

Dear Sir or Madam,

Eurasian Economic Commission (“EEC”) has completed an antitrust investigation on violation on the cross-border market of specialized machinery used in the mining industry. This case shows the new standards (approaches) developed by EEC in relation to the territorial restrictions of the distributors on the cross-border market. Specifically, exclusive conditions and market allocation between distributors within the cross-border market might be considered as a violation of antitrust legislation.

On July 29, 2016 a session of the Subcommittee on Competition and Antitrust Regulation of EEC has been held. During the session, the results of the case on application of LLP "Eurasian Group" (Kazakhstan) to the company Caterpillar, one of the leading international companies in the sphere of specialized machinery production, and its official dealers in the Russian Federation (LLC "Zeppelin Russland", LLC "Mantrac East", LLC "Eastern Technology" and LLC "Caterpillar Eurasia") were considered. The case concerns the actions of Caterpillar and its dealers, which resulted in refusal to supply products to the Kazakhstan market. The application was sent to EEC by the antimonopoly authority of the Republic of Kazakhstan.

EEC, within its authority, carried out an analysis of the cross-border market of specialized machinery, which are used in the mining industry. Caterpillar is one of the largest manufacturer of the above-mentioned specialized machinery. The main customers of the products on this market are the major mining, construction and other industrial enterprises of Russia and Kazakhstan.

The EEC analysis revealed that Caterpillar and its distributors have set out unequal access to the products within the various Member States of the Eurasian Economic Union ("EAEU"). EEC established that Caterpillar and its official distributors concluded agreements where the strictly defined market area for the sale of products was fixed for dealers and distributors; for violation of this provision a “fine” was provided.

According to Article 76 of the Treaty on the Eurasian Economic Union (signed in Astana on May 29, 2014) agreements between economic entities are prohibited if such agreements led or might lead to the restriction of competition.

In this case, EEC has reached a conclusion that allocation of territory between distributors has led to unequal conditions for access to the products for the customers. For example, the price for the Caterpillar production sold by the official dealer in the Republic of Kazakhstan was higher than the price of the similar production sold by the official dealer in the Russian Federation. Herewith, the difference in prices might be up to 40%.

Therefore, as a result of the joint work undertaken by the EEC, the Federal Antimonopoly Service of Russia and participants of this case, Caterpillar and its official dealers introduced amendments to the agreements that regulate their distribution on the territory of the EAEU. The amendments were also introduced to the certificate letters establishing dealers’ sales areas (LLC "Zeppelin Russland", LLC "Mantrac East", LLC "Eastern Technology" and LLP "Borusan Makina Kazakhstan"). In particular, the provision on exclusivity for dealers within its service areas was excluded. Moreover, the provision on fixed amount payable by one Caterpillar dealer to another dealer in the amount of 5% from the price of the production when selling outside the sales area was replaced by the provision according to which dealers have the right to settle terms of this payments through negotiations.

EEC Minister, Nurlan Aldabergenov summarized the results of the work under this case as follow: "Within the authority granted to the Commission to monitor compliance with competition rules, a large-scale company, that ranks among the world leaders, for the first time has changed its contractual practices in the territory of the EAEU after consultation with the Eurasian Economic Commission. Herewith, contractual practices of the company was brought in line with the best practices adopted in the European Union. This should serve as a signal for other market participants about the need to change the rules of the game for their dealers towards developing competition and the inadmissibility of violation of the common competition rules established by the Treaty on the EAEU".

Thereby, the companies, engaged in commercial activity in the territory of EAEU, should pay particular attention to the practice of interaction with distributors from different member countries, in particular, to the provisions of exclusivity, allocation of sales areas, pricing and other issues.

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We hope the provided information will be useful for you. In case of questions, please do not hesitate to contact the head of Antitrust practice, Senior Partner, [Vassily Rudomino](#).

Yours faithfully,

ALRUD Law Firm

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