride-hailing service, which TfL classified as a minicab service that used "private-hire vehicles." Thus, in London, Uber was competing with the city's iconic black cabs as well as swelling the numbers of minicabs.

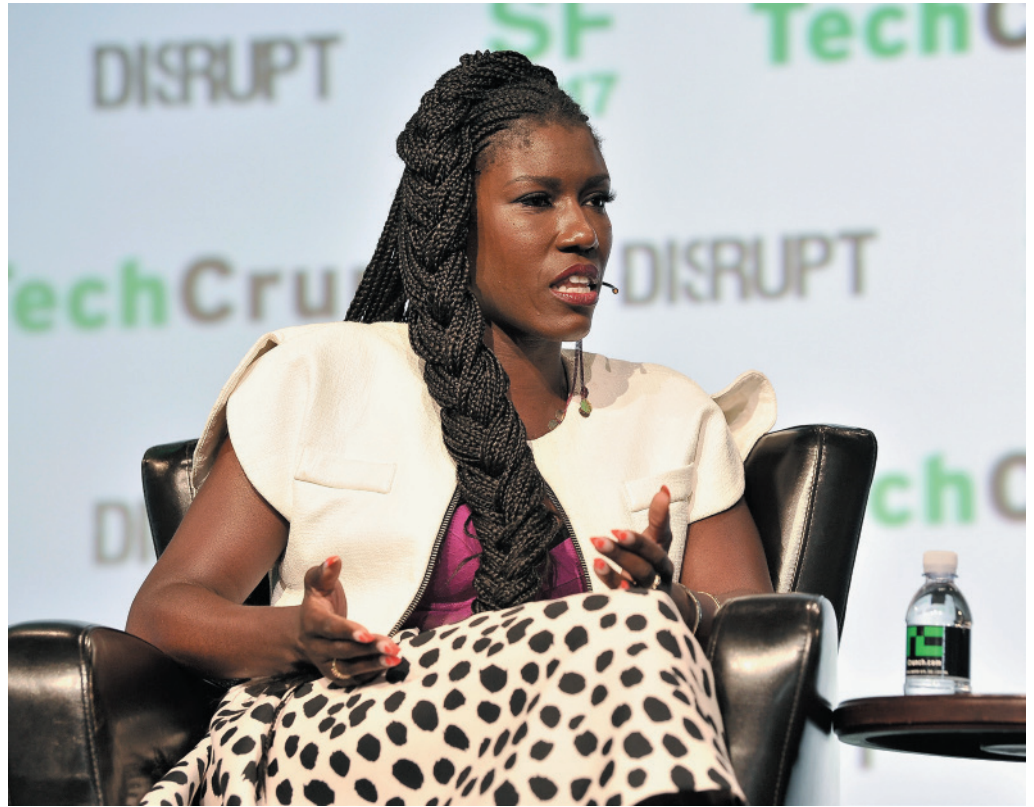
The TfL revoked Uber's permit on the grounds that the company was not "fit and proper" to operate in London. In doing so, the regulatory authority identified four concerns relating to corporate responsibility and governance. One focused on passenger safety; the TfL faulted Uber for lax reporting of crimes committed by drivers. The TfL also alleged that Uber did not follow the correct procedures for obtaining medical certificates for drivers and for conducting criminal background checks. Finally, the agency raised the issue of use of the Greyball software. Uber responded to all four issues. It noted, for example, that it was the TfL's responsibility to ensure that background checks had been performed before it issued licenses to drivers.

In November 2017, Uber suffered another setback. A judge at an employment tribunal in London ruled that Uber's 50,000 U.K. drivers were, in fact, employees rather than independent contractors. If the ruling stands, it will have far-reaching implications for a variety of technology apps that are integral to the so-called gig economy. In Uber's case, it would lead to higher costs by requiring the company to pay drivers the minimum wage as well as make provisions for holiday pay, national insurance contributions, and additional taxes.

Trade Secrets and Data Breaches

Meanwhile, back in the United States, Uber faced a trial to defend itself against charges of stealing trade secrets. The suit had been brought

Exhibit 5-16 Bozoma Saint John.
Source: Steve Jennings/Stringer/Getty Images.



by Waymo, the autonomous vehicle unit of Google parent Alphabet. Lawyers for Waymo alleged that a former employee, Anthony Levandowski, downloaded thousands of confidential documents prior to leaving to start Otto, a self-driving truck venture.

Some of the documents included details about Waymo's proprietary work on LiDAR, a laser-based sensor technology that is integral to autonomous mobility. In August 2016, Uber acquired Otto. The suit was settled in early 2018, with Uber agreeing to give Waymo stock worth \$245 million. Uber also agreed to use only its own technology in its autonomous vehicles program.

Another revelation during the trade secrets trial concerned a shadowy "marketplace analytics team" at Uber whose role was to gather information, including trade secrets, about foreign competitors. According to the evidence presented at the trial, the team had used self-deleting messages to avoid creating a paper trail.

There was still more bad news to come. Near the end of November 2017, Khosrowshahi announced that one year previously Uber had suffered a data breach in which hackers stole the names, e-mail addresses, and telephone numbers of 50 million Uber passengers and 7 million drivers. At the time, the company did not report the breach to authorities, opting instead to pay the hackers \$100,000 on the condition that they delete the stolen data. Data privacy authorities in the United States and elsewhere launched investigations into Uber's handling of the situation. Critics noted that Uber's response to the cyber hack was yet another example of the company's self-defeating corporate culture.

Lyft Gets a Lift

The turmoil surrounding Uber has provided an opportunity for Lyft, the rival U.S.-based ride-sharing company. Cofounders John Zimmer and Logan Green are confident that their company has

the necessary controls in place to ensure good corporate governance and enable it to avoid the type of pitfalls Uber created for itself.

Even as Lyft's driver-friendly corporate culture enabled it to take market share from Uber in the United States, it was targeting key cities for international expansion. For example, Lyft launched operations in Toronto, and top management held a series of meetings with Tfl regulators concerning expanding in London.

Discussion Questions

- 5-5. Despite the negative publicity surrounding Uber, consumers continue to utilize the company's services. Is this surprising?
- 5-6. Is ride-hailing likely to become a commodity service? If so, how will companies such as Lyft and Uber differentiate themselves in the market?
- 5-7. Do you think either Uber or Lyft will emerge as the leading global ride-hailing brand? Or will the sector be characterized by local and regional brands such as China's Didi or India's Ola?

Sources: Sarah O'Connor, Aliya Ram, and Leslie Hook, "Uber 'Workers' Ruling Deals Blow to Gig Economy," *Financial Times* (November 11–12, 2017), p. 18; Leslie Hook, "Fixing Uber: The Professor Dismantling a Rotten Culture," *Financial Times* (September 11, 2017), p. 12; Newly Purnell, "Uber Hits Resistance as It Expands in Asia," *The Wall Street Journal* (December 4, 2014), p. B7; Julie Weed, "In Turnabout, Some Companies Are Rating Their Customers," *The New York Times* (December 2, 2014), p. B7; John Aglioboy and Sally Davies, "Taxis Protest against Hailing Apps," *Financial Times* (June 12, 2014), p. 4; L. Gordon Crovitz, "Uber Shocks the Regulators," *The Wall Street Journal* (June 16, 2014), p. A13; Kara Swisher, "Man and Uber Man," *Vanity Fair* (December 2014), pp. 146, 148, 150; Andy Kessler, "Travis Kalanick: The Transportation Trustbuster," *The Wall Street Journal* (January 26, 2013), p. A13.



CASE 5-2

Putin's Russia versus the West: Cold War 2.0?

On November 7, 2017, people in Russia and around the world paused to observe the 100th anniversary of the Bolshevik revolution and the creation of the Soviet Union. Following Vladimir Lenin's death in the early 1920s, Josef Stalin seized the levers of power and engineered his country's economic transformation from a nation of impoverished peasants into a modern industrial power. In doing so, Stalin created a totalitarian police state. Soviet industrialization helped the Allies defeat Nazi Germany in World War II, after which Stalin embarked on expansionist policies that laid the groundwork for a Cold War with the West.

Nikita Khrushchev became the new leader upon Stalin's death in 1953. In 1956, he famously pounded a shoe on a podium at the United Nations and warned the West, "We will bury you!" The following year, the Soviet Union launched a dog into orbit aboard the Sputnik 2 spacecraft, heating up the space race with the United States.

Despite such achievements, by the mid-1970s the country's leadership was dominated by an aging Politburo, and the Soviet Union had slipped into a state of stagnation and decay. After Ronald Reagan won the 1980 U.S. presidential election, he was determined to win the Cold War. When the Kremlin tried to achieve parity with the United States on defense spending, the Soviet Union was soon bankrupt.

The Cold War effectively ended in 1991, after Mikhail Gorbachev's reform-oriented policies of *glasnost* and *perestroika* led to the dissolution of the Soviet Union. In the twenty-first century, Russia continues to be transformed by political and economic change. In 2000, Vladimir Putin was elected president. When President Putin hosted the Group of Eight Summit in St. Petersburg in 2006, the moment marked Russia's arrival on the world stage. Putin took advantage of the opportunity to present his country in a positive light. The public relations effort included a two-hour television broadcast during which Putin answered questions submitted from around the world via the Internet. Putin was also *Time* magazine's 2007 "Man of the Year."

In 2006, flush with dollars from oil exports, the Russian government lifted all currency controls and made the ruble freely convertible in world markets. Although per capita gross national income (GNI) in Russia is only \$9,720, Russian shoppers spend billions each year on luxury goods, tourism, and foreign real estate. Today, affluent Russians can shop at boutiques that offer Versace, Burberry, Bulgari, and other exclusive brands.

Despite the positive publicity, the phrases *managed democracy* and *state capitalism* have been used to describe the arbitrary exercise of state power in Russia. The Kremlin limits foreign investment in strategic industries such as oil; the term *renationalization* has been applied to the process by which state-owned enterprises (SOEs) acquire their rivals. Terms such as *crony capitalism* and *kleptocracy* refer to the rampant corruption and bribery prevalent among Putin loyalists.

In May 2012, Putin was elected to a third term as Russia's president. Soon, he found himself at the center of several controversies that unsettled the international community. First, the government arrested and jailed members of an all-female art collective after they sang an anti-Putin rock song in an Orthodox cathedral. Members of the feminist punk rock band Pussy Riot were arrested following a brief performance at the Christ the Savior cathedral in Moscow (see Exhibit 5-17). The band was known for its anti-Putin stance and provocative lyrics; one of the band's songs is titled "Holy Mary, Blessed Virgin, Drive Putin Away." Three of the band's members—Maria Alyokhina, Yekaterina Samutsevich, and Nadezhda Tolokonnikova—were charged

with "hooliganism motivated by religious hatred." After a lengthy legal process, Alyokhina and Tolokonnikova were sentenced to two-year prison terms in a remote part of Siberia; Samutsevich was acquitted. In December 2013, in the run-up to the Winter Olympics in Sochi, President Putin pardoned the women and they were released from prison.

Also in 2012, after Ukraine began negotiating a trade deal with the European Union, Putin threatened to impose sanctions. In March 2014, Putin angered the West by annexing Crimea, a region that had been considered part of Ukraine. A few months later, after pro-Russian separatists launched a military campaign in Ukraine, the West turned the tables and threatened Russia with sanctions. Tragically, in July, a separatist missile downed a Malaysian airliner over Ukrainian airspace, killing everyone on board. Then, as 2014 came to an end, the global price of oil dropped below \$60 per barrel and the Russian ruble plunged in value.

Faced with a financial crisis and a test of his political will, Putin blamed the West for Russia's problems. Then-U.S. President Barack Obama responded by observing that Russia's problem is that it doesn't produce any products that people want to buy. Despite—or perhaps because of—such rhetoric, Putin remains extremely popular with the Russian people. Indeed, many Russians agreed when Putin asserted that the collapse of the Soviet Union was "one of the greatest geopolitical catastrophes of the twentieth century for Russia and Russians." Some observers have suggested that a new Cold War era is dawning.

The Economic and Political Environments in Russia

There is other evidence that the political environment in Russia is precarious. Anna Politkovskaya, a reporter for Russia's *Novaya Gazeta* ("New Paper"), often filed stories critical of President Vladimir Putin. On October 7, 2006, assailants gunned down Politkovskaya as she returned from a shopping trip. Since 2000, more than a dozen journalists have been murdered in Russia. Observers note that Russia's independent press suffered as the Kremlin tightened control in anticipation of the 2008 presidential election.

Revenues from the fuel and energy sectors translate into government spending that consumes a whopping 40 percent of GDP. A related problem is the fact that Russia's energy industry is dominated by a handful of huge conglomerates. The men who run these companies are known as *oligarchs*; at one time, Yukos Oil's Mikhail Khodorkovsky, Sibneft's Roman Abramovich, and their peers were among Russia's ultra-rich elite. However, there was widespread resentment among the Russian citizenry about the manner in which the oligarchs had gained control of their respective companies. In 2003, the Putin government sent a message to the oligarchs by arresting Khodorkovsky and several of his peers. In 2010, after having spent 7 years in prison, Khodorkovsky was sentenced to another 13.5 years of incarceration after a Moscow court found him guilty of money laundering and embezzlement. Many observers viewed the verdict as evidence of the Russian government's desire to maintain an iron grip on the economy.

Russia faces other problems as well. Its entrenched bureaucracy is a barrier to increased economic freedom. Further, the banking system remains fragile and is in need of reform. Yevgeny Yasin, a former economy minister and an advocate of liberal reforms, noted recently, "The Russian economy is constrained by bureaucratic shackles. If the economy is to grow, these chains must be dropped. If we can overcome this feudal system of using power, we will create a stimulus for strong and sustainable economic growth and improve the standards of living."