



Enactment of the act concerning antitrust compliance

MARCH 2020

VEGAS LEX

ON 1 MARCH 2020, THE PRESIDENT OF THE RUSSIAN FEDERATION SIGNED AN ACT THAT INTRODUCES AMENDMENTS TO THE LAW ON PROTECTION OF COMPETITION¹ AND DETERMINES A CONCEPT OF ANTITRUST COMPLIANCE AND KEY REQUIREMENTS TO IT ON THE FEDERAL LEVEL OF LEGISLATION (HEREINAFTER — THE "AMENDMENTS")².

The Amendments will come into force on 12 March 2020. The Law on Protection of Competition will contain the following information:

- **the concept of antitrust compliance:** the law will contain the definition of the "system of in-house compliance with antitrust laws", which means a combination of legal and organizational actions aimed at company's compliance with antitrust laws and prevention of violations(hereinafter — "Antitrust compliance system");
- **principle of voluntariness:** implementation of the Antitrust compliance system is rather a right than a company's statutory duty
- **requirements to in-house regulations of the company:** there is a list of mandatory requirements, which should be included into the internal documents of a concerning Antitrust compliance system, viz.:

(a) requirements to the procedure for carrying out evaluation of antitrust risks associated with the company's business;

(b) measures to mitigate antitrust risks;

(c) measures to control operation of the Antitrust compliance system;

(d) the procedure for getting the company's staff familiar with internal antitrust compliance regulations;

(e) information about an official responsible for an operation of the Antitrust compliance system in the company.

Besides, companies are entitled to introduce additional requirements to organization of the Antitrust compliance system by passing in-house regulations.

- **publication of information about Antitrust compliance system on a company's website:** information about passed and applicable in-house documents regarding Antitrust compliance system shall be published on the website of the company;
- **possibility to approve the Antitrust compliance system with the FAS Russia:** the company is entitled to have the documents or draft in-house regulations on antitrust compliance approved with the antimonopoly authority.

In case of submission of the mentioned documents (drafts), the FAS Russia shall consider the documents (drafts) within thirty days and shall issue an opinion on their compliance or incompliance with requirements of antitrust legislation³.

² Federal Law No. 135-FZ of 26.07.2006 "On protection of competition".

³ Federal Law No. 33-FZ "On amending Federal Law "On protection of competition".

³ It is assumed that the FAS Russia will give an opinion in relation to antitrust compliance system of a company in the manner of clarifications of application of antitrust legislation in line with the regulations approved by the Order of FAS Russia No.22 of 20.01.2012.

In the documents attached to the Amendments' draft it is stipulated that within three months of the date the State Duma adopts the Amendments' draft in the second reading, the FAS Russia will prepare changes to the Order of FAS Russia No. 22 of 20.01.2012. The State Duma adopted the Amendments' draft in the second reading on 18 February 2020. Hence, the amendments to the Order of FAS Russia No. 22 of 20.01.2012 shall be prepared until 18 May 2020. // SOZD GAS "Lawmaking": https://sozd.duma.gov.ru/bill/789090-7#bh_histras.

The text of the Amendments is available via the following link: [Antitrust compliance](#).

The Amendments have been adopted according to the National Competition Development Plan for 2018–2020⁴.

When considering the Amendments' draft in the State Duma of the Russian Federation in the first reading, an official representative of the FAS Russia mentioned, inter alia, the following⁵:

- antitrust compliance will enable to increase the effectiveness of antitrust regulation and to create additional mechanisms stimulating business entities to take actions for preventing antitrust violations;
- the antimonopoly authority will take into account implementation of compliance when referring the business entity to one or another risk category within a risk-oriented approach while handling control activities aimed to monitoring of compliance with antitrust legislation.

So far, some companies in the Russian Federation are actively using the Antitrust compliance system. Moreover, such practice gained recognition and became widespread in other countries.

ADVANTAGES OF ANTITRUST COMPLIANCE FOR A COMPANY AND ITS MANAGEMENT

- possibility to find a company not liable for antitrust violation and to exclude its punishment providing that it carries out its activities within rules of the Antitrust compliance system approved by the FAS Russia;

- carrying out business activities in line with the standards of business ethics;
- possibility to reduce the amount of administrative fines, including turnover-based fines (using the fact of existence and operation of the Antitrust compliance system as a circumstance which mitigates liability);
- identifying antitrust risks and their mitigation;
- possibility to exclude/minimize scheduled audits held by the antimonopoly authority;
- preventing damage to business reputation of the company, increasing the additional value of the company.

GUIDELINES FOR COMPANIES

If a company is interested in implementation of the Antitrust compliance system, it can use the following guidelines on elaboration of such system:

- to carry out analysis of the company's products and conditions of their selling in terms of compliance with antitrust laws (to determine the key markets where the company is operating, their boundaries and potential breaches of antitrust legislation), to prepare a risk matrix;
- to evaluate the sufficiency of existing organizational measures and internal resources to manage antitrust risks;
- to consider a possibility to elaborate new measures or change the existing ones in order to comply with requirements of antitrust legislation and to efficiently manage antitrust risks.

⁴ Approved by the Order of the President of the Russian Federation No. 618 of 21.12.2017.

⁵ For the details, please see <https://fas.gov.ru/news/28813>.

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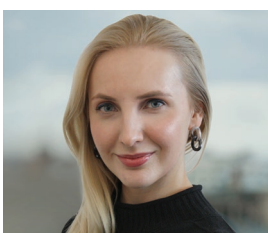
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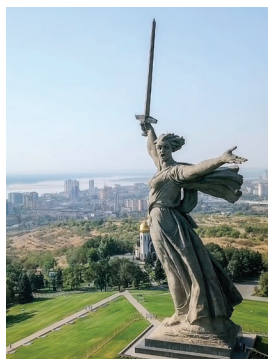
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