



FAS fines are growing

Recently, the fines imposed by the Russian authorities have increased dramatically and currently amount to over €30m. Claiming abuse of dominant position, the Federal Antimonopoly Service has started proceedings against companies operating in various areas, ranging from oil and gas to telecommunications, because it finds their contract practices to be in breach of Russian antimonopoly law.

The Federal Antimonopoly Service of the Russian Federation (FAS) is becoming increasingly aggressive in monitoring compliance with Russian antitrust law, initiating relevant proceedings and imposing fines. While the average fines were €650 in 2005, €750 in 2006 and €1,050 in 2007, the year 2008 showed a dramatic increase in the amounts of penalties, which by Russian standards have become extremely significant. Following the introduction of turnover-based fines in May 2007, the FAS actively began to apply such fines for the abuse of dominant market position during 2008. Enjoying the full support of the government and acting under its direction, the FAS fined three coking coal producers in August and September an aggregate of over Rbs1bn (€24.1m), with the largest fine imposed on Mechel (over Rbs797m or €19.2m). This was the most substantial fine the FAS had ever imposed.

In November 2008, however, the 'record' was broken: two major Russian producers of oil products, Gazpromneft and TNK-BP, were fined Rbs1,356bn (€32.7m) and Rbs1,112bn (€26.9m) respectively for abusing their dominant positions in the oil product market. The process continued and at the end of December the FAS fined their competitors, Lukoil and Rosneft Oil Company Rbs1,443bn (€34.8m) and Rbs1,508bn (€36.4m) respectively for the same offence. Furthermore, the head of the FAS, Yuri Artemiev, has stated that, unless oil companies decrease petrol prices, there will be further proceedings against them.

While the most conspicuous recent cases of high fines primarily involved oil companies, the FAS does not limit its proceedings to the oil industry. In December 2008 it started proceedings against FSK UES, a Russian energy network operator; MMZ Znamya, a producer of spare parts for the aircraft industry; and two major metallurgical companies, Magnitogorsky Metallurgical Plant and Oskolsky Electrometallurgical Plant, claiming abuse of dominant position in their respective markets.

Also in December 2008, the FAS fined the following entities, among other examples, for abuse of dominant market position:

- Metallorukav (the amount of the fine has not been reported); market involved: parts for aircraft and rocket engines;
- Gazprom was fined Rbs9.9m (€239.1 thousand); market involved: granulated sulphur;
- Sibuglemet Group (the amount of the fine has not been reported); market involved: coal concentrate;
- Belregiongaz was fined Rbs72.4m (€1.74m); market involved: gas sales;
- Energosetevaya Kompaniya was fined Rbs12m (€290 thousand) and SibirEnerg, Rbs75.8m (€1.83m); market involved: energy sales; and
- Mobicom-Kavkaz was fined Rbs203m (€4.9m); market involved: telecommunications.

The specific legal grounds the FAS used for claiming abuse and imposing fines vary and include, in particular:

- intrusion of burdensome terms of contracts;

- intrusion of terms unrelated to the subject matter of the contracts;
- refusal to supply gas to businesses or energy to house-dwellers in the required volumes;
- setting monopolistically high prices;
- refusal to exclude a prepayment requirement from energy supply contracts;
- refusal to enter into direct supply contracts; and
- setting discriminatory terms of sales (different prices for the same products/services).

In view of the above and to avoid the risk of FAS proceedings, it is advisable for major companies and especially those holding a dominant position in a particular market to carry out an antitrust analysis of their current contracts, pricing and customer policies and other matters related to entry into agreements in general.

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