

Clarifications of the Federal Antimonopoly Service concerning exemptions from liability for a cartel

On 13 March 2019 the FAS Presidium approved Clarifications No. 16 of the Federal Antimonopoly Service concerning application of parts 7 and 8 of article 11 of the Federal Law “On Protection of Competition”. The clarifications specify the criteria, the fulfillment of which constitutes grounds for an exemption of a controlled group from liability for an antitrust agreement (Cartel). The clarifications limit the concept of control to disposal of over 50% of the total number of votes of all the shareholders (participants) or to exercise of the functions of the executive body of a legal entity.

The criteria of a controlled group are set out in parts 7 and 8 of article 11 of the Law “On Protection of Competition”, the clarifications also specify, that “a group could only be considered as controlled in cases when a natural person or a legal person within a group is able to influence the decisions, made by another legal person by means of (1) disposal of over fifty percent of the total number of votes of voting shares (participatory interests) constituting the authorized (reserve) capital of a legal entity and (or) (2) exercising of the functions of the executive body of a legal entity”. The clarifications specify that this list of criteria is exhaustive and shall not be subject to broad interpretation. Thus, other criteria, such as participation of members of the same group in a public tender or selling commodities in the same commodity market, or links of kinship between the founders shall not be considered as grounds for exemption from liability for antitrust agreements. In order to be subject to exemption from liability, at least one of the two abovementioned criteria of control shall be fulfilled.

The FAS Clarifications exclude the possibility of broad interpretation of control in cases of antitrust agreement and resolve some of the conflicting court practice. Fiduciary management agreements, as well as binding provisions, that may be included in shareholder agreements and other contracts shall no longer be considered as grounds for exemption from liability for a cartel.

For more information please contact our Managing Partner [Andrei Danilov](#).

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