

Decision of the FAS Russia
on Philip Morris/KT&G merger
August 06, 2020

In accordance with Article 33 of the Federal Law of the Russian Federation dated July 26, 2006 No. 135-FZ “On Protection of Competition” (hereinafter - the Law on Protection of Competition), the Federal Antimonopoly Service of the Russian Federation (FAS Russia), considered the application of the companies PHILIP MORRIS PRODUCTS SA (located: Switzerland, 2000 Neuchâtel, Quet Jeanrenot 3; main activity: production and sale of tobacco products, management and holding activities) and KT&G CORPORATION (located: Republic of Korea, 34337, Daejeon, Dedeok-gu, 71 Beotkkot-gil; main activity: production and sale of tobacco products and related activities) on obtaining the preliminary consent of the antimonopoly authority to conclude an agreement on joint activities in the territory of the Russian Federation, provided in accordance with Paragraph 8 of Part 1 of Article 27 of the Law on the Protection of Competition, and **made a decision** to satisfy this application with conditions aimed at ensuring competition imposed on the companies PHILIP MORRIS PRODUCTS S.A. and KT&G CORPORATION, as well as to persons belonging to the same group of persons with each of these companies and conducting their business activities in the production and circulation of nicotine-containing products and devices intended for the consumption of nicotine in ways other than smoking tobacco, in the Russian Federation,

The Decision is valid in conjunction with the remedies dated August 06, 2020 No AD/67492/20.

REMEDIES

Decision of the FAS Russia dated August 06, 2020 No AD/67492/20

In accordance with Article 33 of the Federal Law of the Russian Federation dated July 26, 2006 No. 135-FZ “On Protection of Competition” (hereinafter - the Law on Protection of Competition), the Federal Antimonopoly Service of the Russian Federation (FAS Russia), considered the application of the companies PHILIP MORRIS PRODUCTS SA (located: Switzerland, 2000 Neuchâtel, Quet Jeanrenot 3; main activity: production and sale of tobacco products, management and holding activities) and KT&G CORPORATION (located: Republic of Korea, 34337, Daejeon, Dedeok-gu, 71 Beotkkot-gil; main activity: production and sale of tobacco products and related activities) on obtaining the preliminary consent of the antimonopoly authority to conclude an agreement on joint activities in the territory of the Russian Federation, provided in accordance with Paragraph 8 of Part 1 of Article 27 of the Law on the Protection of Competition, and guided by Paragraph 2 of Part 1 of Article 23 and Paragraph 4 of Part 2 of Article 33 of the Law on Protection of Competition, as well as in accordance with the decision dated August 06, 2020 No AD/67489/20, the FAS Russia

PRESCRIBES

The companies PHILIP MORRIS PRODUCTS SA and KT&G CORPORATION, as well as to persons belonging to the same group of persons with each of these companies and conducting their business activities in the production and circulation of nicotine-containing products and devices intended for the consumption of nicotine in ways other than smoking tobacco, in the Russian Federation, take the following actions aimed at ensuring competition, namely:

1. PHILIP MORRIS PRODUCTS SA and KT&G CORPORATION not to create a joint venture without obtaining the prior consent of the antimonopoly authority to carry out this action.

2. PHILIP MORRIS PRODUCTS SA and KT&G CORPORATION not to renew the agreement on joint activities, which includes the conclusion of an agreement for the supply and provision of logistics services. Not to renew the distribution agreement after the expiration of their five-year term (according to the terms of the contracts) without obtaining the prior consent of the antimonopoly authority.

3. PHILIP MORRIS PRODUCTS SA to develop and agree on it with the FAS Russia a commercial policy, as well as other local acts regulating the selection of counterparties in terms of sale of innovative nicotine-containing products in the Russian Federation, establishing a list of transparent non-discriminatory criteria. PHILIP MORRIS PRODUCTS SA to inform the FAS Russia in a preliminary manner about significant changes to this policy.

4. PHILIP MORRIS PRODUCTS SA no later than April 1 of the year following the reporting year (the year of concluding the agreement on joint activities) to ensure that the FAS Russia receives information on the volumes of production / import and sales of innovative nicotine-containing products in the Russian Federation, broken down by persons entering into one group of persons with PHILIP MORRIS PRODUCTS SA and conducting economic activities in the territory of the Russian Federation.

5. During the initial period of the contracts (three years) (hereinafter referred to as the Initial Period), in the event of an increase or decrease by more than 30% during each year in the territory of the Russian Federation of wholesale prices for innovative nicotine-containing products included in the subject of the joint venture agreement, by persons included into one group of persons with PHILIP MORRIS PRODUCTS

SA and conducting economic activities in the territory of the Russian Federation, (except for cases of an increase in wholesale prices in an amount reflecting an increase in excise rates or direct or indirect taxes and fees) to provide the FAS Russia with an economic analysis reasons for such a change no later than 30 calendar days after the end of the corresponding year.

6. PHILIP MORRIS PRODUCTS SA, during the period of renewal of the agreements (two years after the end of the Initial Period), not to allow the increase or decrease by more than 30% during the year in the territory of the Russian Federation of wholesale prices for innovative nicotine-containing products included in the subject of the agreement on joint activities by persons included into one group of persons with PHILIP MORRIS PRODUCTS SA and conducting economic activities in the territory of the Russian Federation (except for cases of increase in wholesale prices in the amount reflecting an increase in excise rates or direct or indirect taxes and fees) without prior approval from the FAS Russia.

7. The Remedies are valid until the joint venture agreement between PHILIP MORRIS PRODUCTS SA and KT&G CORPORATION is in force.

Failure to comply with this order entails administrative liability in accordance with Part 2.3 of Article 19.5 of the Code of Administrative Offenses of the Russian Federation, and is the basis for invalidating transaction in accordance with Part 5 of Article 34 of the Law on Protection of Competition.