

# FEDERAL LAW

## On Amendments to the Federal Law on Protection of Competition

### Article 1

The following amendments should be introduced to the Federal Law No. 135-FZ on Protection of Competition of 26.07.2006:

1) Article 4:

a) Add Paragraphs 4<sup>1</sup> and 4<sup>2</sup> of the following content:

"4<sup>1</sup>) digital platform is an infrastructure located in the information-telecommunication network Internet, which is used to organize and provide interaction between sellers and buyers;

4<sup>2</sup>) network effect is the dependence of the consumer value of goods on the number of consumers of the same group (direct network effect) or the change in the value of the goods for one group of consumers with a decrease or increase in the number of consumers in another group at the same time (indirect network effect).";

b) Add Paragraph 24 of the following content:

"24) authorized representative is a legal entity or an individual determined by the competition authority in accordance with the procedure established by this Federal Law to monitor and facilitate the execution of prescription issued by the competition authority."

2) Article 5:

a) In Part 2 words «in Part 3 and 6» change with «in Parts 2<sup>3</sup>, 3 and 6»;

b) Add Part 2<sup>3</sup> of the following content:

"2<sup>3</sup>) The position of an entity holding a digital platform can be recognized as dominant if such digital platform occupies more than 35% of the interchangeable

service market using digital platforms related to the interaction of sellers and buyers, and if network effects based on number of digital platform users provide such an economic entity with an opportunity to significantly influence general conditions of goods circulation on the relevant market and (or) to eliminate other economic entities from this commodity market and (or) inhibit access to the market to other economic entities.

The position of an economic entity that owns a digital platform or several similar (interchangeable) digital platforms with revenues less than 400 million rubles in the last calendar year cannot be recognized as dominant.";

c) Part 8 should be complemented with the following second paragraph:

"When analyzing the state of competition on commodity market (commodity markets) where the interaction of sellers and buyers is organized and provided through digital platforms, the competition authority also determines network effects and assesses its impact on the ability of the economic entity to significantly influence the overall conditions of goods circulation on the relevant commodity market, and (or) to eliminate other economic entities from this commodity market and (or) inhibit access to the market to other economic entities, including by means of a significant amount of transactions through digital platforms, or on the lack of this ability."

3) Part 7 Article 11 should be complemented with the following: ", as well as the agreements stipulated by Paragraph 2 Part 1 of this Article."

4) Part 8 Article 11 should be complemented with the following: "In this Article, Articles 11<sup>1</sup> and 32 of this Federal Law, except for Paragraphs 20-25 of Part 5 Article 32."

5) Part 1 Article 13 after words: "Actions (lack of actions) of economic entities provided for in Part 1 Article 10 of this Federal Law (except actions (lack of actions) stated in Paragraph 1 (except fixing or maintaining price of goods, which are the results of innovative activities), 2, 3, 5, 6, 7 and 10 of Part 1 Article 10 of this Federal Law)" should be complemented with the following "coordination provided by Part 5 Article 11 of this Federal Law."

6) In Subparagraph "m" of Paragraph 2 Part 1 Article 23 the words "facilities of industrial property" shall be replaced with "results of intellectual activity and equal means of individualization.";

7) Paragraph 2 Part 1 Article 23 should be complemented with Subparagraphs "n" and "o" of the following content:

"n) on the procedure for granting or transferring to others the rights on the results of intellectual activity and means of individualization equal to them, which are controlled by the person applying for the transaction, other actions of economic concentration, as well as other persons participating in the merger of commercial organizations, one or several commercial organizations, the establishment of a commercial organization;

o) on the determination, as agreed with the person applying for the transaction, of a different activity of economic concentration, an authorized person monitoring and facilitating the execution of the order issued by the antimonopoly authority.";

8) Part 2 Article 23 should be complemented with Paragraph 3<sup>1</sup> of the following content:

"3<sup>1</sup>) establishes the rules of monitoring and facilitating the execution of a ruling issued by the competition authority by an authorized representative.";

9) Part 1 Article 28 should be read as follows:

"1. In case the total value of assets under the recent balance sheet of a person acquiring shares, rights and (or) property and its group of persons, a person, who is an object of economic concentration and its group of persons, exceeds seven billion rubles or if their total revenue from the sale of goods for the last calendar year exceeds 10 billion rubles, while the total value of assets under the last balance sheet of the person, who is an object of economic concentration, and his group of persons exceeds 400 million rubles, or the transaction price exceeds 7 billion rubles with the prior consent of the competition authority, the following transactions with shares, rights and (or) property.";

10) Article 32:

a) In Part 5:

- Paragraph 19 should be eliminated;
- Paragraph 20 should be restated as Paragraph 19;
- Paragraphs 6<sup>1</sup>, 18<sup>1</sup>, 18<sup>2</sup>, 20-25 should be added:

"6<sup>1</sup>) in case the person who is an object of economic concentration, carries out polygraphic activities or activities of editors office and (or) the publisher and (or) the founder of the periodical print publication, information on the number of printed sheets per month or on the cumulative product circulation issued during a year preceding the transaction or relevant application;

18<sup>1</sup>) in case the control over the applicant is carried out by an individual with Russian citizenship, an application from that individual or his representative per procuration (signed) on the absence of other citizenship and on the status of a tax resident of the Russian Federation according to the legislation on taxes and fees;

18<sup>2</sup>) in case the control over the applicant is carried out by a Russian citizen on the basis of a confidential form of ownership or another similar form, information on the conditions for the establishment of trust property or other management of property with a trust declaration, trust agreement or other document, the control on the basis of a confidential form property is determined based on the documents specified in this Paragraph;

20) information on the activities carried out by the person as an object of economic concentration, and persons controlled by him, provided by Article 6 of the Federal Law №57-FZ of April 29, 2008 "On the Procedures of Foreign Investments in the Business Entities of Strategic Importance for National Defence and State Security" (hereinafter - the Federal Law On the Procedure for Foreign Investments in the Business Entities of Strategic Importance for Russian National Defense and State Security), or a written statement that these persons do not perform these activities, either written statement that the applicant cannot provide such information;

21) list of licenses and (or) other permits of the person, who performs as an object of economic concentration, and persons controlled by him for carrying out the types of activities provided by Article 6 of the Federal Law "On the Procedures

of Foreign Investments in the Business Entities of Strategic Importance for National Defence and State Security", or a written application on the absence of such licenses and (or) other permits from the mentioned persons, or a written statement that the applicant cannot provide such information;

22) information on the agreements (including contracts) of a person performing as an object of economic concentration, that can significantly influence the behavior of another person carrying out the types of activities provided by Article 6 of the Federal Law "On the Procedures of Foreign Investments in the Business Entities of Strategic Importance for National Defence and State Security" or a written statement that the applicant cannot provide such information;

23) in case the person, who is an object of economic concentration and (or) persons controlled by him carry out polygraphic activities, information on the number of printed sheets by each of them each month within two years preceding the day of submission of the application or notification, broken down by months, or during the term of such activities, if it is less than two years, as well as information on the maximum production capacity of the polygraphic equipment of each of these persons;

24) in case the person, who is an object of economic concentration, and (or) persons controlled by him carry out activities of the editors office and (or) the publisher and (or) the founder of the periodical print publication, information on the total product circulation produced by each of such persons, published during one year preceding the transaction or the relevant application, in case the total product circulation was not less than:

a) 15 million periodical print publications published two or more times per week;

b) 2,5 million periodical print publications published once a week, once in two weeks or once in three weeks;

c) 700 000 periodical print publications published once a month or two months;

d) 300 000 periodical print publications published not more than once a quarter;

25) if the person, who is an object of economic concentration, and (or) persons controlled by him carry out the types of activities provided by Article 6 of the Federal Law "On the Procedures of Foreign Investments in the Business Entities of Strategic Importance for National Defence and State Security" or have licenses and (or) other permits, specified in Paragraph 21 of this Part, or participate in the agreement specified in Paragraph 22 of this Part:

a) information on each person exercising control over the applicant (hereinafter – the controller) and on the evidences of direct or indirect control over applicant, according to Article 5 of the Federal Law "On the Procedures of Foreign Investments in the Business Entities of Strategic Importance for National Defence and State Security", with copies of documents supporting these evidences;

b) in case the control over the applicant is carried out by a Russian citizen, information on the holding foreign citizenship and on whether the specified citizen is a tax resident, according to the Russian legislation on taxes and fees;

c) in case the applicant submitted applications, notifications or requests for the approval of the relevant transaction or other action, according to Part 6 Article 8 of the Federal Law "On the Procedures of Foreign Investments in the Business Entities of Strategic Importance for National Defence and State Security", with respect to the person, who is an object of economic concentration, to the federal executive body authorized to monitor the implementation of foreign investments or information on the beneficiaries, beneficial owners and controllers of the applicant, information on such applications, notifications and requests, on the provision of such information, as well as the results of their consideration.";

- to insert the following:

"In Paragraphs 20-25 of this Part, "control", "controller", "controlled person" are used in the same meaning as in Articles 3 and 5 of the Federal Law "On the Procedures of Foreign Investments in the Business Entities of Strategic Importance for National Defence and State Security";

b) in Part 9, after the words "in the information-telecommunication network Internet", add the words "with information about the participants and the subject of the transaction, other actions stated in the application (with the exception of personal data of physical persons)";

c) add Part 11 of the following content:

"11. In the course of consideration of an application, the competition authority has the right to request from other government bodies documents and information necessary to consider the application while simultaneously providing information contained in the application for the specified purposes, in compliance with legislation of the Russian Federation regarding national security information, bank secrecy, commercial secret or other secret protected by the law.";

11) in the Article 33:

a) in the Paragraph 3 Part 2 after the words "cannot exceed nine months" add the following sentence: "If a transaction or other action is of a transborder nature (in addition to the market of the Russian Federation it also affects foreign markets), the competition authority with the consent of the Government of the Russian Federation has the right to extend the period specified in the current Paragraph, but no longer than three years";

b) in the Paragraph 3<sup>1</sup> Part 2 words "under No.57-FZ Federal Law "On the Procedures of Foreign Investments in the Business Entities of Strategic Importance for National Defence and State Security" of 29th April 2008 (further on referred to as the Federal Law "On the Procedures of Foreign Investments in the Business Entities of Strategic Importance for National Defence and State Security")" should be replaced with words "under the Federal Law "On the Procedures of Foreign Investments in the Business Entities of Strategic Importance for National Defence and State Security";

c) Part 2 should be complemented with the Paragraph 3<sup>2</sup> of the following content:

"3<sup>2</sup>) on the extension of the period for consideration of the application for the duration of the review of the necessity (absence of necessity) of the preliminary

approval of the deal, other action stated in the application, under the Federal Law "On the Procedures of Foreign Investments in the Business Entities of Strategic Importance for National Defence and State Security", up to the day of verification by the authorized body the necessity (absence of necessity) of the preliminary approval of the deal, other action, but no longer than one month from the moment of commencement of such verification";

d) Part 2 should be complemented with the Paragraph 3<sup>3</sup> of the following content:

"3<sup>3</sup>) on the extension of the period for consideration of the application in the event of the decision on the circumstances of the application under consideration and physical examination of this decision for a period no longer than three months";

e) Part 2 should be complemented with the Paragraph 5<sup>1</sup> of the following content:

"5<sup>1</sup>) on refusal to satisfy the application in case of refusal of the applicant to provide information requested by the authorized body for the review of the necessity (absence of necessity) of the preliminary approval of the deal, other action, under the Federal Law "On the Procedures of Foreign Investments in the Business Entities of Strategic Importance for National Defence and State Security";

f) Part 2 should be complemented with the Paragraph 7 of the following content:

"7) on the return of the application if the applicant within three months after receiving the decision of the competition authority to extend the period for considering the application specified in the Paragraph 3<sup>1</sup> of this Part did not submit application for getting consent for implementation of transaction or other action under the Federal Law "On the Procedures of Foreign Investments in the Business Entities of Strategic Importance for National Defence and State Security" to the federal executive authority authorized to perform functions to control the implementation of foreign investment";

g) Part 3 to read as follows:



"3. The period stated in Part 1 of this Article can be prolonged for the period not more than two months by decision provided for by Paragraph 2 Part 2 of this Article. If a transaction or other action is of a transborder nature (in addition to the market of the Russian Federation it also affects foreign markets), the competition authority with the consent of the Government of the Russian Federation has the right to extend the period specified in the Part 1 of this Article, but no longer than for five years. In case if such decision is taken the competition authority posts on its official site in the information-telecommunication network Internet the information about the expected transaction, other action declared in the application for getting consent for implementation of transaction, other action with information about the participants and subject matter of the transaction, other actions stated in the application (with the exception of personal data of physical persons). The interested persons have the right to submit to the competition authority the information about the influence of this transaction, other action on the condition of competition";

h) Part 3 should be complemented with the Paragraphs 3<sup>1</sup> and 3<sup>2</sup> of the following content:

"3<sup>1</sup>) In the period pending decision of the competition authority on the results of the consideration, the persons submitting the application have the right to submit to the competition authority the obligations to carry out actions aimed at ensuring competition.

3<sup>2</sup>) If the competition authority makes a decision provided for in Paragraph 2 Part 2 of this Article, the competition authority may involve expert to consider the application for getting consent for implementation of transaction, other action subject to state control. Expert is a person who has special knowledge of the issues related to the application. Expert should be independent with respect to the exchanging parties and the object of economic concentration. Information on the involvement of experts and the appointment of expertise is indicated by the competition authority in the decision provided for in Paragraph 2 Part 2 of this Article. Expert, with the permission of the competition authority, has the right to familiarize himself with the application, documents submitted together with the

application, as well as with other materials related to the consideration of the application and submitted to the competition authority, including those constituting a trade secret, provided that he undertakes to keep the information that constitute the secret protected by the law under a duty of confidence. Expert has the right to refuse to give an opinion on issues that go beyond his special knowledge, as well as if the materials provided to him are insufficient to give an opinion. For providing an opinion that deliberately includes false information, the expert is liable under the legislation of the Russian Federation. When appointing an expertise, the period for consideration of the application is suspended for the duration of the expertise";

i) Paragraph 2 Part 5 to read as follows:

"2) procedures for granting or transferring to individuals, determined by the competition authority, rights to the results of intellectual activity and equivalent means of personalization which are managed by the applicant as well as by other persons participating in the merger of commercial organizations, merger with a commercial organization of one or several commercial organizations, creation of a commercial organization";

j) in Part 6 after the words "for concluding a transaction provided for by Articles 28 and 29 of this Federal Law" add the words "stipulated by Paragraph 1 Part 2 of this Article, or approval of the application for getting consent for implementation of transaction, other action and on the simultaneous issuance of a ruling provided for by the Paragraph 4 Part 2 of this Article";

k) add Part 6<sup>1</sup> of the following content:

"6<sup>1</sup>. If the competition authority determines that the transaction or other action stated in the application will or may lead to restriction of competition, the competition authority sends to the applicant, as well as to other persons participating in the transaction or in other action specified in the application, conclusion on the circumstances of the application prior to making a decision.

Conclusion should contain:

1) factual and other circumstances established by the competition authority upon the results of the application review, during the competition

authority's analysis of the state of competition and based on the information received at the request of the competition authority, as well as the description of the evidence supporting the preliminary findings of the competition authority that transaction will or may lead to restriction, non-admission or elimination of competition;

2) proposed conditions that can be established by the competition authority in relation to the applicant, as well as other persons participating in the transaction or other action specified in the application, for the purpose of ensuring competition.

In the event that a conclusion is made on the circumstances at the request of the persons participating in the transaction or other action specified in the application, including when such persons submit written proposition of their obligations for the implementation of actions aimed at ensuring competition, or on its own initiative, the competition authority shall appoint a physical consideration of the application, which shall be subject to a determination to be sent to the applicant, as well as to other persons participating in the transaction or other action specified in the application. In this case, the date for the physical consideration of the application cannot be earlier than in five working days from the date of sending the conclusion to the specified persons.

Persons participating in the transaction or other action specified in the application shall have the right to submit to the competition authority explanations, evidence and arguments in written form in respect of the circumstances specified in the conclusion, prior to the termination of the application review and decision making.

The procedure for the physical consideration of the application is established by the federal competition authority.";

1) add Part 7<sup>1</sup> of the following content:

"7<sup>1</sup>. For the purpose of monitoring and facilitating antimonopoly compliance, the competition authority, upon agreement with the applicant whose transactions and (or) other actions are reviewed by the competition authority in accordance with Paragraph 4 Part 2 of this Article may appoint an authorized representative.

Authorized representative is a legal entity or an individual who has special knowledge on matters relating to the enforcement of the ruling.

Authorized representative should be independent with respect to the merging parties and (or) other actions and the person or persons to whom the ruling was issued.

Authorized representative cannot be legal entity or an individual:

1) in relation to which ruling of the competition authority was issued or member of one group with the person in relation to which ruling of the competition authority was issued;

2) who is a competitor of the person in relation to which ruling of the competition authority was issued, and (or) a person who enters with such person into one group of persons;

3) who is a seller or a buyer to a person in relation to which ruling of the competition authority was issued and (or) a person who enters with such person into one group of persons. The competition authority determines the list of issues that require monitoring and assistance. Applicants whose transactions and (or) other actions are reviewed by the competition authority in accordance with Paragraph 4 Part 2 of this Article shall have the right to propose to the competition authority the list of issues that require monitoring and assistance.

Authorized representative has the right to familiarize with the application review materials, including information that constitutes a secret protected by the law, if it accepts the obligation not to disclose the information constituting a secret protected by the law under a duty of confidence.

Authorized representative is responsible for disclosure of information constituting a secret protected by the law in accordance with the legislation of the Russian Federation.

Authorized representative has the right to refuse to perform the functions of monitoring and facilitating the execution of a ruling on matters that go beyond its special knowledge, and if the materials provided are insufficient to give an opinion.

The decision to involve an authorized representative together with information about such person and list of issues that require monitoring and assistance, as well as the procedure and time limits for granting the information to the competition authority and the person to whom the prescription was issued on performance of the functions assigned should be made together with the decision specified in Paragraph 4 Part 2 of this Article.

Information on the authorized representative, list of issues that require monitoring and assistance, the procedure and time limits for granting the information to the competition authority and the person to whom the prescription was issued on performance of the functions assigned shall be indicated in the decision of the competition authority.";

12) Article 34 should be complemented with the Part 5<sup>1</sup> of the following content:

"5<sup>1</sup>. On non-compliance of the ruling of the competition authority, which was issued in accordance with the procedure specified in the Paragraph 4 Part 2 Article 33 of this Federal Law, if such non-compliance leads or can lead to the prevention, restriction or elimination of competition, the competition authority has the right to:

1) file a claim in court for the exemption to use in the territory of the Russian Federation in the interests of competition development the results of intellectual activity and equivalent means of personalization belonging to the person to whom the ruling was issued if the ruling was related to the exercise by such person of the exclusive rights to the results of intellectual activity and equivalent means of personalization, under conditions of the ruling;

2) file a claim in court with the request to prohibit (restrict) the turnover in the territory of the Russian Federation by the person to whom the ruling was issued, of goods produced using the results of intellectual activity, the exercise of exclusive rights to which is associated with the implementation of this ruling."