



Criminal liability for antimonopoly violations: positive changes

MARCH 2015

VEGAS LEX

On 8 March 2015, the Russian president signed Federal Law No. 45-FZ "On Amendments to Article 178 of the Criminal Code of the Russian Federation" (hereinafter referred to as the "Law"), which significantly narrows the range of antitrust law violations that can result in a criminal prosecution. The Law came into force on 20 March 2015.

BEFORE THE CHANGES

The previous version of Article 178 of the Criminal Code of the Russian Federation stipulated criminal liability for the prevention, restriction or elimination of competition, as a result of the following activities:

- entering into a cartel arrangement;
- repeated (more than two times in three years) abuse of own dominant position in the form of the establishment and (or) maintaining of monopolistically high or low prices, unreasonable refusal or failure to sign a contract or limiting access to the market.

In addition, a prerequisite for criminal liability was gaining income on a large scale, or causing major damages to citizens, organizations or the state, as a result of carrying out the above-described activities.

Article 178 of the Criminal Code of the Russian Federation was rarely applied in prac-

tice, and cases of criminal charges being laid under this article were rare, and concerned only the representatives of small businesses and individual entrepreneurs. Nevertheless, the existence of a potential risk of coming under criminal prosecution in the frequent formal relations with antitrust authorities, with respect to establishing the occurrence of violation of antitrust laws, in some cases affected the making of business decisions.

KEY CHANGES

As a result of the adoption of the Law, the number of violations of antitrust laws, which could potentially lead to criminal prosecution, has been significantly reduced:

- **The Law excludes criminal responsibility for activities leading to the abuse of a dominant position.** The new wording of Article 178 of the Criminal Code of the Russian Federation stipulates criminal liability only for the restriction of competition by entering into a cartel agreement;
- **In the Law, the value has been increased by 10 times, of corresponding income that is considered large and very large in size, as well as large and especially large damages,** which is the prerequisite to bring the person to criminal liability.

The following table lists the threshold values, the achievement of which is necessary to bring a person to criminal liability under Article 178 of the Criminal Code of the Russian Federation, stipulated in the previous and new wording of this article:

	Threshold values stipulated in the previous version of Article 178 of Criminal Code of the Russian Federation	Threshold values stipulated in the new version of Article 178 of Criminal Code of the Russian Federation
Income of a large scale	5 million roubles	50 million roubles
Income of a very large scale	25 million roubles	250 million roubles
Large damages	1 million roubles	10 million roubles
Especially large damages	3 million roubles	30 million roubles

Thus, after the adoption of the Law, the risk of criminal prosecution remains only for cases involving the conclusion of a cartel, which resulted in the extraction of income or causing damages in a large amount, as determined by the Law.

In addition to the indicated positive changes, the Law contains a provision that establishes stricter grounds for exemption from criminal liability. Thus, before the adoption of the Law, the exemption from criminal liability under Article 178 of the Criminal Code of the Russian Federation was extended to a person who had contributed to uncovering of the crime, had made payment for damages caused, or otherwise made amends for the harm caused as a result of his activities, if his activities did not result in other crimes being committed. Now, subject to the indicated conditions, released from criminal responsibility may be only the person who was the first among the partners to voluntarily report the crime. It should be noted that this change was criticized by the Legal Department of the State Duma of the Russian Federation, in connection with the fact that it does not take into account the possibility a crime being reported in the various

regions of the country (9 time zones) and to various law enforcement agencies, however, this commentary was not reflected in the Law.

CONSEQUENCES

Thus, the Law has significantly reduced the number of antitrust violations, the commission of which may result in criminal liability, keeping this punishment for only the most serious violations.

It should be noted that criminal law, eliminating criminal liability for committed deeds, is retroactive. This means that the provisions of this Law apply not only to activities committed after its adoption, but also to crimes that were committed before the entry into force of the Law. Thus, the application of the provisions of the Law shall apply to persons that are the perpetrators of deeds that qualify under Article 178 of the Criminal Code of the Russian Federation, before the entry into force of the Law (regardless of whether criminal charges were laid or not), including persons who are serving their sentences or have been convicted for committing such a crime.

Contacts



ALEXANDER SITNIKOV
Managing partner

sitnikov@vegaslex.ru



JULIA TORMAGOVA
Head of Commercial group

tormagova@vegaslex.ru



YULIA POLYAKOVA
Associate
of Commercial group

polyakova@vegaslex.ru



KSENIA PODGUZOVA
Junior associate
of Commercial group

podguzova@vegaslex.ru

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