

RUSSIAN COMPETITION REGULATORS, MOUNT UP: RUSSIAN AUTHORITIES CRACK DOWN ON ANTI-COMPETITIVE AGREEMENTS WITH UPTICK IN CRIMINAL LIABILITY FOR ANTITRUST VIOLATIONS

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Just one month into the new year, Russian courts have already handed down three new criminal judgments for violations of anti-competition laws, a stark contrast to previous years that often passed without a single conviction for cartel agreements. Over two decades after Russia introduced criminal liability for cartels, this increased activity could signal that the Federal Antimonopoly Service of the Russian Federation ("FAS") is finally beginning to focus on criminal sanctions for cartels — prosecutions that it has long shied away from. Russia's expanded focus into the enforcement of criminal antitrust laws may be felt most heavily by the construction, pharmaceutical, and medical device industries, where procurement procedures and auctions are particularly vulnerable to cartel manipulation.[1] These actions could foreshadow an increased era of Russian enforcement or a backlash against foreign companies doing business in Russia.

Two recent decisions illustrate the risks of which players in these key industries should be aware. In January 2020, a Russia District Court found the CEO of a Russian construction company criminally liable for anticompetitive practices. The CEO entered into an agreement with a competing bidder whereby the construction company would decrease its bid for a municipal contract by just 0.5 percent, and the competitor agreed not to match the new, lower price.[2] In return, the CEO agreed to transfer a portion of the awarded work to another participant in the cartel. In another matter decided in January 2020, three directors of competing medical device companies entered into agreements whereby their bids in public auctions would appear competitive, but they would instead ensure maximum profit on the ultimate contract price.[3] The scheme occurred in 94 open auctions for medical equipment, supplies, and medicines. In both matters, the Russian courts sentenced the defendants to multiple years of imprisonment for concluding a cartel agreement.

Actions against criminal cartels in Russia may just be getting started. In August 2019, the government released special guidelines to facilitate efficient cooperation between the FAS and other law enforcement bodies in investigating anti-competitive crimes.[4] The head of FAS has also indicated an interest in cross-border cooperation, noting a "long-standing bilateral cooperation between FAS and the European Commission under the frame of investigating antimonopoly cases and express[ing] hope for a closer interaction and deep studying of the practice of the European Commission on antimonopoly enforcement." [5]

Given the recent trend, international players in the Russian market, especially those in the healthcare and construction fields, should be on the lookout for indicators of anti-competitive behavior both in-house and within their distribution chains. Companies in the market should ensure proper internal controls are in place, including

controls that check the discretion of individual employees in evaluating, accepting, or placing bids. Likewise, companies should maintain proper policies to ensure control over relationships with subcontractors and distributors, as well as ensuring audit rights of such third parties. Sophisticated companies operating in the Russian market are used to the high-risk nature of business in the country and the potential for international enforcement to go along with domestic risks. However, the Russian government's new focus on anti-competitive practices will require international companies doing business in Russia to take an even closer look at in-country conduct surrounding competitive bids, contracts, and subcontractors.

[1] Federal Law "On Protection of Competition" dated July 26, 2006 No. 135-FZ; Criminal Code of the Russian Federation dated June 13, 1996 No. 63-FZ.

[2] <https://om-saratov.ru/criminal/13-january-2020-i81693-vozbujdeno-ugolovnoe-delo-o> (source in Russian).

[3] Press Release, Sentence to Suppliers of Medical Equipment and Medicine in the Republic of Karelia, Fed. Antimonopoly Serv. of the Russian Fed'n (Dec. 31, 2019), <http://en.fas.gov.ru/press-center/news/detail.html?id=54691>.

[4] Press Release, Russian Government Approved Draft Law on Increasing Efficiency of Suppressing Anticompetitive Actions of the Authorities, Fed. Antimonopoly Serv. of the Russian Fed'n (Aug. 14, 2019), <http://en.fas.gov.ru/press-center/news/detail.html?id=54269>.

[5] Press Release, Igor Artemiev: Competition Development Policy Means Efficient Deterrence of Negative Trends, Fed. Antimonopoly Serv. of the Russian Fed'n (Dec. 24, 2019), <http://en.fas.gov.ru/press-center/news/detail.html?id=54680>.

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