



RUSSIAN COMPETITION LAW: NEW DEVELOPMENTS



12 July 2023

On 10 July 2023, the Russian President signed into law new amendments to the Law On the Protection of Competition. The amendments, also known as the Fifth Antimonopoly Package, will come into effect on 1 September 2023 and will affect, among other things, the merger control rules.

More specifically:

- the new, alternative merger control threshold was introduced: if the transaction value exceeds 7 billion roubles (approx. EUR 70 million), the transaction will be notifiable even if the parties' turnover or assets do not cross the thresholds in the currently effective law;
- the notifying party will have the statutory right to offer remedial action aimed at preserving competition prior to the completion of the review process. Currently, the notifying party may do this, but more as a matter of practice, and the amendments will now formalize this right;
- the merger control review process should become more transparent: now, if the competent authority (the FAS) comes to the conclusion that the transaction may give rise to competition concerns, it will notify the parties of the same, as well as the conditions the FAS may impose in connection with the clearance;
- if the FAS sends such notice, it will, either at its own initiative or if so requested by the parties, invite the parties to an in person hearing, where representations can be made as to why the transaction should be cleared. The final decision regarding the transaction will only be taken after such a hearing. The procedure for such hearings has yet to be developed by the FAS;
- the review process may become substantially longer: if the notified transaction may affect non-Russian/cross-border markets, the FAS may, with the consent of the Federal Government, extend the review for up to three years, as determined by the Government. We have yet to see how this will work in practice, but it is clear that such a long review period can prove problematic for the transaction affected;
- the concept of formal expert evaluation was introduced. Now the FAS, if so requested by the parties or on its own initiative, may instruct independent experts to conduct an expert evaluation for the purposes of a merger control review or proceedings brought in connection with a suspected violation of competition law. The expert's costs of such expert evaluation will be borne either by the Government or, with the parties' written consent, by the parties; and

- competition regulation will become more focused on electronic commerce. In particular, the new concept of “network effect” was introduced, and the list of prohibited monopolistic activities was expanded to include activities in electronic commerce, subject to certain qualitative and quantitative criteria.



The information contained in this document is intended for general guidance and should not be considered as legal advice or opinion.