Russian Antimonopoly compliance: government and business community

An important vector of development of Antimonopoly legislation and competition law in the world practice and in the Russian Federation as well in recent years is the application and improvement of preventive measures.

The Government is interested in reducing violations of Antimonopoly legislation, because the negative consequences of such violations may be so significant that it may be impossible to restore competitive conditions in certain product markets.

One of the most effective ways to prevent violations of Antimonopoly legislation is the implementation of Antimonopoly compliance by authorities and business entities – the internal compliance system with the requirements of Antimonopoly legislation.

Antimonopoly compliance in the activities of state and local government bodies

In order to implement the basic state policy for promoting competition, according to the National Plan on Development of Competition in the Russian Federation for 2018-2020, approved by the Decree of the President of the Russian Federation of December 21, 2017 No. 618 "On the main directions of the state policy on the development of competition" (the National Plan on Development of Competition) the Government of the Russian Federation was instructed 1 to 01.03.2019 to take measures to create and organize internal compliance system of the work of Federal Executive Authorities with Antimonopoly legislative requirements.

In order to implement the above orders and the formation of a unified approach to the creation and organization of the Federal Executive Authorities the internal compliance system of the Antimonopoly law, the Methodical recommendations on the establishment and organization of the Federal Executive Authorities the internal compliance system of the Antimonopoly law 2 were approved, that are also recommended to use by the Executive Authorities of the subjects of the Russian Federation and local self-government bodies.

The adoption of legal acts on the organization of the internal compliance system of the Antimonopoly legislation by Federal Executive Authorities is envisaged by the Action Plan (the road map) for the development of competition in sectors of the Russian economy and the transition of certain spheres of natural monopolies as a natural monopoly to the competitive market in the 2018 - 2020 3 (hereinafter – the Action Plan (the road map)).

According to information received by the FAS Russia in 2020, internal acts on the organization of Antimonopoly compliance were adopted in 34 Federal

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1 Paragraph 19 of subparagraph "a" of paragraph 2 of the National Plan on Development of Competition
Executive bodies. The Ministry of Construction, Housing and Utilities (Minstroy) of Russia, the Federal Tax Service of Russia (the FTS of Russia) and the Ministry of Digital Development, Communications and Mass Media reported the implementation of compliance system at the level of subordinate organizations.

At the same time, the FAS Russia was the first Federal Executive Authority to adopt an act on the organization of the Antimonopoly compliance system.

As part of the implementation of the provisions of this act, the FAS Russia has developed a "risk map" of violations of Antimonopoly legislation. The report of the FAS Russia prepared as a result of the implementation of Antimonopoly compliance was discussed in a collegial body with the participation of representatives of public organizations and the business community. Following the discussion, the report was approved and made publicly available on the Internet https://fas.gov.ru/documents/685775.

The FTS of Russia was one of the first governmental bodies after the FAS Russia which approved the regulations on the organization of Antimonopoly compliance, pursuant to which the FTS of Russia organized work to identify risks of violation of the Antimonopoly legislation in the activities of the FTS of Russia and its Regional offices, the consideration of the circumstances related to such risks and determining the probability of their occurrence. The report on the results of the implementation of the Antimonopoly compliance system for 2019 was published in a timely manner on the official website of the FTS of Russia https://www.nalog.ru/html/ites/www.new.nalog.ru/docs/oi/d_compl.pdf.

During 2019, Antimonopoly compliance measures were successfully implemented in the Federal Service for Labor and Employment (Rostrud).

There is also an activity in organizing Antimonopoly compliance at the regional level. Particularly, in 2019 acts aimed at organizing the Antimonopoly compliance system of Executive Authorities were adopted by the all subjects of the Russian Federation.

One of the positive examples of the organization of the Antimonopoly compliance system is the Belgorod region, where a monitoring system has been developed for the operational management of the process of implementing Antimonopoly compliance, which is carried out according to checklists separately for the Executive Authorities of the region (20 indicators) and for the administrations of municipal districts and urban districts (26 indicators). In order to motivate the achievement of high results of this work, the level of implementation of Antimonopoly compliance indicators is included in the methodology for forming the rating of administrations of municipal districts and city districts of the region in terms of their activities to promote competition.

Also noteworthy is the practice of implementing Antimonopoly compliance in the Voronezh region. Thus, the guidelines for the formation of a digital database

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4 the Order of 29.01.2019 № MMV-7-16/33@  
5 The Order No. 636 "On the organization of the internal compliance system with the requirements of Antimonopoly legislation in the Federal Service for Labor and Employment" was adopted by this Federal Executive Authority on 30.11.2018
of the Antimonopoly compliance system in the region and its use in training and organizing the work of compliance controller were developed by the Order of the Department for economic development of the subject. Based on the recommendations, a digital database of Antimonopoly compliance is created, which is an information collection of specific violations of Antimonopoly legislation that took place in the actions of the authorities, which are assigned the appropriate codes. This data collection is formed on the basis of information provided in the "Black books" and on the websites of the Central office of the FAS Russia, as well as its Regional offices, in media materials, etc. This database provides the possibility of computer processing of information and operational use of its results in current work.

Despite the fact that local governments were not given a separate instruction on the need to implement Antimonopoly compliance, many municipalities have taken appropriate measures:

- all local self-government bodies in 26 subjects of the Russian Federation have adopted acts on implementing a system of internal compliance with the requirements of Antimonopoly legislation;
- municipalities in 15 regions of the Russian Federation have started implementing Antimonopoly compliance.

The FAS Russia constantly provides methodological and consulting support to authorities at all levels on the organization of Antimonopoly compliance.

In this regard in 2019 the FAS Russia held training events: seminars dedicated to the implementation of Antimonopoly compliance for the Federal Executive Authorities and Executive Authorities of constituent entities of the Russian Federation, on the court of the Moscow region Government with the participation of the FAS Russia organized the international scientific-practical conference "Compliance as risk management system: Russian and European experience". Based on the results of the FAS events, explanations were prepared and sent for application to regional Executive Authorities.

Thus, the organization of Antimonopoly compliance is aimed at ensuring that government officials make decisions through the prism of how these decisions may affect competition in the relevant product market.

Antimonopoly compliance in the activities of business entities

In accordance with the National Plan on Development of Competition, one of the main principles of the state policy for the development of competition is to encourage business entities to implement the internal compliance system with the requirements of Antimonopoly legislation.

Legal liability is the main way to ensure compliance with the requirements of Antimonopoly legislation by business entities, the violation of which entails administrative and civil responsibility for legal entities, and in the case of participation of officials in a cartel, criminal liability.

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6 Letter of the FAS Russia No. SP/13794/19 of 25.02.2019
Therefore one of the most effective preventive measures is Antimonopoly compliance, which in recent years has been actively implemented by companies that have the potential to violate Antimonopoly requirements and is the internal compliance system with the requirements of Antimonopoly legislation by an economic entity and its officials.

Undoubtedly the initial incentive to implement Antimonopoly compliance is the need of an economic entity to minimize the risks of violation of Antimonopoly legislation related to the implementation of its activities. At the same time, the state is also interested in reducing violations of Antimonopoly legislation by market participants.

A provision was introduced into the Russian antimonopoly legislation\(^7\), according to which in order to comply with the Antimonopoly legislation and prevent its violation, an economic entity has the right to organize an internal system for ensuring compliance with the requirements of the Antimonopoly legislation (hereinafter - the internal compliance system).

The internal compliance system with the requirements of the Antimonopoly legislation\(^8\) is the set of legal and organizational measures under internal act (internal acts) of the economic entity or another person from those belonging to the same group of persons with this economic entity, if such internal act (internal acts) applies to the entity, and to compliance with the requirements of the Antimonopoly law and prevention of its violation.

The Law on Protection of Competition\(^9\) establishes the provisions that must be contained in the internal act forming the internal compliance system. At the same time, for the organization of the internal security system, it is necessary that the internal act contain all the listed mandatory provisions. In the absence of any provision or provisions the internal act cannot be recognized as meeting the requirements of the Antimonopoly legislation.

These provisions represent a mandatory minimum of what the internal security system should include.

However, the legislation establishes\(^10\) that the adoption of the specified act\(^11\), an economic entity shall have the right to include additional requirements for the organization of the system of internal compliance of the Antimonopoly laws.

In this regard, international standards in the field of risk management, such as the ISO 19600 "Compliance management Systems" and the ISO 31000 “Risk management. Principles and Guidelines” can provide certain assistance to business entities in organizing the internal support system.

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\(^7\) Federal law No. 33-FZ of 01.03.2020 "On amendments to the Federal law" on protection of competition "(hereinafter-the Law “On the Antimonopoly compliance” in the Federal law No. 135-FZ of 26.07.2006 "On protection of competition” (hereinafter - the Law on Protection of Competition) introduced article 9\(^1\)

\(^8\) paragraph 24 of article 4 of the Law on Protection of Competition

\(^9\) Part 2 of article 9\(^1\) of the Law on Protection of Competition

\(^10\) part 3 of article 9\(^1\) of the Law on Protection of Competition

\(^11\) part 2 of article 9\(^1\) of the Law on Protection of Competition
The entity may submit\textsuperscript{12} to the FAS Russia the internal act\textsuperscript{13} (internal acts) or the draft internal act (draft internal acts) to establish their compliance with Antimonopoly legislation.

Sending to the FAS Russia an internal act (draft internal act) (hereinafter - the internal act) that forms the internal support system to establish its compliance with the requirements of the Antimonopoly legislation is the right of an economic entity.

At the same time, the Law on Protection of Competition does not establish any negative legal consequences for an economic entity if the specified act is not sent to the FAS Russia for approval, since the organization of the internal support system is voluntary.

In addition it is important to note that the conclusion of the FAS Russia on the act, forming a compliance system, the Antimonopoly laws can have a positive impact on the economic entity from the point of view of attributing his activities to a lower risk category.

The Government approved the criteria for classifying the activities of legal entities and individual entrepreneurs engaged in economic activities as risk categories in the implementation of state control over compliance with the Antimonopoly legislation of the Russian Federation\textsuperscript{14} (hereinafter – the Criteria). Paragraph 2 of the Criteria establishes the frequency of scheduled inspections of legal entities and individual entrepreneurs engaged in economic activities, depending on the risk category assigned to their activities, unless otherwise established by Federal laws: for the medium – risk category - no more than once every 3 years; for the moderate-risk category-no more than once every 5 years.

Scheduled inspections are not carried out for legal entities and individual entrepreneurs engaged in economic activities classified as low-risk.

In accordance with paragraph 2 of the criteria for classifying the activities of legal entities and individual entrepreneurs engaged in economic activities as risk categories in the implementation of state control over compliance with the Antimonopoly legislation of the Russian Federation, approved by the Government decree No. 213, it is provided that the activities of economic entities subject to classification in accordance with the annex to this document are classified as medium and moderate risk, to be charged to categories of moderate and low risk respectively at presence in aggregate following conditions:

\textsuperscript{12} In accordance with part 5 of article 9 of the Law on Protection of Competition
\textsuperscript{13} that is specified in part 2 of article 9 of the Law on Protection of Competition
\textsuperscript{14} Decree of the Government of the Russian Federation of 01.03.2018 No. 213 "On approval of criteria for classifying the activities of legal entities and individual entrepreneurs engaged in economic activities as risk categories in the implementation of state control over compliance with the Antimonopoly legislation of the Russian Federation" (hereinafter — Government Decree No. 213)
a) the absence within 3 years of the date of the decision of assigning (changing) risk category of an enforceable decision on administrative punishment for a legal person, its officers, sole proprietor for committing administrative violations\textsuperscript{15};

b) functioning of the system of legal and organizational measures aimed at compliance with the requirements of the Antimonopoly legislation of the Russian Federation provided for by the internal act (acts) of the economic entity or another person from among the persons belonging to the same group of persons with the economic entity for at least one year as of the date of making a decision on assigning (changing) the risk category, if such internal acts are applied to the economic entity.

Thus, the organization of an internal security system by an economic entity in the absence of violations of Antimonopoly legislation for three years may serve as a basis for reducing the risk category in the implementation of state control over compliance with Antimonopoly legislation and, as a result, stopping scheduled inspections in respect of such an economic entity.

To sum up it should be noted that Antimonopoly compliance undoubtedly contributes to increasing the level of legality of business entities' activities in the commodity markets, creates additional incentives for business entities to take measures to prevent violations of Antimonopoly legislation, and is necessary to reduce the risks of negative consequences for business entities themselves, including through any form of legal liability.

\textsuperscript{15} under articles 14.31 - 14.33, 14.40, 14.41, parts 2.1 - 2.3, 2.5 and 2.6 of article 19.5 and article 19.8 of the Code of the Russian Federation on Administrative Violations