



NOVEMBER 2015

Fourth Antimonopoly Package: What's New?

The new set of amendments to the Competition and other laws, so-called the “Fourth Antimonopoly Package”, will come into force in January 2016. They cover all regulatory areas, some of which are substantial. We highlight the most relevant ones for foreign companies.

Dominance

- The regulator may no longer qualify an undertaking as dominant player where its share on the commodity market is under 35%. An undertaking with the market share under 35% may still be qualified as dominant if this is clearly provided for by the federal industry-related laws (e.g. the Communications Law, the Electrical Energy Law), as well as in case of “collective dominance” held jointly by a number of market players.
- A positive development is abolition of the register of business entities holding over 35% share on a commodity market. This abolition is aimed at protecting the interests of undertakings with pending abuse of dominance proceedings or economic concentration deals. The entry in the register created a presumption of dominance, which in practice was difficult to overturn. Furthermore, if one of the parties (their groups) to an economic concentration transaction was listed in the register, this would serve as a ground for seeking approval of the transaction by the regulator, regardless of the value of assets and revenues.

Anticompetitive Agreements

- Regulations on “vertical” agreements have been clarified making the Russian laws close to European “safe harbors”. Under amendments vertical agreements containing some restrictive provisions are admissible provided that market shares of each party is less 20% on the market where agreements are concluded. Before the amendments market shares of the parties were calculated on any markets where they operated irrespective of the agreement’s subject and a relevant market.
- Another important amendment fills an existing gap in Art. 11(1) of the Competition Law, which prohibits cartel agreements. Now the law qualifies and prohibits cartels between purchasers (“purchaser cartels”), in addition to those between competing sellers.

Unfair Competition

- The rule of law covering unfair competition has been sufficiently extended, providing much more detailed description of violations. These amendments come as a result of the regulator’s effort to generalize the antitrust practice. The unfair practices now cover competitor defamation, misrepresentation, confusion with competitor goods or activities and a number of others.

Merger Control

- The “Fourth Antimonopoly Package” brings joint venture agreements under merger control procedures. Joint venture agreements between competitors are subject to prior notification if asset or turnover thresholds are met. Even if such thresholds are not observed, undertakings are entitled to voluntarily apply for approval of their agreement. Currently, undertakings seeking



legal certainty can submit agreements potentially restricting competition for review. The amendments will make notification mandatory. So when foreign companies are planning to establish a joint venture related to Russia with foreign or Russian partners, a preliminary assessment should be undertaken to determine if the joint venture is subject to notification obligation. Clearing joint venture agreement with the regulator will secure its parties from declaring conclusion of such agreement violating provisions of the Competition Law, which prohibit restrictive agreements.

- A new rule has been introduced to enable undertakings to submit information on a contemplated transaction to the regulator prior to the filing. This procedure also enables companies to propose remedies aimed at ensuring competition and eliminating the potential competition concerns. It is anticipated that this procedure will enable the competition authority to take into account the undertakings' opinion when clearing the transaction and elaborating remedies.
- The amendments provide for submitting notifications to the regulator electronically in order to ease the document flow. The relevant procedure shall be established by the regulator separately.
- Information on all applications for a transaction should be published on the FAS of Russia's official website. The purpose of this amendment is to enable the market players and other parties concerned to submit their view on the purported transaction to the regulator, and to let the authority have an idea of eventual consequences of such transaction, before deciding on the application.

Antitrust Proceedings

- In order to protect the interests of those involved in pending antitrust proceedings, the antitrust authority shall now issue a statement on the facts before making a final decision. This is similar to European Statement of Objections (SO). The statement shall inter alia describe the facts and the existing evidence the regulator is going to use. The undertakings may review and respond to this document.
- For decisions and mandatory regulations issued by the regulator's regional offices there has been introduced a new procedure for appealing them to the newly established collective body within the Federal Antimonopoly Service. Non-uniformity of construction and application of the antitrust law shall constitute a ground for abolition or amending of the decision issued by the regulator's regional offices. It will allow shaping the practice of 84 regional offices more harmonized on the territory of Russia.

Administrative Liability

- Amendment to the Code of Administrative Offences is aimed on encouraging business entities to voluntarily disclose anticompetitive agreements they have entered into to the regulator. The existing mechanics of discharging the person being the first to declare having entered into such an agreement has now been supplemented with a provision setting a minimum fine (about EUR/USD 1,500) for those who have been the second and the third to do so.
- Therefore, the "Fourth Antimonopoly Package" should have a strong effect on the antitrust practice. Amendments related to the procedure for antitrust proceedings, prevention of breaches as well as administrative liability are by all means positive in their nature and will contribute to protection of the undertakings' rights and legal interests. In broad terms, enforcement of the Competition Law is expected to be more transparent and less biased.

Authored by Counsel Anna Numerova and Senior Associate Elena Kazak

COMPETITION PRACTICE

The Firm's lawyers have an impressive track record of successfully obtaining approvals from the antimonopoly authorities of Russia, Ukraine and Belarus for more than one hundred M&A, joint ventures, and corporate restructuring transactions, including those related to investment into strategic industries.





The Firm's experience encompasses dozens of complex antimonopoly cases successfully settled both as part of administrative proceedings and in court. The Practice's longstanding clients include companies holding dominant positions in the CIS market.

The success of the Practice may be attributed to its participation in major and benchmark transactions and competition disputes, as well as to its extensive involvement in drafting of laws, particularly, as part of expert councils at the Russian FAS and not-for-profit partnerships promoting competition in Russia and the CIS.

In Russia, the practice has thirty experts focused solely on competition law, allowing it to structure general court practice involving articles 10 and 11 of the Federal Law "On Protection of Competition". The Practice is recommended by such publications as Chambers Europe, Who's Who Legal: CIS and Best Lawyers. The Global Competition Review 100 views it as the biggest in the market.

Our services:

- getting merger control clearances for economic concentration deals;
- supporting of transactions on establishing control by foreign investors over companies of strategic importance;
- representing clients in investigations and administrative cases initiated by the regulator as well as challenging the decisions of antitrust authorities;
- client support during the antimonopoly authority inspections;
- representation of clients on other issues of interaction with the antitrust authority (compliance with the antitrust authority's requests, obtaining of explanations, and so forth);
- development of market strategies and business structuring in accordance with the requirements of the antitrust legislation;
- due diligence of the company with regard to compliance with antitrust legislation and the development of local regulations aimed at such compliance (trade and distribution policies etc.);
- audit of retailers and suppliers for compliance with the Trade Law, to protect the interests of such clients' in Trade Law related proceedings;
- client support in relation to tariff regulation with the FAS of Russia;
- consulting and representing clients in the public procurement and tender processes, as well as in projects related to state defense orders;
- legislative drafting and supporting before the antitrust and governmental authorities;
- consulting and support of clients on issues related to Eurasian Economic Community regulations and functioning the Eurasian Economic Commission.

Key Contacts



Anna NUMEROVA

Counsel

anna_numerova@epam.ru

+7 (495) 935 8010



Natalia KOROSTELEVA

Partner,

Head of Competition Practice

natalya_korosteleva@epam.ru

+7 (495) 935 8010

Subscription

You have received this information because this topic may be of interest to you. If you have received this information in error, we would like to extend our apologies and ask that you send us an unsubscribe request.

To unsubscribe from Egorov Puginsky Afanasiev & Partners' mailing list, please reply to this email with [Unsubscribe](#) as email subject.

To subscribe to our legal alerts, please reply to this email with [Subscribe](#) as email subject.