

Legal Alert

Changing thresholds triggering merger control and general antimonopoly control over companies

1. INTRODUCTION

- 1.1. The Federal Antimonopoly Service of Russia (hereinafter the "**FAS**") has developed legislative amendments to increase merger control thresholds and annual revenue thresholds triggering general antimonopoly control over companies, and the Government introduced bill 9719-8 to the State Duma¹ (hereinafter the "**Bill**") on 28 October 2021, after completion of internal procedures. Having considered it, the State Duma approved the Bill in the third reading on 26 January 2022. For the Bill to be passed into law, the Bill must be approved by the Federation Council and be signed by the President.
- 1.2. In terms of the content, the Bill has two limbs: (1) provisions intended to increase financial thresholds relevant to merger control, and (2) provisions intended to increase revenue thresholds triggering antimonopoly control over businesses, including in the course of trade operations and food supplies.

2. INCREASING MERGER CONTROL THRESHOLDS

- 2.1. Pursuant to the current version of Article 28 of Federal Law 135-FZ dated 26 July 2006 "On Protection of Competition" (hereinafter the "**Competition Law**"), transactions involving shares in, assets of, or any rights in relation to, business entities shall not trigger any preliminary antimonopoly control, unless the total value of assets of such entities (and their respective groups of persons) is more than four hundred million rubles. The Bill provides for the increase of the figure from four hundred to eight hundred million rubles.
- 2.2. In accordance with the FAS statistics contained in the explanatory note to the Bill, 15% of the total number of applications considered by the FAS between 2018 and 2020 sought the approval of transactions in respect of companies which total value of assets, along with their respective groups of persons, was less than eight hundred million rubles, as per the last balance sheet. Amendments to the Competition Law will therefore significantly reduce the number of transactions triggering the FAS preliminary approval and thus reduce excessive antimonopoly control for businesses.
- 2.3. It should be noted that the FAS continues to work on improving merger control rules. The "fifth antimonopoly package"² describing the transaction price as an independent financial indicator which, if exceeded, will trigger antimonopoly control is still being developed. The adoption of such a criterion will allow to adapt the merger control rules to transactions in digital markets under which the amount of assets of a target of economic concentration can often be insignificant, while the transaction can obviously have adverse effects for competition, such as by strengthening the dominant position of the digital platform acting as a buyer.

3. EASING OF ANTIMONOPOLY RULES FOR SMEs

- 3.1. The Bill also provides for the doubling of annual revenue thresholds for businesses, from four hundred to eight hundred million rubles, where less stringent antimonopoly control is possible.
- 3.2. Specifically, in accordance with the current law, the prohibition of anti-competitive agreements (other than cartel agreements) and abuse of dominant position (unless otherwise described in the

¹ https://sozd.duma.gov.ru/bill/9719-8#bh_histras

² <https://fas.gov.ru/news/31144>

Competition Law) does not apply to businesses whose annual revenue is four hundred million rubles or less. According to the FAS statistics for 2018-2020 contained in the explanatory note to the Bill, more than 20% of the total number of businesses established to have violated Article 10 and 11 of the Competition Law were businesses whose revenue originating in the market where the violation took place was between four hundred and eight hundred million rubles. Increasing the annual revenue to eight hundred million rubles will reduce the number of cases when a relatively small enterprise which most often does not have a significant impact on the market can be held liable for the violation of antimonopoly regulations.

- 3.3. The Bill will introduce equivalent amendments to the Federal Law 381-FZ dated 28 December 2009 "On Government Regulation of Trade Operations in the Russian Federation": antimonopoly prohibitions will be applicable to businesses engaged in trade operations and food supplies, unless the revenue of such businesses (and their groups of persons) from the sale of goods for the last calendar year is eight hundred million rubles or less.

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