

The Russian Federation
Roundtable on “Suspensory Effects of Merger Notifications and Gun Jumping”
OECD Competition Committee
November 27, 2018

In accordance with the Russian antimonopoly legislation, economic concentration transactions, subject to exceeding certain threshold values, can be carried out after obtaining the relevant approval of the antimonopoly authority.

In the most general form, the execution of a transaction without obtaining the prior consent of the antimonopoly authority is recognized as a violation of the antimonopoly legislation.

Article 34 of the Federal Law dated July 26, 2006 No. 135-FZ “On Protection of Competition” (hereinafter referred to as the Law on Protection of Competition) establishes the consequences of violation of the rules on approval of transactions of economic concentration.

The consequences of this violation can be:

- compulsory liquidation, compulsory reorganization in the form of division or separation;
- recognition of transactions as invalid.

These sanctions are implemented exclusively in court on the suit of the antimonopoly body, sent to the arbitration court.

In the event of filing a lawsuit [for forced liquidation (reorganization) or recognition of an economic concentration transaction as invalid], the antimonopoly authority should prove that the disputed transaction led or could lead to restriction of competition, including as a result of the emergence or strengthening of a dominant position.

Accordingly, transactions carried out in violation of the requirements for their approval by the antimonopoly authority are challengeable before the courts. That is, the transaction may be invalidated on the grounds established by law, by virtue of recognizing it as such by the court (a disputable transaction) (Part 1 of Article 166 of the Civil Code of the Russian Federation).

In addition to the consequences established by Article 34 of the Law on the Protection of Competition, an administrative penalty is imposed for violation of the procedure for approving transactions of economic concentration.

Administrative offenses related to the early closure of transactions include:

- failure to submit applications for prior approval;

- submission of applications containing obviously false information;
- violation of the procedure and deadlines for merger application.

Such actions entail the imposition of an administrative fine on citizens in the amount of 1,500 to 2,500 rubles; on officials - from 15 to 20 thousand rubles; for legal entities - from 300 to 500 thousand rubles¹.

The above elements of administrative offenses are formal. Thus, for the application of administrative liability measures, the occurrence of any consequences does not matter (including whether the offense resulted in restriction of competition or not).

The most common are cases of making transactions without obtaining the prior approval of the antimonopoly authority and closing the transactions until the decision of the antimonopoly authority is received.

To obtain information on such transactions, the FAS Russia uses the following sources:

- information and materials submitted directly by the applicants on the transaction to the antimonopoly authority, along with the application;
- media;
- information from public authorities and self-governing authorities;
- a unified state register of legal entities that provides information online for an indefinite number of persons;
- official pages on the Internet of companies involved in transactions;
- official pages on the Internet exchanges, on which shares of persons participating in the transaction are represented;
- other sources.

In addition, at present, the FAS Russia monitors global transactions. The source uses foreign media reports (Bloomberg, Harvard Business Review, The Wall Street Journal, etc.) regarding the alleged transactions of transnational corporations. It is planned to make this monitoring perform automatically.

It should be noted that the current sanction for committing an administrative offense related to the early closing of the transaction is relatively definite. And unlike the sanctions provided for, for example, by the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of undertakings and imposing a fine of up to 10% of the total turnover of the violating company (article 14 (2) (b)), the sanction does not provide for a “turnover” fine.

¹ Part 3 of Article 19.8 of the Code of Administrative Offenses of the Russian Federation

Currently, the effectiveness of existing sanctions is a subject for discussion, including within the framework of drafting amendments to the antimonopoly legislation (the so-called "fifth antimonopoly package").

It should also be noted that in the practice of the FAS Russia there is no prioritization or selection of cases for the early closure of transactions. If facts of early closure of transactions are detected, the companies violating the law are brought to administrative responsibility (a formal violation) and if the transaction may lead to restriction of competition, the mechanism for recognizing the completed transaction as invalid is triggered.

Examples of investigations of early closing of transactions

Case No. 1. HISENSE (People's Republic of China) deal on the acquisition of European manufacturers of household appliances (GORENJE and ASKO trademarks)²

When, in July 2018, the FAS Russia received an application from HISENSE for obtaining the approval of the antimonopoly authority to enter into this transaction, it was established that, according to monitoring of global transactions, this transaction was completed before the application was filed. As evidence of the fact of the transaction, acts of inspection of official websites on the Internet of the Agency of the Republic of Slovenia on the Securities Market, Ljubljana and Warsaw Stock Exchanges were used.

According to the results of the consideration of the case on an administrative offense, HISENSE was brought to administrative responsibility, a fine was imposed.

The antimonopoly authority did not dispute this transaction, since it could not lead to restriction of competition.

Case No. 2. The acquisition of Pravourmiiskoe LLC by Rusolovo PJSC³

In January 2018, the FAS Russia received a notification on the acquisition Pravourmiyskoye LLC by Rusolovo PJSC.

The notification did not comply with the requirements of Article 31 of the Law on Protection of Competition (notification procedure for intragroup transactions).

² The FAS Decision of 10.16.2018 on the application of the company "Hisense Luxembourg Holding Sàrl" (Russian version only): <https://fas.gov.ru/documents/ats-83368-18>

³ The FAS decision of 07.02.2018 on the application of the public joint stock company Rusolovo to acquire a share in the amount of 33.33% of the share capital of Pravourimiiskoe LLC (Russian version only): <https://fas.gov.ru/documents/ats-8293-18>

According to the results of the consideration of the case of an administrative offense, the company Rusolovo PJSC was brought to administrative responsibility, a fine was imposed.

Since the transaction specified in the notification, in the opinion of the FAS Russia, could lead to restriction of competition, including as a result of the emergence or strengthening of a dominant position, the FAS Russia decided to apply to the court with a claim for recognition of the transaction invalid.