«Fourth Antimonopoly Package» Overview

On 5 October 2015 President Vladimir Putin signed the so-called «fourth antimonopoly package» of amendments to the Federal Law dated 26 July 2006 No. 135-FZ On Protection of Competition (the «Competition Law») and certain other laws (for example, the Law on Natural Monopolies and the Code of Administrative Offenses). Amendments will take effect 90 days after they are officially published, i.e. on 5 January 2016.

The package of amendments took 2.5 years to develop and contemplates a set of measures designed to liberalize and improve the Russian antimonopoly laws. Below is an overview of the most important amendments.

I. Economic Concentration

Joint Operations Agreement

The law will require the approval of the Federal Antimonopoly Service of Russia (the «FAS») for any agreement between competing business entities on joint operations in the territory of the Russian Federation if the aggregate asset value of the competitors’ groups exceeds 7 billion Rubles (approx. 108 million USD) or the aggregate revenues from sales during the year preceding such transaction exceeds 10 billion Rubles (approx. 155 million USD). This requirement applies to a joint operations agreement regardless of whether it results in the formation of a joint venture or not. Furthermore, such FAS approval provides competitors with immunity from the joint operations agreement being recognized as an anti-competitive agreement under Article 11 of the Competition Law.

The parties may also apply for the approval of a joint operations agreement even if the established thresholds are not exceeded.

Submission of Applications and Notices Electronically

Applications and notices for approval of a transaction or another action may be submitted to the FAS in electronic form in accordance with the procedure established by the FAS; however, as of the date of this overview this procedure had not yet been established.

Posting Information About an Application on the FAS Website

Information about an application submitted to the FAS for approval of a transaction or other action will be posted on the FAS official website, and any interested party may inform the FAS of the impact such transaction or action may have upon competition.

Contacting FAS Before Submission of an Application or Notice

The parties will be able to approach the FAS to inform it of the proposed transaction or other action before an application or notice is filed with the FAS: provide information and documents and propose the terms aimed at enhancement of competition.

Changes in Regulation of Natural Monopolies

The amendments introduce an additional qualifying threshold to governmental control over transactions and investments of natural monopolies: revenues of natural monopolies from their natural monopoly activities should exceed 1% of their total revenues.

In addition, the requirement that the FAS must be notified of any transaction involving a purchase of shares (interests) in the charter capital of a natural monopoly or a purchase of shares (interests) in the charter capital of another business entity by a natural monopoly is revoked.

II. Dominant Position

Abrogation of the Register of Monopolies with a Market Share in Excess of 35%

The amendments abrogate the register of business entities whose share of the market of certain goods exceeds 35%.

Thus, the existing requirement that FAS approval is required for any transaction or other action where the purchaser, or the target, or anyone of their group, is included in said register will no longer be relevant, and investigation of each abuse of dominant position will involve the respective commodity market research.
Further, a business entity with a market share below 35% may only be recognized as a dominant one in cases expressly provided for in federal law (rather than at the discretion of the FAS).

Introduction of Rules of Non-Discriminatory Access to the Goods of Dominant Business Entities With a Market Share in Excess of 70%

The Russian Government will be entitled to set rules of non-discriminatory access to the goods produced or sold by the dominant business entity which is not a natural monopoly and whose market share exceeds 70%, if such business entity is held to have abused its dominant position, as established by an effective decision of the FAS.

Rules of non-discriminatory access to financial services regulated by the Russian Central Bank will be approved by the FAS in coordination with the Russian Central Bank.

III. Unfair Competition

A new chapter is introduced to the Competition Law to address unfair competition issues; it lists and details the forms of unfair competition (though the list of unfair competition practices below is not exhaustive, and other forms are also prohibited):
- discrediting
- misleading
- false comparison
- unfair competition involving the use of exclusive rights to the means of identification (of a legal entity, goods, work and services)
- unfair competition involving the use of intellectual property
- unfair competition involving an act of causing confusion
- unfair competition involving the use of trade secrets or other secrets protected by law.

IV. Anti-Competitive Agreements

Filling the gap in relation to the definition of a commodity market for a permitted vertical agreement

The amendments expressly state that in order for a vertical agreement to be considered permitted, it shall be made between business entities each holding up to 20% of the commodity market for the goods covered by the vertical agreement. The Competition Law as previously drafted provided that for a vertical agreement to be permitted the parties had to have less than 20% on any commodity market.

Agency Agreement to Qualify as a Vertical Agreement

An agency agreement will be subject to the bans and restrictions set out in the Competition Law in relation to vertical agreements.

Broader Cartel Definition

The cartel restrictions will now apply not only to agreements between competing sellers but also between purchasers of goods in the same commodity market.

V. Handling of Antimonopoly Cases/Notices and Warnings

The amendments to the Competition Law describe in greater detail the procedure for handling antimonopoly cases which will be generally reviewed in an open session, expand the list of parties involved in a case and revise the procedure for engagement of experts and translators. The amendments also provide for broader application of such preventive measures as notices and warnings.
VI. FAS Collective Body

The FAS will form a collective body to summarize and explain the FAS antimonopoly enforcement practices and to review the decision of the FAS territorial agencies on antimonopoly cases where the antimonopoly authority fails to consistently apply the antimonopoly laws. The members of said body will be approved by the FAS Chairman.

VII. Administrative Liability

No Antimonopoly Liability Overlap

A person ordered to transfer to the federal budget the proceeds of monopolistic activities or unfair competition may not be subject to administrative liability for the antimonopoly offence to which the order relates, if the person has complied with said order.

Minimal administrative fine applicable to the persons being the second and the third to report an anti-competitive agreement

The minimal administrative fine for entering into an anti-competitive agreement will apply not only to the person who was the first to voluntarily report such offence to the FAS, but also to those who were the second and the third to report (other than the originator of such agreement (cartel)).