

Antimonopoly compliance in Russia: status and suggested reforms



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The development and implementation of antimonopoly compliance – an internal corporate system to prevent violations of antimonopoly legislation – is one of the tools available to companies to prevent and mitigate antimonopoly risks.

For the time being, the use of antimonopoly compliance has not been enshrined in Russian legislation, although

discourse on the need to do so has been heard over the last few years and is being actively supported by the antimonopoly authority – the Federal Antimonopoly Service of Russia (“FAS”). The goal of the initiatives for legislative regulation of antimonopoly compliance, namely the identification and prevention by companies of violations of antimonopoly legislation, is clear and is not cause for debate. However, there are significant differences in the various proposed incentives for companies to establish such a compliance system. During the discussions both the introduction of a full exemption from liability for a committed violation (especially the exemption of company officials from criminal liability) and various options to limit liability (for example, limiting it to its minimum amount) have been proposed.

On 14 July 2016, a draft law aimed at enshrining the terms and consequences of introduction by Russian companies of an antimonopoly compliance system appeared on the official website for publication and discussion of draft laws and draft regulations of

the Russian Federation¹. This draft law is currently at the public deliberation stage, during which, among other things, proposals on amendments to the draft law can be sent.

According to the current text of the draft law, antimonopoly compliance is understood to mean the combined legal and organisational measures stipulated by an internal act of a business entity, aimed at ensuring that this business entity complies with antimonopoly legislation and preventing violations of this legislation. The draft law does not compel Russian companies to introduce antimonopoly compliance, with the exception of a number of business entities (in particular, business entities with state participation). If the current version of the draft law is passed, these entities will be required to draft and adopt internal acts on the organisation of an antimonopoly compliance system.

If a decision to introduce antimonopoly compliance is taken, a company (or a group of companies) must adopt an internal act or acts containing provisions

¹ See <http://regulation.gov.ru/projects#npa=50178>



such as the requirements on the procedure for assessing the risks of a violation, measures to mitigate these risks, the procedure for making employees aware of the procedure and measures, etc. The draft law establishes a list of these requirements, but does not indicate that the list is exhaustive (the company is entitled to include additional requirements). In the end, the performance of these requirements will be assessed when determining how effective the antimonopoly compliance system was in reality.

The draft law does not require companies that have introduced an antimonopoly compliance system to make its text publicly available, but the company

must place information on the adoption of an internal act or acts on antimonopoly compliance in the Internet.

In this regard, all the aforementioned requirements on the organisation of antimonopoly compliance are intended to lessen the liability for a violation by the company of the Russian antimonopoly legislation. For example, the draft law proposes amendments to the Code of Administrative Offences of the Russian Federation pursuant to which the organisation by a company of an antimonopoly compliance system prior to the commission of an administrative violation will be a mitigating factor on administrative liability. The possibility to apply this mitigating factor will extend to

the following violations of antimonopoly legislation:

- abuse of a dominant position;
- conclusion of an agreement that limits competition;
- performance of concerted actions that limit competition;
- performance of forbidden coordination of business activity;
- price manipulation on the markets of electrical energy.

That being said, in the current version of the draft law the organisation of an antimonopoly compliance system alone is not sufficient to reduce liability. This system must actually be functioning, and this must be confirmed, among other things, by the termination of the violation.



Since the draft law on antimonopoly compliance is still in the early stages, one can expect further revisions of its text, the requirements on the antimonopoly compliance system and its correspondence to the assignment of liability on the transgressor. In order to understand the possible ways in which the concept of antimonopoly compliance may be revised, one must pay attention, in particular, to foreign practices.

The attitude to antimonopoly compliance varies greatly in other countries. For example, while recognising the importance of antimonopoly compliance the European Commission does not consider the existence of an established and effective antimonopoly compliance system to be a mitigating factor when considering violations of

antimonopoly legislation. The US hold the same view.

A number of countries establish certain concessions for companies that have implemented an antimonopoly compliance system. Some countries clearly establish the maximum percentage by which the amount of the fine can be reduced when assigning liability (for example, by up to 10% in the United Kingdom and France, and up to 15% in Italy). Other countries establish a general rule that the existence of an effective antimonopoly compliance system may be deemed a circumstance that limits administrative liability during the consideration of violations of antimonopoly legislation, but do not establish clear rules and amounts for this limitation (for example, Australia, Israel and Canada).

The Russian draft law on antimonopoly compliance stands by the countries, which take the existence of an antimonopoly compliance system into account during the consideration of violations of antimonopoly legislation, but it does not establish specific rules on limiting liability (for example, a certain percentage of the amount of the fine).

At the same time, the draft law does not currently give clear explanations of when an antimonopoly compliance system will be recognised as an actually functioning system, therefore leading to a limitation of liability. This issue will be resolved during the practical application of antimonopoly compliance provisions and, possibly, in the clarifications of the FAS on the version of the law that is actually passed. |