

Anti-Monopoly Regulation

Order of the Federal Anti-Monopoly Service on Approval of the FAS Administrative Rules on Establishment of the Predominant Position of an Economic Entity in the Consideration of Applications, Materials, Cases of Anti-Monopoly Laws Violation and in the Exercise of the State Control Over Economic Concentration, dated May, 25, 2012, No. 345, was registered by the Ministry of Justice and promulgated on August 9, 2012.

In the performance of its function of state control over compliance with anti-monopoly laws, the FAS is entitled to accept (observing the requirements of law on state, bank and commercial secrets) from legal entities and individuals documents and information connected with the circumstances described in the statement of violation.

The Rules set the term for establishing the predominant position of a commercial entity upon receipt of statements and materials indicating the presence of the signs of anti-monopoly laws violation – 3 months. The criteria for recognizing the predominant position in the market are contained in the

Federal Law on Protection of Competition, No. 135.

The case on violation of anti-monopoly laws is opened on the basis of an order of the head of the anti-monopoly authority and is considered by a commission within a term not exceeding 8 months. Upon consideration of the case the commission issues a resolution that the economic entity occupies or does not occupy the predominant position, and the resolution is published on the FAS's official site.

Order of the FAS on the Approval of the Procedure for Analysis of the State of Competition for Establishing the Predominant Position of a Credit Organization, dated June, 28, 2012, No. 433, came into force on August 5, 2012.

The Order defines the notion “banking service”. Special attention is paid to the specifics of the analysis of the state of competition in this sector. In particular, data received from the Central Bank of Russia are used in the analysis as initial information. In the detection of the banking service characteristics determining the buyer's

choice, subject to analysis are: 1) the term during which the banking service was rendered, the territory in which the service was rendered, and the amount of money for which the service was rendered; 2) the conditions and the means of rendering the banking service, including requirements to the buyer of the service, documents

necessary for getting the service; 3) business reputation of the credit organization. The Order outlines the barriers for entry to the market.

The results of the analysis are stated in a report indicating the sources of information used and the results of the analysis. The report is placed on the official site of the FAS <http://fas.gov.ru/>.

Decree of the RF Government on Amendment of the Rules on Preliminary Approval of Transactions and Approval of the Establishment of Control by Foreign Investors or a Group of Persons of a Foreign Investor Over Economic Entities Having Strategic Importance for Ensuring Defense of the Country and Safety of the State, dated August 2, 2012, No. 787, came into force on August 16, 2012.

The Decree contains a new requirement to the information to be provided to the FAS for approval of the transaction – the FAS should be notified whether the Russian citizen exercising control over the entity that filed an application for approval of the transaction is a citizen of other jurisdictions and whether the said citizen is a tax resident of Russia.

The Decree sets the term for signing an agreement between the FAS and the entity that filed the application for preliminary approval of the transaction (the “Agreement”) – 30 days following receipt by the FAS of the positive resolution of the

Governmental Commission for Control Over Foreign Investment in Russia.

The effective date of the Agreement has been changed – as of the time of formalization of the FAS decision on preliminary approval of the transaction (previously the Agreement came into force as of the time of its signature, as was stated in Decree No. 836). The Decree also obligates the foreign investor to inform the FAS about the implementation of the approved transaction.

The FAS site has published the FAS Order on Approval of the FAS Administrative Rules on Supervision Over Compliance with Advertising Laws by Carrying Out Inspections of Compliance with Advertising Laws, dated June 4, 2012, No. 360.

The Rules determine what administrative actions, within what terms and in what sequence the FAS should perform in carrying out inspections of compliance with advertising laws, including the manner and form of inspections, powers of the FAS officials, and the rights and obligations of the objects of inspections. An inspection should be carried out within 20 business days (in exceptional cases the term may be extended by 10 business days).

The FAS may carry out field and documentary, scheduled and extraordinary inspections. The annual schedule of inspections is coordinated with the prosecutor’s office and published on the FAS official site. Extraordinary inspections are carried out on the ground of the expiration of the term for remedying the violation of obligatory requirements; applications and statements of individuals and legal entities; a direction of the FAS head.

Currency Operations

The Bank of Russia's Instruction on the Procedure for Provision by Residents and Non-Residents of Documents and Information Connected with Currency Operations to Authorized Banks, Procedure for Issuance of Transaction Passports, and Procedure for Recordal by Authorized Banks of Currency Operations and Control Over Making Thereof, dated June 4, 2012, No. 138-I, has been published.

Starting from October 1, 2012, this Instruction will replace the currently effective Instruction of June 15, 2012, No. 117-I. The new Instruction introduced new regulation of provision by residents of documents and information to authorized banks in connection with operations in foreign currency, as well as by residents and non-residents in connection with operations in rubles.

The Instruction also regulates the exchange of documents and information between residents (non-residents) and the authorized banks; the exercise by the authorized banks of control in the provision of documents and information to residents (non-residents); the matters of storage of information by the banks, keeping of the currency control dossier.

There are some transitory provisions. In particular, it is established that transaction passports issued before the effective date of

the Instruction are valid until closing or amendment on the grounds stipulated by the Instruction.

The Instruction has annexes: the form of a certificate of currency operations and the form of a transaction passport with detailed instructions of how to fill them in, the list of operation codes. Also listed are documents necessary for obtainment of a transaction passport and grounds for refusal to issue a transaction passport. Described is the procedure for closing a transaction passport.

The Instruction does not extend to currency operations with accounts opened in the Bank of Russia, currency operations by federal executive bodies specially authorized by the RF Government for carrying out currency operations, and to agreements whereunder the amount of obligations does not exceed \$50,000.

Customs. A Transaction Passport

Order of the RF Federal Customs Service on Non-Provision of a Transaction Passport in the Customs Declaration of Goods, dated July 20, 2012, No. 1470.

According to the Order, customs authorities are entitled to require that a transaction passport be produced when a declaration for the goods is submitted in an electronic

form. The number of the passport should nevertheless be indicated in the electronic declaration as well. Customs authorities are obligated to check veracity of the passport

details indicated in the declaration by using the currency control central data base and monthly notify the Bank of Russia about any found inconsistencies between the information recorded in the electronic data base and the information indicated in the declaration.

The Order will come into force on September 30, 2012, and, consequently, the FCS Order on Non-Provision of a Transaction Passport in the Customs Declaration of Goods Placed under the Customs Procedures of Export and Temporary Exportation, dated 9 March, 2011, No. 513, will cease to be in effect.

Court Practice. Legal Costs

Resolution of the Plenum of the RF Supreme Arbitration Court, dated July 12, 2012, No. 43, on Amendment of Resolution of the Supreme Arbitration Court Plenum, dated February 17, 2011, on Certain Issues of Application of the RF Code of Arbitration Procedure as stated in the Federal Law on Amendment of the RF Code of Arbitration Procedure, dated July 27, 2010. No. 228-FZ, has been promulgated.

The SAC Plenum supplements the previously given explanations regarding the issues that arise in court practice when the provisions of the Code of Arbitration Procedure on legal costs are applied.

In particular, the Resolution touches upon the issue of determination of the beginning of the 6-months term for filing a statement of legal costs. Under the general rule, for the purpose of calculation of the 6-months term, the judgment of the court of first/appeal/cassation instance, a ruling on dismissal of the claim and a ruling on termination of the proceedings should be considered as the last judicial act which terminates the consideration of the case on the merits.

The issue of acceptance of a statement of legal costs for consideration by the

arbitration court is to be decided within 5 days after the filing of the statement. The statement should be considered by the judge within 3 months.

If the term for filing the statement is missed, the interested person may apply to the arbitration court with a petition for reinstatement of the term. In the event of late filing of the statement of legal costs and non-filing of the petition for reinstatement of the 6-months term, the statement is ignored by the court and returned to the applicant.

The Resolution specifies the procedure for compensation of legal costs incurred by the party in the course of consideration of the statement of legal costs and the procedure for filing a statement of legal costs incurred at the stage of execution of judicial acts.

The RF Duma is considering Draft Federal Law on Amendment of Certain Legislative Acts of the Russian Federation in Connection with Improvement of Conciliation Procedures, No. 121844-6 (the "Draft Law").

The Draft Law provides for additional, apart from mediation, possibilities to settle a court dispute with the assistance of a judicial conciliator, fixates the procedural institution of judicial conciliation, determines the principles of conciliation procedures, their main types: negotiations, mediation, judicial conciliation.

It is proposed that conciliation procedures may be used in any arbitration case and at any stage of arbitration proceedings on the request of a party or on the suggestion of the arbitration court with consent of the parties. The conciliation results in: a settlement agreement with respect to all or part of the claims, withdrawal of the claim in full or in part, acknowledgement of the claim in full or in part, acknowledgment of the circumstances relied upon by the other party in its claims or objections, an agreement on the circumstances of the case.

The functions of judicial conciliators are proposed to be performed by deputy judges not involved in the consideration of the case, court employees with law degree, and retired judges. The procedure for judicial conciliation and requirements to a judicial conciliator would be determined in the Rules of Judicial Conciliation approved by the RF Supreme Arbitration Court.

The Draft Law proposes measures stimulating the use of conciliation procedures in the form of a refund to the plaintiff of up to 70% of the filing fee in the event of execution of a settlement agreement, withdrawal of the claim, acknowledgment of the claim by the defendant.

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This newsletter is not intended to provide legal advice and/or any other form of legal assistance that may be rendered by attorney-at-law to client. The exclusive purpose of this review is to make aware its recipient of certain recent changes in Russian laws and regulations, and of the development of law application practice. Any use of the information contained herein for particular purposes may require more detailed case-specific explanations. Further information can be obtained via +7 (495) 933 75 67 or office@agp.ru



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