

Unclassified

DAF/COMP/GF/WD(2016)38

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

10-Oct-2016

English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Global Forum on Competition

SANCTIONS IN ANTITRUST CASES

Contribution by the Russian Federation

-- Session IV --

1-2 December 2016

This contribution is submitted by the Russian Federation under Session IV of the Global Forum on Competition to be held on 1-2 December 2016.

Ms Lynn Robertson, Global Relations Co-ordinator, OECD Competition Division,
Tel: +33 1 45 24 18 77, Email: Lynn.Robertson@oecd.org.

JT03402412

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

DAF/COMP/GF/WD(2016)38
Unclassified

English - Or. English

SANCTIONS IN ANTITRUST CASES

-- Russian Federation --

1. According to the antimonopoly legislation of the Russian Federation, ensuring competition is based on actions of competition authorities combating and preventing violations.
2. The use of such measures in case of violations of the antimonopoly legislation by Russian and foreign legal entities, organizations, authorities, individuals, including sole proprietors, is the responsibility of the Federal Antimonopoly Service (the FAS Russia).
3. Sanctions against the violators of the antimonopoly legislation are applied in accordance with the Federal Law of 26.07.2016 №135-FZ "On Protection of Competition" (hereinafter - the Law on Protection of Competition), the Code of Administrative Offences of the Russian Federation (hereinafter - the Code of Administrative Offences) and the Criminal Code of the Russian Federation (hereinafter - the Criminal Code). In case of applying the criminal law, as well as in a number of cases that fall under administrative legislation in antitrust cases the FAS Russia can not act separately and plays the role of initiator of such cases brought by the competent authorities.
4. The Russian antimonopoly legislation provides 8 types of punishment including:
 1. Acts adopted by the antimonopoly body, including those containing the requirements against the violators on the cease of actions violating the conditions of competition;
 2. Fine;
 3. Disqualification, which can be installed for a period of 6 months to 3 years by the court;
 4. Warning (demanding an end the action (omission), which contain signs of antimonopoly violations);
 5. Obligation to transfer the income received as a result of violations of antitrust laws to the federal government budget;
 6. In the case of systematic monopolistic activity by a dominant commercial organization, as well as non-profit organization generating revenues, the court **at the claim of the antimonopoly body** is entitled to take a decision on compulsory division of such organisations or the decision on separation of one or more organisations out of its composition.
 7. Compulsory works*;
 8. Deprivation of liberty*;
 9. Deprivation of the right to occupy certain positions or be engaged in certain activities*. It is proposed to consider further the use of these types of punishment.

**These penalties apply in the case of criminal offenses*

1. Acts of the FAS Russia

5. In cases considered by the FAS Russia its Commission may issue acts, including conclusion on the circumstances of the case, warnings, rulings, decisions or prescriptions.

6. Prescription is a tool used for correcting the situations occurred as a result of violation of the antimonopoly legislation. This document may be issued with respect to:

- cessation of agreements restricting competition and (or) concerted actions of economic entities and execution of actions aimed at ensuring competition;
- termination of abuse of dominant position by economic entity and fulfillment of actions aimed at ensuring competition;
- termination of violation of rules of non-discriminative access to products;
- termination of unfair competition;
- prevention of actions which can be obstacle for beginnings of competition and (or) can lead to prevention, restriction or elimination of competition and violation of the antimonopoly legislation;
- elimination of the consequences of violation of the antimonopoly legislation;
- termination of other violations of the antimonopoly legislation;
- restoration of the situation that existed prior to the violation of the antimonopoly legislation;
- conclusion of contracts, change of contractual terms or abrogation of contracts in the case if in the course of examination by the antimonopoly body of the case of violation of the antimonopoly legislation the persons whose rights were breached or can be breached applied the relevant application or in the case when the antimonopoly body exercises state control over economic concentration;
- transference of the profit gained in the result of breach of the antimonopoly legislation to the federal budget;
- change or restriction of use of brand name in the case if in the course of examination by the antimonopoly body of the case of violation of the antimonopoly legislation the persons whose rights were breached or can be breached applied the relevant application or in the case when the antimonopoly body exercises state control over economic concentration;
- fulfillment of economic, technical, informational, and other requirements on elimination of discriminative conditions and prevention of its creation;
- fulfillment of actions aimed at supporting competition.

7. The prescription in the case of violation of the antimonopoly legislation is enforceable in the specified period of time, and in the case of non-respect of it a person is brought to administrative responsibility. It is important to note that the prosecution of persons under administrative and criminal legislation in cases of offenses in the area of competition does not exempt them from the obligation to execute the decision of the antimonopoly body and to submit to the antimonopoly body an application or notification for reviewing or carrying out other activities envisaged by the antimonopoly legislation.

8. While talking about the sanctions provided in the current Russian antimonopoly legislation, the course towards mitigation of liability for certain types of violations shall be mentioned.

9. Year 2012 saw the appearance and year 2015 - the expansion (with the introduction of the so-called third and fourth antimonopoly packages) of categories of competition law violations, in case of which the competition authority is not entitled to bring an action unless a warning is issued. This category includes:

- actions (omissions) that lead or may lead to preventing, restricting or eliminating competition;
- economically, technologically or otherwise unjustified establishment of different prices by the dominant economic entity;
- creation of discriminatory conditions of dominant economic entities;
- unfair competition;
- restriction of competition by authorities.

10. The significance of introducing the institute of warnings and extension of the cases to which it applies can hardly be overestimated since with the introduction of "turnover" fines for companies and criminal responsibility for the most significant antitrust violations (e.g. cartels) antitrust prohibitions and requirements have acquired a real legal value. Thus excessive brutality could have contributed to "shadowing" (in the criminal sphere) of entire areas and business activities, unless an effective ratio of coercive measures and actions to prevent and suppress violations is provided.

2. Sanctions in accordance with CoAO¹

11. As punishment, provided the Code on Administrative Offences, in cases of violation of antitrust legislation may also apply fines and disqualification.

12. The decision on applying specific penalties, and on its size (the size of a fine, the duration disqualification) is adopted after consideration of different circumstances. In this context, the Code of Administrative Offences contains detailed rules for the appointment of administrative penalties, stipulating that the nature of an individual administrative offense, the identity of the violator, his property status, the circumstances mitigating or aggravating administrative responsibility shall be considered in all cases. The Code of Administrative Offences defines cases in which fines may be imposed with a minimal amount.

¹ Application of penalties provided for by the Administrative Code and the Criminal Code are considered in more details in the table (see Appendix 1). Actual use of sanctions for violating the Russian antimonopoly legislation over the recent years is presented in Appendix 2.

13. The Code of Administrative Offences provides detailed and non-exhaustive list of circumstances mitigating or aggravating administrative responsibility. An example to the first category is repentance of the offender, prevention of harmful effects of the offense etc., to the second - involvement of minors, repeated infringement and other.

14. It is important to note that with respect to violations of the antimonopoly legislation the Code of Administrative Offences provides a specified list of aggravating and mitigating circumstances, which is different from those applying to offenses in other areas. The article 14.31 of the Code of Administrative Offences contains detailed information of the method of calculation of punishment, based on the number of aggravating / mitigating circumstances in each given violation.

15. It is worth mentioning that based on Article 23.1 of the Code of Administrative Offences decisions on disqualification imposed on any persons for violating the antimonopoly legislation are carried out at courts uniquely, although on the FAS Russia's initiative.

16. Besides, any decision taken by the FAS Russia to impose sanctions may be appealed at courts in accordance with Article 52 of the Law on Protection of Competition.

3. Sanctions in accordance with the Criminal Code

17. The Criminal Code provides liability for the prevention, restriction or elimination of competition done through the conclusion of a cartel by economic entities. To apply criminal law and to impose appropriate penalties to offenders, the FAS Russia cannot act on its own and plays the role of initiator so that the case was brought by competent authorities, in particular the Ministry of Internal Affairs of the Russian Federation (hereinafter - the Ministry of Internal Affairs). To implement this, the FAS Russia and the Ministry of Internal Affairs cooperate on a permanent basis, which is provided by Order № 878/215 «On Approval of Procedure of Interaction between the Ministry of Internal Affairs of the Russian Federation and the Federal Antimonopoly Service".

18. As a result of bringing a criminal case following the FAS Russia's initiative by competent authorities and in case of recognition of guilt in accordance with Article 178 of the Criminal Code, such penalties may be imposed as compulsory works, imprisonment and deprivation of the right to occupy certain positions or be engaged in certain activities.

19. The Criminal Code also contains information about the aggravating circumstances (such as recidivism), the circumstances mitigating the punishment (for example, committing a crime for the first time) and the circumstances excluding criminality (including coercion).

20. It is worth mentioning that judgments are carried out by courts in accordance with the relevant procedural order.

21. Thus, as it can be seen from the Appendix and the above information, the system of penalties in case of violations of competition law in accordance with the Russian Federation's legislation is transparent and clear. Furthermore, this system fully allows to ensure the right for protection at courts, as well as the principle of a sanction's proportionality to the violation's degree of severity.

APPENDIX 1

Violations and sanctions in Russian antimonopoly legislation

Violation of antimonopoly legislation	Envisaged punishment
CoAO	
Actions of authorities' officials, which are inadmissible according to the antimonopoly law and lead or may lead to preventing, restricting or eliminating competition	a fine on officials in the amount of RUB 15,000-50,000 ² (Russian rubles), and in the case of repeated offenses - disqualification for up to three years
Abuse of dominant position by economic entities if such abuse leads or may lead to the infringement of the interests of others, and the result of such actions does not and cannot lead to preventing, restricting or eliminating competition	a fine on officials in the amount of RUB 5,000-50,000; for legal entities - in the amount of RUB 300,000-1,000,000
Abuse of dominant position by economic entities, if the result of such abuse is or can lead to preventing, restricting or eliminating competition / Abuse of a dominant position by a natural monopoly entity	a fine on officials in the amount of RUB 20,000-50,000 or disqualification for up to three years; for legal entities - in the amount of 1-15% (in some cases provided by law - 0.3-3%) of revenue Clarification: the fine is imposed on a legal entity in the amount of the minimum prescribed fine and a half of the difference between the maximum and minimum amount of fine imposed for committing the offense. In certain cases, in accordance with the legislation the fine is imposed on a legal entity in the minimum prescribed size. Under the mitigating or aggravating circumstances, except certain cases, the size of the administrative penalty imposed on a legal person shall be respectively increased or decreased for each such factor on the one-eighth of the difference of the maximum and minimum amount of the fine imposed for committing the offense.
Conclusion by an economic entity of an agreement / participation in it / executing concerted practices	imposition of an administrative fine on officials in the amount of RUB 20,000-50,000 or disqualification for up to three years; for legal entities - a fine of 1-15% (in some cases provided by law - 0.3-3%) of revenue
Coordination of economic activities of economic entities, unacceptable under the antimonopoly legislation of the Russian Federation	imposition of an administrative fine on officials in the amount of RUB 20,000-50,000 or disqualification for up to three years; for legal entities - a fine of RUB 1,000,000-5,000,000
Conclusion by authorities of an agreement or implementation of concerted actions	imposition of an administrative fine on officials in the amount of RUB 20,000-50,000 or disqualification for up to three years
Unfair competition	imposition of an administrative fine on officials in the amount of RUB 12,000-20,000; for legal entities - in the amount of RUB 100,000-500,000
Unfair competition in the form of introduction into circulation of a good with illegal use of results of intellectual activity	imposition of an administrative fine on officials in the amount of RUB 20,000 or disqualification for up to three years; for legal entities - a penalty of 1-15% of the revenue of the violator received as a result of selling goods (works, services) on the market where the violation occurred, but not less than RUB 100,000

² The currency rate as of September 5, 2016 is 1 Russian ruble = 0.016008 U.S. dollars.

Failure to submit pre-merger notifications to the antimonopoly authority, submitting pre-merger notifications containing deliberately false information, or violation of the order and timing for submission of pre-merger notifications	imposition of an administrative fine on citizens in the amount of RUB 1,500-2,500; for officials - in the amount of RUB 15,000-20,000; for legal entities - in the amount of RUB 300,000-500,000
Failure to submit post-merger notifications to the antimonopoly authority, submitting post-merger notifications containing deliberately false information, or violation of the order and timing for submission of post-merger notifications	imposition of an administrative fine on citizens in the amount of RUB 800-1,200; for officials - in the amount of RUB 5,000-7,500; for legal entities - in the amount of RUB 150,000-250,000
Failure to submit on time to the antimonopoly authority data (information), including failure to provide data (information) at the request of the antimonopoly authority	imposition of an administrative fine on citizens in the amount of RUB 1,500-2,500; for officials - in the amount of RUB 10,000-15,000; for legal entities - in the amount of RUB 50,000-500,000

Criminal Code

Restriction of competition by entering into an agreement between economic entities, which restricts competition (a cartel), if this act caused large-scale damage ³ to citizens, organizations or the state or resulted in the extraction of a large revenue ⁴	a fine of RUB 300,000-500,000 or the salary or other income received over the period of 1-2 years, or compulsory works for a term of up to three years, with disqualification to hold certain positions or be engaged in certain activities for up to one year or without such disqualification, or imprisonment for up to three years with deprivation of the right to occupy certain positions or be engaged in certain activities for up to one year or without such deprivation
The same actions: a) committed by a person using his official position; b) related with the destruction or damage or threat of damage to someone else's property; c) that caused especially large damage / resulted in gaining especially large revenue	compulsory works for a term of up to five years, with disqualification to hold certain positions or be engaged in certain activities for up to three years or without such disqualification, or imprisonment for up to six years with a fine of up to RUB 1,000,000 or in the amount of the salary or other income received over the period of up to five years or without such fine, with deprivation of the right to occupy certain positions or be engaged in certain activities for a period of 1-3 years or without such deprivation.
The same acts committed with the use of violence or threat of violence	compulsory works for a term of up to five years, with disqualification to hold certain positions or be engaged in certain activities for a period of 1-3 years, or imprisonment for up to seven years with deprivation of the right to occupy certain positions or be engaged in certain activities for a period of 1-3 years.

³ Large-scale damage in this article is understood as a damage, the amount of which exceeds RUB 10 million, and for an especially large damage - RUB 30 million.

⁴ Large revenue in this article is understood as a revenue, the amount of which exceeds RUB 50 million, and for an especially large revenue - RUB 250 million.

APPENDIX 2

Actual use of sanctions for violating antimonopoly legislation in Russia

Fines imposed for violating the antimonopoly legislation in 2013-2015

	Applications considered	Cases initiated	Fines imposed	After court appeals
2013	29912	6095	6565 (RUB 7,9 billion ⁵)	6244 (RUB 6,8 billion)
2014	39689	6488	7581 (RUB 6,8 billion ⁶)	7357 (RUB 5,9 billion)
2015	51546	6588	7277 (RUB 6 billion ⁷)	7025 (RUB 4,2 billion)

22. The FAS Russia's commitment to imposing heavy fines on large companies for the abuse of dominant position is confirmed by the authority's experience in the suppression of offenses on the energy market. Over the period from 2008 to 2011, the largest vertically integrated oil companies (OAO "Gazprom Neft", OJSC "TNK-BP Holding", JSC "NK" Rosneft ", OJSC" LUKOIL ") have been accused of violating Article 10 of the Federal Law of 26.07.2006 No. 135-FZ "On protection of competition", and were forced to transfer to the federal budget RUB 19.4 billion. The Presidium of the Supreme Arbitration Court of the Russian Federation confirmed validity of the decisions and orders of the FAS Russia in these cases.

23. An example of a significant fine imposed on companies as a result of their participation in cartel is represented by the case concerning two companies operating in the pharmaceutical market. For artificially maintaining the price at the auctions, the companies were forced to transfer RUB 402 million to the federal budget in 2014.

24. A case concerning unfair competition in which the FAS Russia imposed the largest penalty recently related to the unlawful use of a misleading name by a trade retailer. The company-violator was fined by RUB 23 million in 2016.

25. In addition, since the entry into force of amendments to the Russian antimonopoly legislation concerning the application of criminal liability in respect of offenders, the case involving imprisonment of a government official has taken place. The perpetrator was sentenced to a term of 3 years and 8 months for illegal conduct while holding an open auction for the conclusion of the state contract.

26. Another example of a penalty used against a public official leading to dismissal was disqualification of the head of Solnechnogorsk municipal district of the Moscow region for the systematic violation of the antimonopoly legislation, resulting in an exclusive right of land use granted by him illegally to the third parties without proper public procedures. The official was disqualified for 6 months.

⁵ The average currency rate in 2013 is 1 Russian ruble = 0.031427 U.S. dollars.

⁶ The average currency rate in 2014 is 1 Russian ruble = 0.026337 U.S. dollars.

⁷ The average currency rate in 2014 is 1 Russian ruble = 0.016485 U.S. dollars.