STATE AND ADMINISTRATION

ON DEVELOPMENT STRATEGY OF COMPETITION AND ANTIMONOPOLY REGULATION IN THE RUSSIAN FEDERATION

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Abstract. The paper analyses the Development strategy of competition and antimonopoly regulation for the period of 2013-2024 approved by the Presidium of FAS Russia on July 3, 2013. The Strategy purpose is development of competition in the Russian Federation and perfection of competition protection institutes. The Strategy will also serve to the tasks of implementation of effective tools for prevention of antimonopoly offenses, such as the rules of non-discriminatory access, corporate institutional arrangements making provision for observance of standards of antimonopoly legislation regulations. The author substantiates a breakthrough importance of establishing administrative responsibility of public authority officials for violation of procedure for the exercise of authority in the field of urban development and land relations. In his opinion, legislative amendments in accordance with the Strategy will make it possible to create in practice mechanism of administrative appeal of mandative constitutive procedures.

Keywords: antimonopoly legislation, restriction of competition, development of competition, antimonopoly regulation, protection of competition, effective competition, state order, municipal order, abuse of a dominant position, anticompetitive practices (acts), unfair business practices, administrative appeal, development strategy of competition and antimonopoly regulation, Federal Antimonopoly Service, non-discriminatory trade policies.

For the purposes of the development of competition in the Russian Federation and the perfection of rules for the protection of competition institutions,
the Federal Antimonopoly Service (FAS) has developed a strategy for the development of competition and antimonopoly regulation for the period of 2013-2024\(^1\) (which will be referred to hereafter as «the Strategy»); this was approved by the Presidium of The Federal Antimonopoly Service of the Russian Federation on July 3, 2013.

The Strategy was developed as part of the harmonization of antimonopoly legislation with best practice from around the world, and takes into account advice from the Organisation for Economic Cooperation and Development (OECD) and business representatives.

Voting organized by the Vedomosti newspaper showed that the adoption of the Strategy by The Federal Antimonopoly Service of the Russian Federation along with the development of the law on class actions, the change in the procurement rules under the Federal Law No. 223-FZ of July 18, 2011 «On procurement of goods, works, services by individual types of entities»\(^2\) and the draft amendment to Article 178 of the Criminal Code of the Russian Federation\(^3\) as it pertains to a narrowing of its field of application for cartels and the relief from criminal responsibility of the first person to confess, the Federal Antimonopoly Service of the Russian Federation was recognized as an important event in antimonopoly policy in 2013.\(^4\)

It must be noted that the Federal Law No. 135-FZ of July 26, 2006 «On protection of competition»\(^5\) (which is referred to hereafter as «the Protection of Competition Law») was adopted in 2006. Over the period from 2006 to 2013 the Protection of Competition Law was amended, and the amendments were put together in three «antimonopoly» packages.

During that time the antimonopoly regulation in the Russian Federation was improving, on the basis of best practice from around the world, the dictates of time and advice from the business community.

During the period mentioned above, administrative responsibility was introduced for economic entities and governmental and municipal bodies, as well as for their officers, in the field of the protection of competition, and limits were increased for the control of economic concentration.

The «third antimonopoly package»\(^6\) of amendments to the Protection of Competition Law introduced systems of warnings and notices intended to bring to an end the use of preventive measures to protect competition, and to replace them with prophylactic measures. If an infringer obeys a warning within the specified time, he is no longer subject to antimonopoly fine and free of administrative


The Strategy establishes four priorities for the improvement of antimonopoly regulation in the Russian Federation:

1. The creation of a favourable institutional and organizational environment for the effective protection and development of competition.
2. The lowering of administrative barriers that prevent the free functioning of the markets.
3. The provision of non-discriminatory access for consumers to the services of natural monopolies, and the formation of effective mechanisms of tariff setting.
4. The creation of conditions for effective competition in the course of government and municipal procurement and the sale of state property.

The creation of a favourable institutional and organizational environment for the effective protection and development of competition is a necessary condition for a substantial improvement in the quality of the implementation of measures aimed at the protection of competition. These measures are based on the use and implementation best practice from around the world, as well as on improvements in the effectiveness of the activities of antimonopoly bodies by means of the implementation of modern and effective quality management tools.

In this section of the Strategy, The Federal Antimonopoly Service of the Russian Federation considers one of the most important tasks to be the implementation of effective tools to prevent offences under the antimonopoly legislation, such as rules about non-discriminatory access and non-discriminatory trade policies of business entities that are dominant in the markets, as well as corporate institutional arrangements making provision for the observance of the standards of antimonopoly legislation.

An additional point is that, in accordance with this section of the Strategy, great importance will be attached to the development and implementation of economic incentive measures for the development of markets, and the introduction of pro-competition demands as a norm in all spheres of Russian legislation.

According to the Strategy, the improvement of antimonopoly legislation and its use in practice will be directed at the development and perfection of systems to prevent offences in the field of the protection of competition. Within the framework of that part of the Strategy it is proposed:

- to extend the field of use of new legal institutions preventative regulations on warnings and notices about actions that have been committed, and the publication of details of actions by public authorities that limit competition, as well as cases in which unfair competition has occurred;
- to introduce policies for the notification of dominant business entities, with the purpose of stopping consumer discrimination;
- to develop and introduce norms that will stimulate the introduction of compliance systems (corporate measures directed at the prevention of offences under the antimonopoly legislation) in business entities, associations and unions; and
- to develop, and present for approval by the government of the Russian
Federation, rules on the non-discriminatory access to limited resources (such as subsoil, aquatic biological resources, EMR spectrum frequencies etc.).

The Strategy provides for the field of use of the Protection of Competition Law to be extended to agreements on the use of exclusive rights where those agreements lead to the limitation, prevention or elimination of competition in the sale of goods.

In order to increase the effectiveness of the suppression and prevention of unfair competition, the Strategy provides that a detailed list of forbidden practices that are recognized as unfair competition will be set out in the Protection of Competition Law.

For the purposes of increasing the quality and operating efficiency of antimonopoly bodies in the field of the protection of competition, the Strategy includes measures for increasing the quality of economic analysis and control on economic concentrations. In particular, the Strategy provides for:

- the standardization of the use of economic analysis, on the basis of the best practices of the antimonopoly bodies of the member countries of the OECD;
- the establishment of responsibility for the assessment of competition in adjacent markets in the course of preliminary control on transactions; and
- the substantiation of decisions on economic concentration, to ensure that, in the analytical part of a decision, conclusions on the state of competition in the corresponding goods market and the transaction consequences are included.

In order to reduce the administrative burden on business entities, the Strategy provides exclusion of the notification control over economic concentration, as well as the abolition of mandatory for businesses included into the register business entities holding a market share of more than 35%, binding state statistical reporting, as well as to introduce the requirement of the three-year period of entering data into the registry. The Strategy devotes an important section to the problems of improving the effectiveness of the progression of cases on breaches of the antimonopoly legislation, as well as the modernization of the statutory regulations on administrative breaches in the protection of competition field.

In particular, the Strategy contains an indication that amendments to the laws of the Russian Federation will be introduced to provide for the unification cases on breaches of the antimonopoly legislation and cases on administrative breaches, provide for the introduction of a pre-trial procedure for appeals decisions of territorial antimonopoly bodies to The Federal Antimonopoly Service of the Russian Federation, with the purpose of increasing the uniformity of the enforcement of the law.

In addition, the Strategy provides for the establishment of administrative responsibility for government authority functionaries for breaches of the rules governing the exercise of their powers in the field of construction and land rights, as well as the ending of the practice of administrative fines being given to functionaries for the most «harmful» breaches of the antimonopoly legislation, with a single punishment, in the form of disqualification, being introduced for such breaches.
Along with this, the Strategy provides for the establishment of fines commensurate with turnover for the parties to anticompetitive «vertical» agreements where there are no proceeds in the goods market and fines for the coordination of economic activity, as well as the establishment of turnaround penalty for the abuse of a dominant position with monopsony.

It must be noted that Federal Antimonopoly Service of the Russian Federation has already set about the implementation of the Strategy. In particular, in his report at the 5th annual conference on «Antimonopoly regulation in Russia», the head of The Federal Antimonopoly Service of the Russian Federation, Igor Artemyev, spoke about the amendments to the Protection of Competition Law that had been drafted. These are in two parts: the first contains provisions that were not included in the «third antimonopoly package» amendments, and the second contains proposals made by businesses.

The amendments have been developed with the purpose of implementing the «Development of competition and perfection of antimonopoly policy» road map, and are in accordance with the recommendations of the OECD which, in July 2013, acknowledged that the protection of competition policy in Russia was in accordance with its standards.\(^1\)

In particular, the amendments contain a complete reversal of the position about notifications of economic concentration transactions, as well as the introduction of a responsibility government authorities to coordinate the establishment of state and municipal unitary enterprises with an antimonopoly body,\(^2\) and the expansion of rules warnings other forms of abuse of a dominant position, for anticompetitive activities (acts) of government authorities events of unfair competition (with the exclusion of events in the intellectual property sphere).

In addition, the draft amendments are also intended to eliminate the possibility of the prohibition of abuse a dominant position that action would lead only to the impairment of the interests of particular persons not connected with the business activities and if the abuse does not result in the restriction of competition in the market. The amendments are also intended to make impossible the business entities with a share of less than 35% as being dominant in the market, to allow the possibility of recognizing joint venture agreements as admissible, and to determine the order of notification about joint venture agreements. At the present time those amendments to the antimonopoly legislation are being coordinated with the relevant Federal government bodies and with representatives of the business community.

In October 2013 a discussion the amendments to the antimonopoly

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2. Andrey Tsarikovskiy: The FAS will concentrate on major cases which exercise a significant influence on competitive situation // Federal Antimonopoly Service. URL: fas.gov.ru/fas-news/fas-news_34968.html.
legislation took place with representatives of the All-Russian public organization «Business Russia». On November 1, 2013 a discussion of the amendments took place at the «Influence of amendments to antimonopoly legislation on the development of small and medium-sized businesses in Russia» conference held by The Federal Antimonopoly Service of the Russian Federation and «Backbone of Russia», the all-Russian social organization of small and medium-sized private enterprises. On November 11, 2013 in the State Duma of the Russian Federation a discussion of the amendments took place at the discussions representatives of Federal Antimonopoly Service of the Russian Federation, the Ministry for Economic Development, the Federal Tariffs Service, the Chamber of Commerce and Industry, the Russian Union of Industrialists and Entrepreneurs and State Duma Deputies etc. part.

At the present time a draft Federal law also prepared, entitled «On amendments being made to the Federal law «On protection of competition’ and some legislative acts of the Russian Federation», in which the amendments and additions to Article 18.1 of the Protection of Competition Law are introduced and which provides for the administrative appeal decisions and actions of the government authorities in the field of urban development and land rights.

The draft law mentioned above also provides for the administrative responsibility of functionaries of government authorities for the breach of the exercise of an authority's powers in the field of urban development and land rights.

These changes will create a practical mechanism for administrative appeal of mandatory title procedures, to create the conditions for the elimination of administrative barriers in the field of construction and land rights, and to make the economy of the Russian Federation and its regions more open and attractive in terms of investment.

This type of administrative appeal is a preventive measure designed to deal with the refusal to allow competition or the limitation or elimination of competition by the norms of Articles 15 and 16 of the Protection of Competition Law. The use of preventive measures will make it possible to save time, an appeal by an antimonopoly body is considered well-grounded and an injunction violations is issued, then the limitation and elimination of competition and the competition will not happen, and it not be necessary to use the measures for the protection of competition Article 9 of the Protection of Competition Law.

3 About the most important: representatives of FAS Russia and State Duma Deputies have discussed amendments to antimonopoly legislation // Federal Antimonopoly Service. URL: fas.gov.ru/fas-news/fas-news_34952.html.
References

1. Andrey Tsarikovskiy: The FAS will concentrate on major cases which exercise a significant influence on competitive situation // Federal Antimonopoly Service. URL: fas.gov.ru/fas-news/fas-news_34968.html.


