

Brief information on anticartel legislation in the Russian Federation

Fighting cartels is one of the priority lines of action for the Federal Antimonopoly Service. The scope of Federal Law No.135-FZ “On Protection of Competition” (hereinafter - Law “On Protection of Competition”) is defined by its subject and extended, most significantly, to relations, connected to protection of competition, including prevention and suppression of monopolistic activity (p.1 art.3 of the Law “On Protection of Competition”).

The provisions of the Law “On Protection of Competition” on a define scope of persons are extended to Russian and foreign legal entities, other organizations, Federal Executive Bodies etc.

The Law “On Protection of Competition” has its power:

- on the territory of the Russian Federation;
- on the anticompetitive agreements between economic entities, undertaken outside the territory of the Russian Federation, agreements between Russian and (or) foreign persons/organizations, and also prohibition on their actions, **in case such agreements or actions affect the competition on the territory of the Russian Federation.**

Paragraph 18 of Article 4 of the Law “On Protection of Competition” defines the agreement as written agreement, being a part of one or several documents, and also as oral agreement.

The abusing competition agreements between economic entities are prohibited in Article 11 of the Law “On Protection of Competition”. As a general rule, the cartels are prohibited *per se*, i.e. the cartels “as such”.

The Law “On Protection of Competition” includes five different types of cartels:

1. Fixing or maintaining prices (tariffs), bonus payments and/or surcharges;
2. Increasing, reducing or maintaining prices during auctions;
3. Dividing market by volume of sales;
4. Reducing or termination of production;
5. Refusing of contracting with certain sellers or buyers (customers).

A cartel is an administrative offence and defines responsibility in the form of a turnover-based fine. It is a criminal offence that defines responsibility in the form of a fine, compulsory labour, forfeiture of a right to occupy certain posts or engage in certain activities, imprisonment for up to seven years.

Prospective answers:

Country A – Assumingly the Russian Federation

1. What are the legal and jurisdictional requirements to bringing an enforcement action against Alpha and Beta? What factors would you consider in deciding whether to bring an enforcement action?

Answer:

If we analyse the given situation, then we have: in case Alpha and Beta are organized in accordance with the legislation of the Russian Federation, they must comply with the provisions of antimonopoly legislation and, in particular, with provisions of the Russian Federation's Law "On Protection of Competition".

Relying on legal provisions and in accordance with the condition, that their actions do not effect competition on the territory of the Russian Federation, since the product is exported to the state B, the present situation does not affect the Russian market consumers' interests and does not limit the competition.

Correspondingly, the Russian enforcer does not have a base for starting an enforcement process, since it is impossible to prove the violation of the legislation of the Russian Federation.

2. if you would bring an enforcement action under these facts, how would a sanction against Alpha and Beta be determined? What factors would you consider in determining an appropriate sanction?

Answer: Look at the previous answer

3. Would you consider whether other jurisdictions have imposed sanctions for this conduct either in bringing an enforcement action or in determining an appropriate sanction?

Answer: This example shows that the Russian enforcer has no basis for bringing an enforcement action against Alpha and Beta. Correspondingly, the sanctions, imposed by other jurisdictions on our organisations will not be taken into account.

Country B – Assumingly the Russian Federation

1. What are the legal and jurisdictional requirements to bringing an enforcement action against Alpha and Beta? What factors would you consider in deciding whether to bring an enforcement action?

Answer: In case of an agreement between Alpha and Beta, in accordance with which they sell a component X by higher price, the organization in the Russian Federation (the finished products integrator) is forced to purchase the component X at an inflated cost. In case of absence of the anticompetitive agreement the integrator could purchase the product on competitive conditions.

Considering the fact, that these actions affect the state of competition on the territory of the Russian Federation, the Antimonopoly body has the right to bring an enforcement action on the basis of the law “On Protection of Competition”.

2. Is your analysis any different if Alpha and Beta have attended price-fixing meetings in Country B?

Answer: The corporations’ agreement on setting and maintaining prices on the component X is a violation of the Law “On Protection of Competition” and is prohibited per se. In this case, the discussion of this agreement on the territory of the Russian Federation or on the territory of a foreign state does not affect the violation’s qualification, and its analysis and decision making on bringing an enforcement action will be same. However, in this case analysis will consider circumstances and facts, connected with the conclusion of the agreement on the territory A and with further discussion (and realization) on the territory of the state B.

3. If you would bring an enforcement action under these facts, how would a sanction against Alpha and Beta be determined? What factors would you consider in determining an appropriate sanction?

Answer: In accordance with the Paragraph 1 of the Article 2.6 of the Code on Administrative Offences of the Russian Federation (hereinafter Administrative code) the foreign citizens, stateless persons and foreign juridical entities, who committed an administrative offence on the territory of the Russian Federation, are subject to administrative liability on an equal footing. The sanctions on Alpha and Beta could have been imposed on an equal footing, i.e. in accordance with the article

14.32 Administrative code for concluding of an anticompetitive agreement, coordinated actions limiting the competition, coordination of economic activity.

In determination of the sanction on Alpha and Beta the following factors would be taken into account: revenue on the commodity market, mitigating and aggravating circumstances.

In accordance with Administrative code, the mitigating circumstances are the following:

1) Voluntary termination of wrongful conduct by the person, conducted an administrative offence;

2) Voluntary report on administrative offence by the person conducted an administrative offence to the legal body, empowered to proceed in case of an administrative offence;

3) Assistance of the person conducted an administrative offence to the legal body, empowered to proceed on an administrative offence, in establishing the circumstances, that are to be established within the case on administrative offence;

4) Prevention of harmful consequences of an administrative offence by the person conducted an administrative offence;

5) Voluntary compensation or elimination of the inflicted harm by the person conducted an administrative offence;

6) Wilful fulfilment by the person conducted an administrative offence of the offence elimination order of the legal body, setting the state control,;

7) A person, who conducted an administrative offence, is not an organizer of the competition restricting agreement or coordinated actions and (or) had received binding directions to take part in them;

8) A person, who conducted an administrative offence, did not start to implement the competition restricting agreement.

In accordance with Administrative code, the aggravating circumstances are the following:

1) Continuation of the wrongful conduct, regardless of an order of the authorized body to terminate it;

2) Repeated commitment of the similar administrative offence, i.e. committing an administrative offence within the period the person is considered to be subject to administrative sanction;

3) Commitment of a long-term administrative offence, the continuation of which is more than 1 year;

4) Causing harm to the citizens, organizations and state at the rate of more than 1 million RUB or making a revenue at the rate of more than 5 million RUB as a result of an administrative offence conduct;

5) Conduct of an administrative offence if on this person had already been imposed sanctions for such offence, and sanctions are still in force;

6) A competition restricting agreement or coordinated actions, organized by a person conducted an administrative offence;

7) A person conducted an administrative offence forced other persons to conduct an administrative offence or to take part in organization of a competition restricting agreement or coordinated actions.

Foreigners may also face criminal liability under certain circumstances. In accordance with Paragraph 3 of the Article 12 of the Criminal Code of the Russian Federation, the foreigners conducted an offence outside Russia are a subject to criminal liability, if their offence is addressed against the interests of the Russian Federation. Thus, FAS Russia depending on the results of the case proceeding can bring the case materials to the law enforcement bodies on establishing liability for the foreign corporation officials in accordance with the article 178 of the Criminal Code of the Russian Federation.

4. Would you consider whether other jurisdictions have imposed sanctions for this conduct either in bringing an enforcement action or in determining an appropriate sanction?

Answer: No. The practices of other jurisdictions in bringing an enforcement action for concrete offences are not considered in bringing an enforcement action or in determining an appropriate sanction in the Russian Federation.

Country C – Assumingly the Russian Federation

1. What are the legal and jurisdictional requirements to bringing an enforcement action against Alpha and Beta? What factors would you consider in deciding whether to bring an enforcement action against Alpha and Beta?

Answer: In accordance with the conditions of this objective, Alpha and Beta established a cartel to maintain and set prices on the electronic market (final products) in the Russian Federation. Moreover, the corporation discussed the prices' increase on the Russian market and also, they tracked the sales of final products. This agreement or these actions affect the state of competition on the territory of the Russian Federation.

Thus, the provisions of the antitrust legislation and, in particular, of the Law “On Protection of Competition” would be considered as the legal basis for starting the proceedings.

For the beginning of the enforcement process it is necessary to establish/confirm the signs of the violation of the antimonopoly legislation. There are several methods of confirmation: conducting of dawn raids, requesting information, cooperation with law enforcement bodies etc.

2. Is your analysis any different if Alpha and Beta have attended price-fixing meeting in country C?

Answer: The meetings on the territory of the Russian Federation would not change the essence of an offence. There is a concluded agreement on setting and maintaining prices between the corporations. Independently on place of the price-fixing meeting the enforcement action could be brought, because this agreement affects the state of competition on the territory of the Russian Federation.

3. Is your analysis different if Alpha and Beta have had contracts with finished product purchasers in Country C, including negotiations regarding Component X pricing?

Answer: In case the organizations-purchasers of the final products in Russia purchase aiming to resell the products to the final consumers, then here we can talk about a vertical agreement. The vertical agreement – is an agreement between economic entities, one of them purchasing the product and the other one providing (selling) it (p.19 art.4 of the Law “On Protection of Competition”). In such case, the negotiations between corporations and Russian organizations can lead to setting of the reselling price.

Therefore, the enforcement process can be started against foreign and Russian companies in accordance with the Law “On Protection of Competition”.

4. Is your analysis any different if, contrary to the facts outlined above, the finished products are sold around the world and Alpha and Beta are unaware or indifferent to whether the finished products are sold in Country C?

Answer: In case, taking into account other conditions, the final products were sold around the world, it would not cancel the fact that there is an anticompetitive agreement between Alpha and Beta on increasing of prices on component X. The necessary mark of the agreement is that it limits or can limit competition. In accordance with Russian legislation, the cartels are prohibited per se, i.e. there is an incontrovertible presumption on competition restricting established by such agreement. Regardless of the fact, that the cartel was established without aiming to cause harm to the Russian economy, however, the Russian consumer has to overpay

for the product that, otherwise, could be purchased cheaper. In other words, the given situation should not affect the analysis in general.

5. Is your analysis any different if the integrators are wholly-owned subsidiaries of the finished product purchasers in Country C?

Answer: In case the integrators were the 100% subsidiaries of the finished products purchasers in Country C, it could affect the analysis, conducted by the antimonopoly authority and would require the examination of additional circumstances on persons, geographical and production boundaries of the market etc. However, taking into account that actions and agreement between Alpha and Beta directly or indirectly limit or can limit the competition on the territory of the Russian Federation, these circumstances can be taken as basis for bringing an enforcement action.

6. If you would bring an enforcement action under these facts, how would a sanction against Alpha and Beta be determined? What factors would you consider in determining an appropriate sanction?

Answer: In accordance with the Paragraph 1 of the Article 2.6 of the Code on Administrative Offences (hereinafter Administrative code) the foreign citizens, stateless persons and foreign legal entities, which committed an administrative offence, are subject to administrative liability on an equal footing. The sanctions on Alpha and Beta could have been imposed on an equal footing, i.e. in accordance with the article 14.32 Administrative code for concluding of a competition restricting agreement, of coordinated actions limiting the competition, coordination of economic activity.

In determining appropriate sanctions for Alpha and Beta, the following factors would be taken into account: revenue on the commodity market, mitigating circumstances (active assistance in revealing and/or investigation of the cartel by the persons conducted offences etc.) and aggravating circumstances (duration, recurrent administrative offence, group administrative offence, obstruction of investigation etc.).

Foreigners may also face criminal liability under certain circumstances. In accordance with paragraph 3 of the article 12 of the Criminal Code of the Russian Federation, the foreigners conducted an offence outside Russia are a subject to criminal liability, if their offence is addressed against the interests of the Russian Federation. Thus, FAS Russia by the results of the case proceeding can bring the case materials to the law enforcement bodies on establishing liability for the foreign corporation officials in accordance with the article 178 of the Criminal Code of the Russian Federation.

7. Would you consider whether other jurisdictions have imposed sanctions for this conduct either in bringing an enforcement action or in determining an appropriate sanction?

Answer: No. The practices of other jurisdictions in bringing an enforcement action for concrete offences are not considered in bringing an enforcement action or in determining an appropriate sanction in the Russian Federation.