

The State Duma has prepared amendments to the law on protecting competition

FAO: CEOs and employees of companies' legal departments

Law firm Pepeliaev Group advises that, on 1 October 2024, the State Duma (the lower chamber of Russia's Parliament) adopted in its third reading a Draft Law¹ to specify the definition of a 'business entity' and to adjust the procedure for determining a monopolistically high (low) price.

Amendments are being made to Federal Law No. 135-FZ "On protecting competition" dated 26 July 2006 (the 'Law on protecting competition' or the 'Law').

The Draft Law was submitted to parliament in July 2023 and then in its new version in January 2024. As stated in the Explanatory Note, the Draft Law has been designed to improve antitrust legislation and to ensure that prices on the domestic market are independent from stock exchange and/or off-market price figures on global commodity markets.

It is expected that the new provisions will come into effect starting from **1 March 2025**. Let us consider them in more detail.

1. Changing the procedure for determining a monopolistically high (low) price

It is worth a reminder that article 6(1) of the Law on protecting competition sets out a definition of a 'monopolistically high price'. However, in its current version the article provides that to determine whether a price is monopolistically high one can, among other things, compare it with a price that has been established on a similar commodity market outside Russia. Similar provisions have also been stipulated for the procedure of determining a monopolistically low price (article 7(1) of the Law on protecting competition).

Meanwhile, under article 6(8) of the Law, in determining a monopolistically high price, it is mandatory to take into account stock exchange and/or off-market price figures which have been established for a similar product on the global commodity markets.

It is not uncommon in practice for prices on a domestic market to be based exclusively on foreign figures and make no allowance for the economic situation on a national internal market. In such circumstances, product prices, as one might expect, are unreasonably overstated in the absence of any factors other than an

¹ <https://sozd.duma.gov.ru/bill/409891-8>

increase in global prices, which, in turn, leads to a purchasing power being reduced within the country.

In view of the above, it is being proposed that provisions should be excluded from the Law under which a monopolistically high or a monopolistically low price can be determined based on comparable markets outside the country. It has also been stipulated that it will no longer be mandatory to take into account stock exchange or off-market price figures on the global markets of a similar product to determine a monopolistically high price.

It is worth mentioning that having the above provisions excluded from the Law does not mean that such figures cannot be applied. Business entities will still be able to rely on them to substantiate the price they have established. Nonetheless, the antitrust authority will not be obliged to take such prices into account when it determines whether or not the price is monopolistically high (low).

It is expected that the Draft Law will expand the list of parties to transactions whose volumes can be taken into account in assessing a monopolistic price. It has been proposed that transactions of persons that form a single group with a dominant entity or that act in the latter's interests should be also taken into consideration.

It should also be noted that, according to the Draft Law, any changes of prices on global commodity markets should be also excluded from the list of factors to be taken into account when it is decided whether business entities' actions are concerted actions.

Pepeliaev Group's comment

These new provisions are rational, although the question still remains of how an antimonopoly authority will determine in practice in which case it should, or should not, refer to international figures to determine a monopolistically (low) high price.

2. Specifying the definition of a 'business entity'

Under article 4(20) of the Law on protecting competition, federal and municipal benefits are granted to business entities, among others. Further, under article 19(1)(13.2) of the Law, the above federal and municipal benefits can be granted to support individuals who are not individual entrepreneurs but who apply 'Tax on professional income'.

Nonetheless, the above category of persons has not been included in the definition of a 'business entity' that has been enshrined in article 4(5) of the Law on protecting competition. In view of the above, the Draft Law proposes that the definition of a business entity be modified to include the above category of individuals.

Pepeliaev Group's comment

We believe that this new development is positive for the category of persons at hand since the definition of a 'business entity' being made more specific will make the procedure of granting benefits more transparent.

3. Expanding the list of grounds for the antitrust authority to issue a warning

Under current legislation, the Russian Federal Antimonopoly Service may forward a warning either to a company or its officer regarding it being unacceptable to violate antimonopoly legislation only in cases when it receives a public statement of such planned conduct which may result in antitrust legislation being violated (parts 1 and 2 of article 25.7 of the Law on protecting competition).

The Draft Law proposes that the antitrust authority's tools be expanded for it to promptly respond to such actions and that the right be conferred on it to forward such warnings based on any available information regarding a company's future actions.

Pepeliaev Group's comment

Basically, it is anticipated that the list of grounds be expanded for a warning to be issued by the antitrust authority. However, we believe that this new provision is a positive one as it will give a company a chance (by a warning being issued) to cease its actions that meet the criteria of violations of antitrust legislation rather than when the governmental agency instigates a case against such business entity.

It is also worth noting that the Draft Law stipulates provisions according to which a warning can be issued to business entities which own a digital platform to cease actions (an omission) that meet the criteria of violations of antitrust legislation provided that such entities commit actions for which clauses 3, 5, 6 and 8 of article 10(1) of the Law (abuse of a dominant position on the market) provide.

Pepeliaev Group's comment

This new development is rather predictable and obvious if we take into account the 'fifth antimonopoly package of amendments', which has come into effect and which provides for a ban on monopolistic activity for such category of business entities.

What to think about and what to do

The forthcoming new provisions may significantly change the process of determining whether a business entity has established a monopolistically high (low) product price, whether business entities are acting in concert on a commodity market and the procedure for an antimonopoly authority to send out warnings that it is unacceptable to violate antitrust legislation or warnings ordering actions (an omission) be ceased that meet(s) the criteria of a violation of antitrust legislation.

We advise you to read the text of the document and, once it comes into effect, take its provisions into account while carrying out your professional activity.

Help from your adviser

Pepeliaev Group's specialists have considerable experience of providing legal support to clients in the field of antitrust regulation.

Our lawyers continually monitor changes in antitrust legislation and are ready to promptly advise on any legal aspects that arise in connection with the new provisions being adopted.

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