



Internal monitoring

The Legislator reverts to the issue of antitrust compliance

A new version of the antitrust compliance bill is presented to the State Duma

On 4 September 2019 the Government introduced to the parliament a new version of the bill on internal systems to ensure compliance with antitrust legislation, the so-called antitrust compliance bill. Bill No. 789090-7 (the “**Bill**”) proposes amendments to Federal Law No. 135-FZ “On the Protection of Competition”.

This initiative has been discussed for a few years, with the form and content of these amendments to the law having been completely changed a number of times. The main objective of this legislation is to encourage companies to voluntarily implement an internal prevention system against risks of violations of antitrust legislation. Developing the regulatory framework for antitrust compliance was a target included in the government’s national development plan for competition for 2018-2020.

The antitrust authority has been consistent supporter of antitrust compliance as a practice, which it sees as a soft-law instrument strengthening controls and adherence to antitrust legislation on a par with preemptive warnings issued by the FAS. From the point of view of the FAS, antitrust compliance should contribute to reducing the number of violations in the long term. In contrast to earlier proposals, the Bill now makes implementation of antitrust compliance policies an exclusive right of the company.

What makes up antitrust compliance

The concept of antitrust compliance has not been changed significantly compared to previous versions of the Bill. Antitrust compliance is a set of legal and organizational measures that are regulated by one or more internal policies and regulations inside an organization, including the following elements:

- ✓ A procedure to assess risks
- ✓ Risk-mitigating mechanisms
- ✓ System-control mechanisms
- ✓ A training procedure for employees
- ✓ A regulation of the activities conducted by the person in charge of compliance



There is no need to develop antitrust compliance processes for each company inside a group of companies. It is acceptable that one antitrust compliance system is extended to apply to all entities inside a group, or to parts of the group. This approach seems optimal for large Russian and foreign groups. Nevertheless, foreign groups should bear in mind that antitrust compliance policies in force at the global level do not always comply with requirements under Russian law, and therefore often must be adapted.

The Bill aims at bringing about high levels of transparency and publicity for antitrust compliance policies. Information on their implementation should be posted on the company's official website.

Seal of approval by the FAS



One of the new things in the Bill is the possibility to apply to the FAS to check whether a company's antitrust compliance system is in line with antitrust legislation. This is a fairly important point that was absent in previous versions of the Bill. In reality, it represents a form for certification of antitrust compliance policies by the antitrust authorities.

The FAS then considers the application within **30 days** and issues an opinion on whether the compliance policy and internal regulations adopted by the applicant are consistent with the requirements of antitrust legislation.

What is the point of antitrust compliance?

The implementation of an antitrust compliance policy should be undoubtedly motivated by the company's own internal standards and a commitment to conduct business in full compliance with applicable legislation. Nevertheless, it is also no secret that such internal policies are also driven by businesses' wish to manage its risks and reduce potential liability for any future turnover-based fines and other negative consequences.

In contrast to earlier versions, the bill now brought forward does not carry amendments to the Administrative Code. Therefore, as per this version, no amendments which would provide reductions or exemptions from criminal or administrative liability are being considered. Nonetheless, the Government's explanatory note to the Bill contains a potentially strong guarantee in this regard:

If a Company has received a positive opinion from the FAS on their antitrust compliance policy, if it has implemented this policy and operates in accordance with the rules approved, this company cannot be found to be in breach of antitrust legislation.

It seems likely that such a guarantee will require a statutory basis, either in the competition law or in the Administrative Code. However, setting aside issues of legislative methodology, it is nevertheless a positive step that such a principle is present in the Bill's set of documents. This reference potentially opens up a discussion on absence of administrative culpability of a company that implemented and adhered to the rules of internal compliance approved by the FAS.

Status quo

The adoption of this Bill will be an important additional step towards introducing antitrust compliance systems in Russia. We assume that the content of the Bill will still undergo some changes during the legislative process. In any case, having an antitrust compliance policy has become the norm for ordinary commercial activities for many companies in Russia, and if this approach is now embraced by the authorities with legislative guarantees, we have confidence that antitrust compliance culture will be developed even more actively in the future.

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