

1. General provisions

Chapter 7 of the Russian federal law of 26.07.2006 No. 135-FZ "On Protection of Competition" (hereinafter referred as the Law on Protection of Competition) is devoted to issues of state control over economic concentration.

According to this chapter, specific stock (share) transactions, commercial and financial organizations' property transactions, creation and reorganization of economic entities that are carried out both upon a pre-merger or post-merger notification to the antimonopoly authority are subject to state control.

The following transactions are subject to state control¹:

- 1) acquisition by a person (a group of persons) of more than 25, 50, 75% of voting shares of a Russian joint-stock company;
- 2) acquisition by a person (a group of persons) of more than 1/3, 50%, 2/3 shares of a Russian limited liability company;
- 3) acquisition of more than 20% of the fixed production assets and intangible assets of a management company;
- 4) acquisition of other rights of control in relation to the Russian economic entity (for example, establishment of indirect control, receiving functions of the management company);
- 5) acquisition of more than 50% of stocks (shares) of a foreign legal entity that carries out deliveries of goods to the Russian market.

Thus, the transactions listed above will require a pre-merger or post-merger notification to the antimonopoly authority only if a planned transaction corresponds to one of the established criteria of "fineness" transactions, namely:

- a) the total sum of assets of the group of the purchaser and the group of the acquired society exceeds seven billion rubles (233,3 mln. US\$) (thus the cost of a group of the acquired society should exceed two hundred fifty million rubles (8,3 mln. US\$));
- 6) the total proceeds of the specified persons from realization of goods exceed ten billion rubles (333,3 mln. US\$) (thus the cost of the acquired group should also exceed two hundred fifty million rubles (8,3 mln. US\$));
- c) one of the persons stated above is included in the register of the economic entities having a share in the market of certain goods in a size of more than 35% (further - the register).

If the cost of assets of participants of transactions doesn't exceed the specified sizes, transactions can be made without pre-notification but a post-merger notification to antimonopoly authority is required.

Besides, in some cases when conditions of "fineness" of actions made is ensured (for

¹ Article 28 of the Law on Protection of Competition.

example, seven billion rubles for the cost of assets (233,3 mln. US\$)) reorganization of the commercial organizations (merge, accession, and also creation) is subject to the state control².

2. Acquisition of shares

Acquisition by a person (a group of persons) of more than 25, 50, 75 percent of voting shares of a Russian joint stock company (more than 1/3, 50 percent, 2/3 shares respectively– for a limited liability company) is performed both upon a pre-merger notification or a post-merger notification (in the presence of terms established).

The acquisition of shares (stocks) of economic entities means acquisition of the right of ownership as well as the right to manage shares (stocks) of Russian economic entities on other grounds, such as on the basis of a property trust management contract, contract of agency etc.).

For example, a pre-merger notification is required for concluding a share pledge agreement, if as a result of its conclusion the pledgee receives the right to manage voting shares of this entity (by means of exercising of the voting right at the general shareholder meeting).

It is worth noting that if the person does not acquire the right to manage shares at its own discretion (to manage differently than strictly according to instructions of shareholders), such entity is not an acquirer of shares within the meaning of the antimonopoly legislation and its transactions do not require a pre-merger notification.

3. Acquisition of a minority shares

As it was said above, acquisition of more than 25 % shares (stocks) of an entity is subject to a pre-merger notification to the antimonopoly authority. Acquisition by an entity of 25 and less percent of shares does not require a pre-merger notification.

Thus, it is necessary to keep in mind that the Law on Protection of Competition extends on cases of acquisition of shares by a group of persons which is considered in the antimonopoly law as the single economic entity³.

In connection with this, acquisition of the minority shares may require a pre-merger notification to the antimonopoly authority if other members of a group have participation shares in the target company and such a group receives the right to manage the respective quantity of voting shares of the company acquired (more than 25, 50, 75 % of shares).

4. Acquisition of assets

Receiving by an economic entity (a group of entities) of the rights of ownership, use or possession of more than 20 percent of fixed production assets or intangible assets of

² Article 27 of the Law on Protection of Competition.

³ A group of persons is the aggregate of individuals and (or) legal entities that are united by a specific relations of dependency. Features of reckoning persons among one group of persons is specified by Art. 9 of the law on protection of Competition. For example, a group of person is an economic entity and an individual or legal entity if such a person has respectively the right to manage more than 50% of shares(stocks) of such an economic entity or carries out functions of an executive body of such an economic entity.

another economic entity is performed both with a pre-merger notification or with a post-merger notification to the antimonopoly authority (in the presence of terms established).

Acquisition of fixed production assets and exclusive rights to the results of intellectual property, provided the volume of transferred property is over 20 percent of the balance value of fixed production assets and non-material assets of a transferring person, requires a prior consent.

Thus, only acquisition of assets located within the territory of the Russian Federation is subject to a pre-merger notification. The exception is specified for acquisition of fixed assets in the form of the land plots, objects of incomplete construction and non-industrial purpose.

5. Joint ventures

The Law on Protection of Competition does not have a special norms regulating creation of joint ventures.

At the same time, creation of a new commercial organization or acquisition of a specific participation share in the existing enterprises requires a pre-merger notification to the antimonopoly authority (in the presence of terms established).

When establishing a commercial organization (Art. 27 of the Law on Protection of Competition) a pre-merger notification is required if the cost of assets of participants exceeds 7 billion rubles (233,3 mln. US\$) (or their total proceeds from realization of goods exceed ten billion rubles (333,3 mln. US\$), authorized capital stock of a created organization is paid with shares (stocks), property of another commercial organization and in relation to such a property a created organization acquire the rights specified by Art. 28 of the Law on Protection of Competition (acquisition of more than 25, 50, 75 % of shares; acquisition of more than 20 % of the fixed production assets and intangible assets. In case an authorized capital of the created organization is paid by cash assets, a pre-merger notification is not required.

In relation to transactions on acquisition of participation shares in the existing enterprises, common provisions on acquisitions of shares (stocks) of commercial organizations is applied.

As it was mentioned above (see items 1, 2), acquisition of more than 25, 50, 75 % of voting shares of the Russian joint-stock company is subject to a premerger notification to the antimonopoly authority or more than 1/3, 50 %, 2/3 shares in the authorized capital of the public limited company (in case there are specified conditions on cost of assets, inclusion in register of participants of transactions).

6. Exemptions

The Law on Protection of Competition specifies a number of exemptions of approval by the antimonopoly authority of transactions that are subject to state control.

The following transactions are excluded from the list of pre-merger notification:

- 1) persons entering into one group of persons on the basis of possession of more than 50 actions (shares) in dependent entities;
- 2) in order provided by the Law on protection of competition for carrying out of "intra

group" transactions (Article 31);

3) on the basis of acts of the President of the Russian Federation or acts of the Government of the Russian Federation.

The first basis specifies an exception for cases of carrying out of "intra group" transactions between parent and subsidiaries companies or companies which are under control of one person.

So, disposal, transfer of shares of societies within one group of persons won't require a pre-merger notification if such transactions are made between holding and subsidiaries companies, and also between persons of more than 50 % shares of which the supervising person (the participant of group) has the right to dispose directly or indirectly. A notification on carrying out of such transactions has to be submitted to the antimonopoly authority.

The second basis for "release" of transactions from a pre-merger notification is their carrying out according to the order for "intra group" transactions provided by the Law on Protection of Competition.

In case no less than one month prior to execution of transactions the list of the persons entering into one group has been presented to the antimonopoly authority, and as of the moment of transactions such a list has not been changed, execution of these transactions by participants of a group can be made without a pre-merger notification but a post-merger notification to the competition authority is required.

Besides, as it was mentioned, a pre-merger notification isn't required if transactions are made on the basis of acts of the President of the Russian Federation or acts of the Government of the Russian Federation.

7. Changes to a merger regime

Amendments introduced into the Federal Law «On Protection of Competition» by the so-called «Third Antimonopoly Package» came into force in January 2012.

These amendments involve, inter alia, the sphere of control over economic concentration.

In accordance with the amendments introduced, the requirement specifies a pre-merger notification of the antimonopoly authority if an acquisition makes more than 50% of stocks (shares) of the foreign legal entities carrying out deliveries of goods to the Russian market in volumes that can influence on competition, namely the foreign organizations which carries out deliveries of goods to the territory of the Russian Federation in the sum of more than one billion rubles (within a year preceding the date of the planned transaction).

Moreover, the law bill on exception of the necessity to submit to the antimonopoly authority post-notifications on transactions (actions) of economic concentration (acquisition of shares, property, merger, joining of the commercial organizations) is being considered in the State Duma of the Russian Federation (the lower chamber of the Russian Parliament).

The bill has been developed for the purposes of improvement of the antimonopoly regulation and reduction of administrative burdens on participants of business activity.

Adoption of the aforementioned law will considerably reduce the administrative burdens on medium-sized business and allow the competition authority focusing on major

transactions (actions) that can significantly affect competition which will encourage rising of antimonopoly effectiveness in Russia.