

RUSSIAN FEDERATION

FEDERAL LAW

On Amendments to the Federal Law "On Protection of Competition"

Adopted by the State Duma on June 27, 2023

Approved by the Federation Council on July 5, 2023

Article 1

To amend the Federal law of July 26, 2006 No. 135-FZ "On Protection of Competition" (Collected Legislation of the Russian Federation, 2006, No. 31, Art. 3434; 2008, No. 18, Art. 1941; No. 45, Art. 5141; 2009, No. 29, Art. 3601; No. 52, Art. 6450; 2011, No. 27, Art. 3880; No. 29, Art. 4291; No. 48, Art. 6728; No. 50, Art. 7343; 2013, No. 30, Art. 4084; No. 51, Art. 6695; No. 52, Art. 6988; 2014, No. 23, Art. 2928; 2015, No. 29, Art. 4376; No. 41, Art. 5629; 2016, No. 27, Art. 4197; 2018, No. 53, Art. 8440; 2019, No. 29, Art. 3854; No. 52, Art. 7803; 2020, No. 9, Art. 1125; 2021, No. 27, Art. 5103, 5171, 5180; 2022, No. 8, Art. 1034, 1035; 2023, No. 1, Art. 67) with the following:

1) Article 4 extend by the item 4¹:

"4¹) network effect - a property of a commodity market (commodity markets), in which the consumer value of a program (set of programs) for electronic computers in information and telecommunication networks, including the Internet, which ensures transactions between sellers and buyers of certain goods (hereinafter referred to as the digital platform), changes depending on the change in the number of such sellers and buyers;"

2) Article 5 extend by the item 8¹:

"8¹ When analyzing the state of competition in the commodity market (commodity markets), in which transactions between sellers and buyers are carried out through the use of a digital platform, the antimonopoly authority establishes the presence of network effects and assesses the possibility of an economic entity owning a digital platform and ensuring, through its use, transactions between other persons, acting as sellers and buyers of certain goods, exert a decisive influence on the general conditions for the circulation of goods on the relevant commodity market, and (or) eliminate other economic entities from the commodity market, and (or) impede access to the commodity market for other economic entities, including due to the number of transactions made through such a digital platform.";

3) Chapter 1 extend by the Article 9²:

"9²: Article 9.2. **Expertise**

1. When considering an application for giving consent to making a transaction, other action subject to state control, a case of violation of antimonopoly legislation, as well as for the purpose of exercising control by the antimonopoly authority over the execution of remedies issued in accordance with Item 4 of Part 2 of Article 33 of this Federal Law, the antimonopoly authority or the commission for considering a case on violation of the antimonopoly law at the request of the applicants for giving consent to the transaction, other actions subject to state control, the persons participating in the case on violation of the antimonopoly law, or on their own initiative, have the right to appoint an examination and involve experts to carry it out.

2. The expert opinion is taken into account by the antimonopoly body when making a decision based on the results of consideration of an application for giving consent to a transaction, other actions subject to state control, a decision on a case on violation of the antimonopoly law, as well as when deciding on the proper execution of a remedy issued in accordance with Item 4 of Part 2 of Article 33 of this Federal Law.

3. An expert engaged by the antimonopoly body or by the commission to consider a case on violation of the antimonopoly law is a person who meets the qualification requirements, which are determined by the federal antimonopoly body and must ensure the involvement as an expert of a person who has special knowledge on issues related to the application for consent under consideration to making a transaction, other action subject to state control, or a case of violation of the antimonopoly law. Information on the appointment of an expert examination, the involvement of experts to conduct it, and the period for conducting the expert examination are indicated when considering the said application in the decision

of the antimonopoly authority, and when considering a case on violation of the antimonopoly law, in the determination of the commission considering the case on violation of the antimonopoly law. At the request of the expert, the term for the examination may be extended.

4. An expert must be independent in relation to the chairman and members of the commission for considering a case on violation of the antimonopoly law, the persons participating in the case on violation of the antimonopoly law, and when considering an application for giving consent to a transaction, other action subject to state control, in relation to the employees of the antimonopoly body considering the relevant application, the parties to this transaction and the person who is the object of economic concentration, and also should not be closely related to the said persons.

5. An expert, with the written permission of the antimonopoly body, has the right to get acquainted with the materials related to the consideration of an application for giving consent to a transaction, other actions subject to state control, and when considering a case on violation of the antimonopoly law, with the written permission of the commission for considering a case on violation of the antimonopoly law has the right to get acquainted with the materials of the case on violation of the antimonopoly law, including those constituting a commercial secret, provided that the antimonopoly authority or the commission considering the case on violation of the antimonopoly law is provided with a written obligation not to disclose information constituting a secret protected by law. Such materials are handed over to the expert on the basis of an acceptance certificate signed by an employee of the antimonopoly authority and the expert.

6. Candidates for experts and issues on which an expert opinion is required are determined by the antimonopoly body or the commission for considering a case on violation of the antimonopoly law. When appointing an expert examination, applicants for consent to a transaction, other action subject to state control, persons participating in a case on violation of the antimonopoly law, have the right to propose to the antimonopoly body or commission considering the case on violation of the antimonopoly law candidacies of experts and representatives of expert organizations, and as well as matters requiring expert opinion.

7. Applicants for giving consent to a transaction, other action subject to state control, persons participating in a case on violation of antimonopoly legislation, have the right to challenge an expert if there are circumstances that may cast doubt on his impartiality. The decision to challenge an expert is made by the antimonopoly body or the commission for considering a case on violation of the antimonopoly law, which involved the expert in respect of whom the challenge was filed to participate in the case on violation of the antimonopoly law. An application for re-rejection of an expert shall be left without consideration if a recusal was previously declared

in respect of this expert on the same grounds, and a decision on which was made.

8. In the event that the questions raised, on which an expert's opinion is required, go beyond the expert's special knowledge, or the materials and documents provided to him are unsuitable or insufficient for conducting an examination and giving an opinion, the expert is obliged to send to the antimonopoly body or commission for considering a case on violation of the antimonopoly law, who appointed the examination, a reasoned written statement about the impossibility of giving an opinion.

9. For giving a knowingly false conclusion, the expert bears responsibility, provided for by the legislation of the Russian Federation.

10. An expert carries out an examination on a reimbursable or non-reimbursable basis. The costs of paying for the services of an expert are covered from the federal budget in accordance with the procedure established by the legislation of the Russian Federation, or from the funds of applicants for consent to a transaction, other action subject to state control, persons participating in a case of violation of antimonopoly legislation. The costs of paying for the services of an expert cannot be charged to the applicants for giving consent to a transaction, other action subject to state control, persons participating in a case on violation of the antimonopoly law, without their written consent.";

4) Extend by the Article 10¹:

"Article 10¹. Prohibition on monopolistic activity by an economic entity owning a digital platform

1. Actions (inaction) provided for by Part 1 of Article 10 of this Federal Law, committed by an economic entity owning a digital platform and ensuring through its use transactions between other persons acting as sellers and buyers of certain goods, are prohibited, if the following conditions are present in the aggregate:

1) the network effect gives such an economic entity the opportunity to exert a decisive influence on the general conditions for the circulation of goods on the commodity market, in which transactions between sellers and buyers are carried out through a digital platform, and (or) to eliminate other economic entities from this commodity market, and (or) hinder access to this product market for other economic entities;

2) the share of transactions made between sellers and buyers through a digital platform exceeds, in value terms, thirty-five percent of the total volume of transactions made on the relevant commodity market;

3) the revenue of such an economic entity for the last calendar year exceeds two billion rubles.

2. An economic entity has the right to provide evidence that its actions (inaction) specified in Part 1 of Article 10 of this Federal Law (with the exception of the actions specified in Items 1, 2, 3, 5, 6, 7 and 10 of Part 1 of Article 10 of this Federal Law) may be recognized as admissible in accordance with the requirements of Part 1 of Article 13 of this Federal Law.";

5) Part 7 of the Article 11 extend by the words: ", as well as agreements provided for by the Item 2 of the Part 1 of this Article";

6) Paragraph 1 of the Part 1 of the Article 13 after the word "Law)," extend by the words "coordination of economic activities of economic entities, provided for by the Part 5 of the Article 11 of this Federal Law,";

7) Item 2 of the Part 1 of the Article 23 extend by the subitem "o":

"o) to appoint an expert for the purpose of exercising control by the antimonopoly authority over the execution of a remedy issued in accordance with Item 4 of Part 2 of Article 33 of this Federal Law;"

8) In the Part 2 of the Article 25³ replace the word "knowing" with the word "knowledge";

9) Paragraph 1 of the Part 1 of the Article 28 after the words "eight hundred million rubles," extend by the words "or if the transaction price exceeds seven billion rubles,";

10) In the Article 32:

a) The first sentence of the Part 9 extend by the words "indicating information about the participants and the subject of the transaction, other action stated in the application (with the exception of personal data of individuals)";

b) Extend by the Part 11:

11. In the course of consideration of an application for giving consent to a transaction, other action subject to state control, the antimonopoly body shall have the right to request from state authorities the documents and information necessary for consideration of the application, while simultaneously providing such state authorities with the information necessary for these purposes and information contained in the application, in compliance with the requirements of the legislation of the Russian Federation on state secrets, bank secrets, commercial secrets or other secrets protected by law.";

11) in the Article 33:

a) in the item 3 of the Part 2 words "months. Such" replace by the words "months.

If a transaction or other action is carried out on the commodity market of the Russian Federation and (or) has an impact on it, as well as has an impact on the commodity markets of foreign countries (cross-border markets), with the consent of the Government of the Russian Federation, the antimonopoly body has the right to decide to extend the term specified in this Item, for a period determined by the Government of the Russian Federation, but not more than three years. Such";

b) Part 3 shall be amended as follows:

"3. The period specified in paragraph 1 of this article may be extended by a decision provided for in Item 2 of Part 2 of this Article by no more than two months. If a transaction or other action is carried out on a cross-border market (cross-border markets) and (or) has an impact on it, with the consent of the Government of the Russian Federation, the antimonopoly body has the right to decide to extend the period specified in Part 1 of this Article for a period determined by the Government of the Russian Federation, but not more than for three years. If these decisions are made, the antimonopoly body on its official website in the information and telecommunications network "Internet" places information about the transaction, about another action stated in the application for consent to the transaction, other action subject to state control, indicating information about the participants and about the subject of the transaction, other action, stated in the application (with the exception of personal data of individuals). Interested parties have the right to submit to the antimonopoly body information on the impact on the state of competition of such a transaction or other action.";

c) extend by the Parts 3¹ and 3²:

"3¹. In the period before the antimonopoly body makes a decision on the results of consideration of an application for giving consent to a transaction, other action subject to state control, the persons who submitted the application have the right to submit written obligations to the antimonopoly body on the implementation of actions aimed at ensuring competition, which are taken into account by the antimonopoly body when making a decision based on the results of consideration of the application.

3². When an expert examination is appointed and an expert is involved in the consideration of an application for giving consent to a transaction, other actions subject to state control, the term for consideration of the application is suspended for the period of the examination.";

d) Part 6 after the words "render a decision" extend by the words "provided for in Item 1 of Part 2 of this Article, after the words "Federal Law," extend by the words "or a decision to satisfy an application for giving consent to the execution of a transaction, other action subject to state control, and on the simultaneous issuance of an order provided for in the Item 4 of the Part 2 of this Article,";

e) extend by the Parts 6¹-6⁵:

6¹. If, based on the results of consideration of an application for giving consent to a transaction or other action subject to state control, the antimonopoly authority comes to a preliminary conclusion that the transaction, other action stated in the application will lead or may lead to restriction of competition, before making a decision based on the results of consideration of the application, the antimonopoly body sends to the applicant, as well as other persons participating in the transaction or other action stated in the application, a conclusion on the circumstances of the application for giving consent to the transaction, other action subject to state control (hereinafter - the conclusion on the circumstances of the application).

6². The conclusion on the circumstances of the application is drawn up in writing, signed by an authorized official of the antimonopoly body and must contain:

1) factual and other circumstances established by the antimonopoly body based on the results of consideration of an application for giving consent to a transaction, other actions subject to state control, including those established in the course of an analysis of the state of competition conducted by the antimonopoly body, and information received at the request of the antimonopoly body, as well as a description of the evidence confirming the preliminary conclusions of the antimonopoly body that the transaction, other action stated in the application will lead or may lead to restriction of competition;

2) the proposed conditions that may be established by the antimonopoly body in relation to the applicant, as well as other persons participating in the transaction or other action declared in the application, in order to ensure competition.

6³. The antimonopoly body considers an application for giving consent to a transaction, other action subject to state control, without summoning the persons participating in the transaction, other action declared in the application (examination of the application in absentia). If a conclusion is made on the circumstances of the application at the request of the persons participating in the transaction or other action declared in the application, including when such persons submit written proposals on the content of their obligations to take actions aimed at ensuring competition, or on their own initiative, the antimonopoly authority shall appoint face-to-face consideration of the application, on which a ruling is adopted, which is sent to the applicant, as well as to other persons participating in the transaction or other action declared in the application. At the same time, the date of the face-to-face consideration of the application specified in the ruling cannot be set earlier than five working days from the date of sending the conclusion on the circumstances of the application to the indicated persons.

6⁴. Persons participating in a transaction, other action declared in an application for giving consent to a transaction, or another action subject to state control, are entitled to provide explanations, evidence and arguments in writing

to the antimonopoly authority in relation to the circumstances set out in the conclusion on the circumstances of the application until the completion of the consideration of the application and the adoption of a decision by the antimonopoly body.

6⁵. The procedure for conducting a face-to-face consideration of an application for giving consent to a transaction, other actions subject to state control, is established by the federal antimonopoly body.";

12) in the Article 42¹:

a) Parts 2 and 3 shall be recognized invalid;

b) Part 4 shall be amended as follows:

"4. Information on the procedure for paying for the services of an interpreter and the source of financing for such payment are indicated in the ruling on the case of violation of the antimonopoly law, according to which the interpreter is involved in the consideration of the case.";

c) Parts 5 – 7 and 9 shall be recognized invalid.

Article 2

The given Federal Law enters into force on September 1, 2023.

President of the Russian Federation

V. Putin

Moscow, Kremlin

July 10, 2023

No. 301-FZ