

Russia Adopts Antitrust Compliance Law

19 March 2020

On 1 March 2020, Federal Law No. 33-FZ on Amendments to the Federal Law on Protection of Competition (the “Law”) was adopted, establishing the regulatory framework for antitrust compliance. The Law entered into force on 12 March 2020.

Prior to the enactment of the Law, many Russian and multinational companies operating in Russia adopted and implemented antitrust compliance programs to minimize their antitrust risks. The adoption of such programs was widely encouraged by the Federal Antimonopoly Service (the “FAS”), which initiated and developed the Law.

Antitrust Compliance. The Law defines antitrust compliance as a system of organizational and legal measures aimed at ensuring that companies comply with antitrust requirements.

Voluntary Antitrust Compliance. Under the Law, the development and implementation of the antitrust compliance system remains voluntary.

However, if the company is subject to investigation of antitrust law violations, the antitrust compliance system implemented by such company may serve as evidence that the necessary measures were taken to comply with antitrust requirements, act as proof of an absence of fault and support a defense against administrative liability.¹ Russia therefore joins a significant number of other countries—such as Australia, Brazil, Canada, Israel, Italy, Malaysia, Singapore, South Africa, Spain, Switzerland, the UK and the U.S.—in having an additional incentive to implement an antitrust compliance program. The EU is notably different in that it continues to refuse to consider a compliance program as a mitigating factor when setting any fine.

Structure of Antitrust Compliance Program. The Law states that any antitrust compliance program should include:

¹ Pursuant to Article 2.1 of the Administrative Offences Code of the Russian Federation, a legal entity is guilty of an offense if it had an opportunity to comply with the legal requirements but did not undertake all possible measures to ensure compliance.

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- requirements for the procedure for evaluating the antimonopoly risks of a specific company;
 - measures aimed at mitigating such risks;
 - measures aimed at monitoring the effectiveness of the antitrust compliance program;
 - procedures for familiarization of the employees with the antitrust compliance program;
 - details of the officer or officers responsible for the implementation of the antitrust compliance program.

Companies may include other sections in the antitrust compliance program, for example, procedures to be followed in case of identification of an antitrust violation, investigation by the antimonopoly authorities and liability for antitrust violations.

Antitrust compliance programs should be adopted as internal regulations at the company's or parent company's level, in the latter case provided that it is adopted in a way making it applicable to the relevant group company.

Disclosure of Antitrust Compliance Program. The Law provides that if a company adopts an antitrust compliance program, such program must be disclosed in Russian on its website.

Review of Antitrust Compliance Program by FAS. Any company may submit its antitrust compliance program, whether in final or draft form, to the FAS for review and verification of its compliance with the antitrust laws. The FAS should consider compliance program submissions within 30 days and issue its decision on whether they comply with the requirements of the antimonopoly laws or not.

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Please do not hesitate to contact us with any questions.

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