

Preventing violations of antimonopoly law: antimonopoly compliance

In view of the fact that the antimonopoly authority is strengthening its control over different sectors of the economy (power industry, retail distribution, construction, natural resources, etc.), a growing number of major and mid-market Russian companies have expressed interest in ways of reducing the risks connected with violations of antimonopoly law. The demand for a system that would significantly reduce the probability of claims from the Federal Antimonopoly Service of Russia (FAS) has created a new service in the market for legal services called antimonopoly compliance. The much-needed antimonopoly compliance system on the one hand is based on international experience and best practices, on the other, it fully reflects the special features and particular nature of the regulatory environment in Russia.

The main purpose of the antimonopoly compliance system is to improve business processes within a company leading to more efficient internal and external communications, thereby reducing to a minimum the risk of any situation in which action or omission to act may constitute evidence of a breach of antimonopoly law. If adopted, such a system will make it possible for business entities to avoid direct negative consequences (fines, compliance notices, claims to recover damages, etc.), and it will also have a favorable impact on the company's reputation.

An antimonopoly compliance system is not universal by nature and it is always developed with due regard for industry specific risks (abuse of dominant market position, violation of procurement procedures, unfair competition, etc.). As a rule, the first step is to conduct an antimonopoly audit to identify the most pressing risks. Such an audit also addresses such issues as the concrete conditions in the respective product market, relations with business partners and consumers, pricing, and other important aspects of the company's operations. Later, a set of measures to minimize such identified risks is determined, including drafting internal regulations (policies, rules, procedures, and manuals), obtaining clearance from the antimonopoly authority, training employees, integrating software, etc.

It should be emphasized that the antimonopoly authority has been providing useful assistance in developing antimonopoly compliance through advocating competition and improving antimonopoly laws. FAS representatives regularly come out in support of plans to introduce antimonopoly compliance systems in companies that the antimonopoly authority keeps a close eye on; FAS also supports initiatives to make this practice a legal requirement. It is expected that in the near future if a company maintains an antimonopoly compliance system, such fact may be deemed as an argument for reducing administrative sanctions, and in some cases fully discharging a legal entity from liability.

It should be noted that without a structured, efficient, and result-oriented system in place, separate elements (antimonopoly policy, antimonopoly manager, etc.) do not constitute an antimonopoly compliance system. FAS will accept an antimonopoly compliance system only if it is fully functional, i.e. with full coverage of the respective areas of the company's operations and with all regulations in place.