

THE REVIEW OF MEETINGS OF THE GOVERNMENT OF THE RF IN JUNE 2015

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At meetings of the Government of the Russian Federation in June 2015, a draft law on liberalization of some provisions of the antitrust legislation was discussed.

On 11 July 2015, at the meeting of the Government of the Russian Federation the draft law on Protection of Competition and Other Statutory Acts of the Russian Federation were discussed. The draft law in question was developed for the purpose of implementation of item 25 of the Plan of Priority Measures Aimed at Ensuring Stable Development of the Economy and Social Stability in 2015 approved by Resolution No.98-r of 27 January 2015 of the Government of the Russian Federation (the Anti-Crisis Plan of the Government of the Russian Federation).

It is proposed in the draft law to exclude from the Federal Law on Protection of Competition one of the conditions of recognition of the dominating position of the economic entity if its share in the market of a certain product does not exceed 35%, but there is evidence of "market power" with that economic entity. It is to be reminded that that evidence of a dominating position of the economic entity was introduced by Federal Law No. 164-FZ of 17 July 2009, thus adjusting considerably the formal approach envisaged by the Federal Law On Protection of Competition which approach consists in establishing of 35% barrier for such a recognition¹. With Federal Law No.164-FZ of 17 July 2009 coming into force, on the basis of the competition analysis carried out by the antitrust authority the position of an economic entity whose share in the market of a certain product amounted to less than 35% and exceeded the shares of other economic entities on the respective commodity market, but had a decisive effect on general conditions of circulation of goods on the commodity market is recognized as a dominating one, too, provided that the following conditions are met in the aggregate:

- an economic entity is in a position to determine unilaterally the level of prices on the goods and have a decisive effect on the general terms of sales of goods on the relevant commodity market;
- access of new competitors to the relevant commodity market is complicated among other things due to existence of economic, technological, administrative or other limitations;
- goods sold or purchased by an economic entity cannot be replaced by other goods in consumption, including for production purposes;
- change in the price on goods fails to stimulate the relevant drop in demand on those goods.

The above principle of recognition of the dominating position is cancelled by the draft law.

Also, the draft law supplements the Federal Law on Competition with new limitations under which the position of an economic entity – a legal entity whose founder is an individual (including an individual entrepreneur) or several individuals – cannot be recognized as a dominating one if the revenues of that economic entity from sales of goods (jobs and services) in the previous calendar year did not exceed Rb 400m.

At the same time, the above limitation is not applied to individual types of economic entities, such as economic entities which are included in the *same group* with other economic entities in accordance with Article 9 (2) of the Federal Law on Protection of Competition, financial institutions, entities of a natural monopoly on the commodity market which is in the state of a natural monopoly, economic entities whose founders or participants are business entities; business associations in which charter capital there is a share of participation of the Russian Federation, a constituent entity of the Russian Federation and a municipal entity.

The draft law was approved at the meeting of the Government of the Russian Federation and submitted to the State Duma of the Russian Federation. ●

¹ At that moment, exceptions from the general rule of the 35% barrier were already in effect: the evidence of the collective market power and existence of direct exceptions provided that they were recognized by federal laws approved particularly to that effect.