

Newsletter

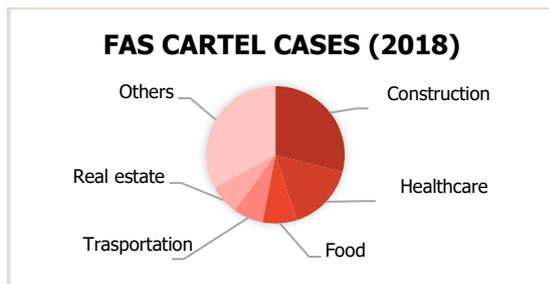
Criminal antitrust investigations in Russian pharmaceutical and medical equipment markets

February 12, 2020

Dear Ladies and Gentlemen,

We would like to share our views on the latest trend in the criminal enforcement of the cartel crimes in the pharma and medical equipment markets.

During 2017-2018, the Russian Government stepped up the investigation process of cartel crimes through various statutory acts. As the construction, healthcare and food markets are considered as the most risky industries, from the anticompetitive collusion perspective, these spheres have been affected the most.



According to the latest FAS¹ statistics, the share of cartels in healthcare exceeds 16% of overall anti-cartel cases². Cartels at the state procurement procedures of medicines and medical equipment had been identified in 83 regions of Russia, within more than 11,000 auctions.

Given the latest strengthening of cooperation between the antimonopoly authority and the criminal enforcement bodies, as well as significant changes in the criminal investigation process, the number of judgments involving cartels is constantly growing. While in 2017 there was zero sentence, in 2019 five cases³ were sent to the Court and three judgments have already been issued since the beginning of 2020. Here is a recap of the two recent criminal cases in this industry.

Samara case⁴

In 2017, the Samara Office of the FAS issued **its decision on violation, by three Russian companies and governmental bodies, of the Competition Law** for conclusion of a bid-rigging anticompetitive agreement in relation to technical support of the medical equipment, for 23 healthcare facilities in the Samara Region.

The case materials were transferred to the Investigation Committee in the Samara Region.

The criminal enforcement investigators indicted the top-managers of the companies, as well as former Deputy Minister of the Samara Ministry of Healthcare, for attempting (conspiracy to attempt) to form a cartel to secure a large income.

The court concluded that investigators proved the guilt. Thus, the Director of SMT LLC was sentenced to 3,5 years' imprisonment, the former Deputy Minister of the Samara Ministry of Healthcare was sentenced to 3 years' imprisonment and other defendants were sentenced to suspended sentences of imprisonment according to Part 2 Article 178 of the Criminal Code.

¹ Federal Antimonopoly Service.

² <https://fas.gov.ru/p/presentations/433> (link in Russian only).

³ <http://en.fas.gov.ru/press-center/news/detail.html?id=54614>.

⁴ <http://en.fas.gov.ru/press-center/news/detail.html?id=54251>.

Karelia case⁵

The Karelia Office of the FAS recognized **the actions of three companies from St. Petersburg as violating the Competition Law**. These companies formed a bid-rigging cartel aimed at price fixing in 94 auctions for medical equipment and pharmaceuticals supplies, to healthcare facilities in Karelia, during 2014-2017.

The relevant materials were sent to the Police for further investigation.

At the end of December 2019, **the Moscow District Court of St. Petersburg announced its judgement on the criminal case** in relation to managers of these three companies. The Court sentenced the defendants to up to 2.5-years of suspended sentences of imprisonment for concluding a cartel agreement under Part 2 Article 178 of the Criminal Code.

Conclusion

The FAS commitment to fight against bid-rigging cartels in the pharma industry signals that the number of antitrust criminal cases in Russia will increase in the near future.

For the international pharmaceutical and medical equipment suppliers, it has become more important to develop and maintain an effective risk-management system, when dealing with the Russian market and counteragents, namely:

- to ensure that the internal commercial and marketing policies provide for an in-depth risks assessment of the potential and existing distributors, including in respect of possible criminal allegations from the FAS side;
- to include anti-corruption clauses into all supply and distribution contracts;
- to avoid any unlawful arrangements with the distributors, in respect of their strategy of participation in the public tenders.

These simple measures might help to minimize the administrative and reputational risks, related to the increasing antitrust criminal enforcement in the Russian pharmaceutical industry.

We hope that the information provided herein will be useful for you. If any of your colleagues would also like to receive our newsletters, please let us know by sending us his/her email address in response to this message. If you would like to learn more about **Healthcare and Pharmaceutical Industry**, please let us know in reply to this email. We will be glad to provide you with our materials.

Note: Please be aware that all information provided in this letter was taken from open sources. Neither ALRUD Law Firm, nor the author of this letter, bear any liability for consequences of any decisions made in reliance upon this information.

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⁵ <http://en.fas.gov.ru/press-center/news/detail.html?id=54691>.