

January 31, 2012

Dear Sirs,

This is to inform you about the recent amendments to the Russian competition legislation.

On January 6, 2012 the Law introducing amendments to the Competition Law and other laws entered into force. On January 7, 2012 the Law amending the Code of Administrative Offenses entered into force. The respective amendments are jointly referred to as the “Third Antimonopoly Package”.

The Third Antimonopoly Package introduces important amendments to the competition legislation, in particular with regard to key legal terms of the Competition Law, scope of its applicability, fundamental prohibitions and exemptions, merger control, liability for the competition legislation violation and administrative proceedings. The most significant changes will be described below.

Merger control

The important amendments in the sphere of merger control relate to foreign-to-foreign transactions, parties to which do not have Russian assets, subsidiaries and / or representative offices, but only turnover in Russia. Previous provisions of the Competition Law defined “business activity in Russia” and “other effect on competition” as the general criteria for merger control filing. However these notions have not been clarified by the Competition Law and / or guidelines of the Federal Antimonopoly Service (FAS Russia). Due to such ambiguity foreign companies in questionable cases either filed notifications with FAS Russia (even on insignificant transactions), or had to bear the risks of failure to notify with FAS Russia.

The Third Antimonopoly Package introduces an additional merger control thresholds for foreign-to-foreign transactions: the merger control filing is required, if shares / participation interests / rights are acquired in respect of a foreign target company, which has supplied goods to Russia in the amount exceeding RUR 1 billion (approx. EUR 23,8 million, USD 31,5 million) during the year, preceding the date of the transaction execution.

However the Package does not exclude the filing requirement for acquisition of foreign companies having Russian subsidiaries or owning fixed productive assets (intangible assets), but having turnover less than RUR 1 billion (approx. EUR 23,8 million, USD 32,2 million). Thus if a foreign target company owns a manufacturing facility and / or a subsidiary in Russia the merger control filing might be still required, provided the assets / turnover thresholds are met.

The filing thresholds for (i) take-over, (ii) acquisition and (iii) setting up of a legal entity (if its share capital is paid up by shares and / or assets of another legal entity) are increased up to RUR 7 billion (approx. EUR 167 million, USD 220 million) for the worldwide value of assets and RUR 10 billion (approx. EUR 238 million, USD 315 million) for the worldwide aggregate turnover.

Restrictive agreements and concerted practices

The Third Antimonopoly Package provides for specific regulation with regard to cartels, vertical agreements, restrictive agreements and concerted practices. The following key changes are introduced:

- Cartels

The term “cartel” is legally defined as an agreement between competitors which results or may result in certain consequences prohibited *per se*. The list of such prohibitions is shortened and includes the following:

- price fixing;
- bid rigging;
- market sharing;
- decreasing or ceasing of the production;
- refusing to enter into contract with certain sellers and / or buyers.

Other agreements between the competitors are estimated under the rule of reason.

- Vertical agreements

The Third Antimonopoly Package provides for liberalization of the vertical agreements regulation. It allows setting forth maximum resale prices in vertical agreements. It is legally stated that an agency agreement is not a vertical agreement.

- Concerted practices

A new Article regarding concerted practices is introduced to the Competition Law. Thus following the worldwide practice restrictive agreements and concerted practices will be regulated separately. A new criterion is added for the qualification of concerted practices: actions should be known to each of the participants of concerted actions due to public announcement by one of the participants on commitment of such actions. According to the amendments prohibitions of the Competition Law on concerted practices do not apply to the legal entities, if their aggregate market share is less than 20% and the market share of each legal entity is less than 8%.

Both restrictive agreements and concerted practices are excluded from the prohibition *per se* and permitted if executed within one group of persons provided a legal entity controls the other legal entity or they are controlled by the same legal entity. However this exception is not applicable to agreements between legal entities engaged in those types of business activities, which are legally prohibited to undertake simultaneously (e.g. banking and insurance activity, transmission and sale of electric energy, etc.).

- Coordination of economic activity

The Third Antimonopoly Package introduces a new definition of the term “coordination of economic activity”. Accordingly the coordination implies reconciliation of legal entities’ actions by a third party not belonging to the same group with any of the said legal entities and active on the market other than these coordinated entities. Coordination is prohibited if it leads to a cartel or an inadmissible vertical agreement.

New powers of FAS Russia

The Third Antimonopoly Package provides FAS Russia officers with a number of new powers. The most innovative ones concern empowering FAS Russia to issue:

- warnings on inadmissibility of the competition legislation violation. The warning is forwarded to officers of legal entities upon their public announcement on planned behavior, if it may lead to violation of the competition legislation and there are no grounds for initiation of administrative proceedings; and
- cautions on ceasing of the competition legislation violation. The caution is issued to dominant legal entities to cease actions (omissions), which leads or may lead to competition restriction. The competition authority cannot initiate administrative proceedings without issue of the caution. In case of fulfillment of the caution the administrative proceedings are not initiated and vice versa.

More precise regulation will be introduced for administrative hearings of the cases on violation of the competition legislation. The Package sets out the possibility to review the decisions of FAS Russia on violation of the competition legislation under new or newly discovered facts.

Amendments to the Russian Code of Administrative Offenses

The Russian Code of Administrative Offenses provisions on antitrust violations were supplemented with circumstances mitigating and aggravating liability of an offender. The new *corpora delicti* were introduced:

- price manipulation in wholesale or retail market of electric energy;
- failure to notify or to submit required information provided for by legislation on foreign investments.

The Third Antimonopoly Package altered the Article concerning abuse of the dominant position. Sanctions for abuse of dominance were differentiated pursuant to peculiarities of the offence.

Amendments to the Russian Criminal Code

The Third Antimonopoly Package narrows the scope of the Criminal Code applicability to restrictive agreements and practices. Criminal liability is imposed only for anticompetitive agreements between competitors, i.e. cartels, and repeated abuse of the dominant position.

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We hope the information above is helpful for you.

For more information on ALRUD Competition practice please visit our **Web-site** or contact directly **Senior Partner, Head of ALRUD Competition practice Vassily Rudomino** vrudomino@alrud.ru.

Yours faithfully,
ALRUD Law Firm

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