News on the latest developments in antitrust law

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Adopted Laws

Amendments to the Contract System Law
Amendments to the Contract System Law entered into force on 4 June.

The amendments allow purchases from a single supplier for an amount of up to RUB 2 million or up to 5% of total annual purchases as long as the latter amount does not exceed RUB 50 million.

There are now fewer cases where the price, other significant contractual terms, impossibility or inadvisability of supply arrangements other than purchases from a single supplier must be documented. Only a few of the many exceptions apply to a company’s normal business activity - for example, a purchase from a single supplier for an amount of up to RUB 100,000.

The list of cases in which a buyer must engage experts to examine purchases from a single supplier has also been shortened.

Draft legal acts

When is a high price monopolistic?
The Federal Antimonopoly Service (FAS) has developed basic principles for determining an economically justified price level for goods sold by a business entity in a dominant position.¹ The assumption is that application of this approach to the price-setting by a company will allow escaping from challenge by the FAS.

The document provides principles for determining the level of “appropriate profit” and the economically justified price level as well as variations of the comparable markets method.

The FAS singles out the following variations of the comparable markets method:

▶ the reverse-pricing method for export- and import-oriented markets
▶ the “weighted average price” method
▶ the “direct price” method

Market analysis requirements may be changed
The FAS has drafted amendments to Order No. 220 establishing a procedure for analyzing the state of competition on the market.²

The amendments would reduce the number of cases in which the FAS is not required to analyze the state of competition. Such cases include:

▶ Agreements, coordination of economic activity and concerted actions that have or could have the effect of raising, lowering or supporting prices in tenders
▶ Unfair competition
▶ Agreements with government agencies
▶ Violation of antitrust requirements for tenders.

Special market analysis requirements have been introduced for cases involving cartels and violations of prohibitions affecting “vertical agreements.”

New efforts in the fight against monopolies
As a new effort in the fight against monopolies, the FAS has drafted amendments to the Competition Law that would allow those whose rights and interests have been infringed as a result of a violation of antitrust law to claim compensation in the amount of 1%-15% of the value of goods sold in violation of the law. It will be up to the aggrieved party whether to claim reimbursement of losses or compensation.

Note that the draft amendments do not rule out the possibility that a company will be charged a turnover-based fine and also be required to compensate 1%-15% of the value of goods as claimed by an aggrieved party.

Activities of the Federal Antimonopoly Service (FAS)

85 cases and RUB 62 million in fines for creating discriminatory conditions

As readers may recall, the FAS found that Auchan LLC had violated the Trade Law by creating discriminatory conditions for milk and dairy suppliers, charging suppliers differently for the same quantity of advertising services involving the demonstration of sample goods in Auchan stores. The FAS initiated 85 administrative offense cases. On 25 June and 16 July, Auchan LLC was fined RUB 2 million in each of 31 cases.

Restriction of competition by lowering the volumes of purchased power

The FAS found that HaloPolymer Perm OJSC, Promyshlennaya Energetika OJSC and Permenergosbyt OJSC violated antitrust law by entering into an agreement envisaged by Article 11, part 4, of the Competition Law. Measures taken to lower the volumes of purchased power resulted in higher electricity costs for other consumers in Perm Territory, thus restricting competition. HaloPolymer Perm and Promyshlennaya Energetik were fined a total of over RUB 37.5 million.

Monopolistic price for space in cable conduits

In early August a case was brought against Rostelecom OJSC based on complaints by several telecom operators that tariffs for services involving the installation of cables in conduits had been raised by 50%.

The FAS found indications that Rostelecom had violated the Competition Law by setting and maintaining a high monopolistic price for these services. If Rostelecom cannot provide an economic justification of the higher tariffs, it may be held to administrative liability in the form of a turnover-based fine on operators’ earnings from the installation of cables in conduits throughout Russia.

Overstated amounts of planned consumption constitute abuse of a dominant position

According to the antimonopoly service, 5 companies of the Rosseti Group - Dagestan Power Supply Company OJSC, Nurenergo OJSC, Cabbalkenergo OJSC, Karachayevo-Cherkeskenergo OJSC, Ingushenergo OJSC and Sevkavkazenergo OJSC (the “Companies”) - operate in territories where the parameters of wholesale and retail markets are fixed, and they purchase power under regulated agreements that set the cost well below that on the wholesale market.

By overstating the amounts of power to be purchased at artificially low prices, the Companies were able to sell what was left at a balancing-market price that was 125% higher on average, thus manipulating the price.

The FAS found that the Companies’ organized regular and substantial overstatement of planned (as opposed to actual) consumption resulted in unjustifiably high prices for other consumers and thus constituted abuse of a dominant position. The Companies were issued instructions and charged fines totaling over RUB 512 million.

Court practice

The FAS must not be denied information

From February till May 2013 the antimonopoly service performed an unscheduled field audit of CJSC Argus Spectr, during which it requested information from the company and its dealers. Many dealers declined to answer on grounds that they needed additional clarification of the purposes of the audit. In the FAS’s opinion, the dealers refused to provide information in order to obstruct the Argus Spectr audit.

The FAS initiated several administrative offense cases for failure to submit the requested information. The antimonopoly service’s decisions were appealed, but the courts ruled that it was legal to impose liability for failing to submit information to the FAS.

In its decision on the claim of Fire Monitoring Service 26 LLC, the Arbitration Court of the City of Moscow stated that the FAS is not required to


clarify a request or to explain why it needs requested documents and information.

An FAS administration finds that an oral agreement was concluded before the results of a tender were finalized

Rosgosstrakh LLC violated antitrust law when it tendered for the right to sign agreements for compulsory motor vehicle liability insurance with IDGC of Volga.

According to the FAS Saratov Administration, Rosgosstrakh and IDGC of Volga entered into an oral agreement including terms that blocked other business entities' access to the market, since the companies entered into a de facto agreement even before the results of the tender were finalized and proceeded to implement it: insurance policies were issued immediately after the bids were opened and without payment of an insurance premium.

Rosgosstrakh thus enjoyed an improper advantage over other tenderers.

The decision of the FAS Saratov Administration was appealed, but the claims were denied by the Arbitration Court of Moscow Region and the arbitration appeals court. The courts ruled that Rosgosstrakh could have issued the policies only by agreeing its actions with IDGC of Volga in advance, and it benefited both parties to the agreement for the insurance policies to be issued before the results were finalized.
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