

## SPECIAL ISSUE

### Comments on Federal law as of 17.07.2009 №164-FZ «On introduction of amendments to Federal law «On protection of competition» and other laws of Russian Federation»

#### Essence of the changes:

The main purpose of the new Federal law as of 17. 07.2009 №164-FZ "On introduction of amendments to Federal law On protection of competition and other laws of Russian Federation" is to improve and detail statements, regulating case consideration in this legal area.

For instance, there was established a new legal institute of state and municipal preferences, procedure of its granting; legislator increased threshold of assets (revenue) of entities, activity of whom is regulated by Federal law "On protection of competition"; stated procedure and terms of planned and extraordinary inspections by antimonopoly authority; laid down 3-year term for consideration of antimonopoly cases.

#### State and municipal preferences

This new definition replaced definition of state and municipal support.

State and municipal preferences are regarded as granting by federal executive bodies, executive bodies of constituent entities, municipal bodies, any other entities exercising functions of bodies mentioned above to any entity advantage providing them more convenient market conditions by assignation of state or municipal property, other objects of rights or by granting of property exemption.

There was specified cases of granting, the stress was laid on strictly purposive character. The procedure of granting is similar to procedure of state and municipal support granting.

#### Execution of planned and extraordinary inspections by antimonopoly authority

The most important amendments were introduced to article 25.1 "Execution of planned and extraordinary inspections by antimonopoly authority". Legislator tightened control over compliance with antimonopoly laws by federal executive bodies, executive bodies of constituent entities, municipal bodies, any other entities exercising functions of bodies mentioned above, persons and legal entities.

Inspections shall be executed pursuant to the order of Head of antimonopoly authority. Planned and extraordinary inspections are executed in the form of field inspection.

Planned inspections are carried out not more often than once in 3 years. As grounds for planned inspections execution are regarded expiration of 3 years from creation of legal entity or organization, state registration of sole entrepreneur, completion of the latest planned inspection.

Grounds for execution of extraordinary inspection are:

- Issues, received from law-enforcement bodies, other state bodies, municipal bodies, from public associations pointing out signs of breach of antimonopoly laws;
- Messages and submissions of persons, legal entities, messages from mass media pointing out signs of breach of antimonopoly laws;
- Expiration of term for performance of instruction, issued subsequent to the results of antimonopoly case consideration.

Term of inspection shall be not longer than 1 month from the date of beginning stated in the order of Head of antimonopoly authority. As an exception the stated term may be extended for 2 months. Procedure of term extension is determined by antimonopoly authority.

The inspected entity shall be informed upon execution of planned inspection not later than **in 3 days** before its beginning. The inspected entity shall be informed upon execution of extraordinary inspection not later than **in 24 days** before its beginning. Given above does not cover execution of extraordinary inspections upon compliance with legislative provisions, prohibiting agreements restricting competition between entities or concentered actions of entities.

Within execution of inspection antimonopoly officials are given wide-ranging powers.

#### Preliminary consent of antimonopoly authority to transactions

Legislator changed the threshold of actives (revenue) at exceed of which the consent of antimonopoly body to transaction fulfillment or its subsequent notice is needed. Please find below comparative table of such changes:

Ground for preliminary consent of antimonopoly authority	Previous edition of Federal law "On protection of competition"	New edition of Federal law "On protection of competition"
Creation of commercial organization, providing that its charter capital is paid by stocks (shares) or property (excluding money) of another commercial organization or provided that created commercial organization acquires on the base of its stocks (shares) or property of another commercial organization on the base of transfer act or separation balance sheet and in respect of these stocks (shares) and (or) property (excluding money) acquiring rights stipulated in Art. 28 of Federal law "On protection of market competition" taking into account that summary cost of assets according to the latest balance sheet of founders of created commercial organization (its interest groups) and entities (its interest groups) stocks (shares) and (or) property (excluding money) of which are brought as a contribution to the charter capital of created commercial organization	exceed 3 000 000 000 roubles	exceed 7 000 000 000 roubles
Integrated revenue of founders of created commercial organization (its interest groups) and entities (its interest groups) stocks (shares) and (or) property (excluding money) of which are brought as a contribution to the charter capital of created commercial organization from sale of goods for the previous calendar year.	exceed 6 000 000 000 Roubles	exceed 10 000 000 000 Roubles
Integrated cost of assets according to the latest balance sheet of entity, acquiring stocks (shares), rights and (or) property, integrated cost of	exceed 3 000 000 000 roubles	exceed 7 000 000 000 roubles

assets according to the latest balance sheets of its interest group and entity stocks (shares) and (or) property of which are to be acquired and its interest group		
Integrated sales revenue for the latest calendar year of entity, acquiring stocks (shares), rights and (or) property, integrated cost of assets according to the latest balance sheets of its interest group and entity stocks (shares) and (or) property of which are to be acquired and its interest group	exceed 6 000 000 000 roubles	exceed <b>10 000 000 000</b> roubles
Value according to the latest balance sheet entity stocks (shares) and (or) property of which are to be acquired and its interest group	exceed 150 000 000 roubles	exceed <b>250 000 000</b> roubles
In case of creation of commercial organization as a result of merger of commercial organizations or accession of commercial organizations to the other commercial organization provided that integrated cost of assets e according to the latest balance sheets or integrated sales revenue for the latest calendar year previous to year of such merger of accession	exceed 200 000 000 roubles	exceed <b>400 000 000</b> roubles
While transactions or other actions mentioned in Art. 28 of Federal law "On protection of competition" entities, acquiring stocks (shares), rights and (or) property,) in case that Integrated cost of assets according to the latest balance sheet or integrated sales revenue for the latest calendar year of entity, acquiring stocks (shares), rights and (or) property and its interest group and entity stocks (shares) and (or) property of which are to be acquired and its interest group for the latest calendar year previous to year of such transactions or actions	превышает 200 000 000 roubles	превышает <b>400 000 000</b> roubles
Integrated cost of assets according to the latest balance sheet of entity stocks (shares) and (or) property and (or) rights of which are to be acquired and its interest group	exceed 30 000 000 roubles	exceed <b>60 000 000</b> roubles

Legislator widened a list of possible situations when preliminary consent is not needed. Thus, transactions do not need to be approved provided that they are fulfilled by a company (partnership) on one hand and person or legal entity on the other hand, possessing due to their participation in the company (partnership) more than 50% of total number of voices corresponding voting stocks (shares) in charter (joint) capital of the company (partnership).

While estimating necessity of antimonopoly authority notification in case of creation of financial organization as a result of merger of financial organizations or accession of financial organizations to the other financial organization now we shall take into account not cost of assets according to the latest balance sheet of entity, but integrated cost of assets according to the latest

balance sheets of financial organizations, activity of which is terminated in the result of merger, or integrated cost of assets according to the latest balance sheets of financial organizations in process of accession.

There was stated necessity of notification of antimonopoly authority by entities acquiring stocks (shares), rights and (or) property of financial organization, upon fulfillment of transactions, other actions stipulated in Art. 29 of Federal law "On protection of competition" provided that integrated cost of assets according to the latest balance sheet exceeds value, stated by the Russian government.

The list of entities acting as applicants in order to get preliminary consent of antimonopoly authority in cases described in articles 27-29 Federal law "On protection of competition" or submit a notification in cases described in articles 30-31 Federal law "On protection of market competition".

Term of notification of entities in the same interest group by Federal Antimonopoly Service stating grounds under which they were recognized as an interest group was extended from 10 to **14 days**.

The list of documents upon fulfillments of transactions, other actions subject to state control that are to be submitted to antimonopoly authority simultaneously with the petition or notification was supplemented. In the event that entity does not presented all the needed documents and data the relevant application is recognized as non-submitted and antimonopoly authority notifies applicant upon this in 10 days. Nowadays antimonopoly authority must inform an applicant after consideration of petition in writing upon made decision pointing out grounds of such a decision.

Legislator transferred to FAS a right to consider cases of antimonopoly laws infringement regardless to place of commitment or place of location or residence of the persons in respect of which the statement and materials are submitted.

#### **Term of and term for performance of issued instructions.**

There was stated period of prescription for consideration of antimonopoly laws infringement cases. Proceedings can not be initiated and initiated proceedings are to be terminated 3 years after the day of such an infringement, and whether the infringement is permanent the proceedings – 3 years from the date of its completion or its discovery. Federal law "On protection of competition" was supplemented with provision stipulating that term for performance of issued instruction upon antimonopoly laws infringement may be extended no longer than for 6 months upon reasoned petition of respondent provided that reasons specified in it are recognized as valid excuse.

#### **Other amendments**

New Federal law introduced a provision, widening definition of interest group. As participants of interest group will be recognized on one hand company and on the other hand persons and legal entities, entering into one interest group. Such entities, possessing more than 50% of total number of voices corresponding voting stocks (shares) in charter (joint) capital of the company, and a company (partnership) itself will be nothing but self-consistent interest group. One of the most important particularities of this new ground for recognition as an interest group is the fact, that as one of the parties, possessing participation share in the company, is regarded not a person or legal entity, but an interest group itself. Thus, range of entities that may be recognized by state structures in the area of competition protection as an interest group has been considerably expanded.

Furthermore this Federal law specifies cases when position of entity market share of which is less than 35% is recognized as dominant.

Legislator laid down some new criteria for determination of monopoly high and monopoly low price of goods.

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Further steps were made in order to prevent creation of discrimination conditions in the market. For example, there was set out that Russian government establishes the rules of non-discrimination access to commodity markets and (or) to goods produced or sold by natural monopoly holder.

**Enactment-** amendments to Federal law "On protection of competition" introduced by Federal law as of 17. 07.2009 №164-FZ enter into force upon expiry of 30 days after day of official publication (published in "SZ RF"- 20.07.2009, in "Rossiiskaya gazeta " – 23.07.2009).

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