

# RUSSIAN COURT SATISFIES THE CLAIM FOR RECOVERY OF LOSS OF PROFIT FROM A FOREIGN PHARMACEUTICAL COMPANY



On 24 June 2014, the Moscow City Arbitration Court satisfied a claim for the recovery of damages in the amount of RUB 408,375,000 from a foreign pharmaceutical company (case No. A40-14800/14).

The foreign pharmaceutical company (the seller) entered into a framework agreement for the supply of pharmaceuticals with a Russian company (the purchaser). In accordance with the agreement, the seller was obliged to supply pharmaceuticals to the purchaser on the basis of the latter's orders. The purchaser, at its end, had to use its best efforts to actively participate in public procurement procedures. However, in April 2013, the seller did not respond to one of the purchaser's orders. As a result, the purchaser was not able to participate in a significant state procurement auction.

In response to the seller's behaviour, the purchaser filed a complaint with the Federal Antimonopoly Service of Russia (FAS). The FAS found out that the reason for the refusal to supply, was that the Russian subsidiary of the seller had participated in the same state procurement auction. The FAS ruled that the seller's behaviour constituted a breach of antimonopoly laws in the form of abusing its dominant position<sup>1</sup>. On the basis of the FAS decision, the purchaser applied to the court with a claim for the recovery of loss of profit. The amount of the loss of profit was calculated in the following way. In 2012, the seller and the purchaser entered into a bonus agreement for high level of supplies under state

procurement contracts. If the level specified in the contract was achieved by the purchaser, the seller would have to pay the former a bonus of 16.5%. This bonus would be calculated from the total value of pharmaceuticals supplied by the seller in 2013, which were later sold by the purchaser under a state procurement contract. The threshold for the payment of the bonus was achieved by the purchaser by the moment of seller's refusal to supply the pharmaceuticals. Accordingly, the purchaser claimed that his loss of profits equalled 16.5% of the total value of the supply agreement entered into between the seller and its subsidiary, in connection with the state procurement auction mentioned above. The court agreed with the calculation of the loss of profit mentioned above.

The described decision of Moscow City Arbitration Court is of significant importance since it is still quite rare for Russian courts to recover the loss of profit for a breach of antimonopoly legislation. The fact that the loss of profit was recovered from a foreign company makes it even more important, and demonstrates the increasingly liberal approach of the Russian courts to the issue of damages' recovery. We recommend taking the described practice into account when dealing with Russian partners and customers.

<sup>1</sup> FAS decision dated 24 December 2013 (case No. 1-10-279/00-18-13).

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Current document contains an overview of the recent legislative and regulatory developments in the field of drugs and MDs circulation. The above materials do not contain any recommendations and should not be treated as professional advice.

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