



Please welcome antitrust compliance!
A draft law to help relieve companies
from liability for antitrust violations
has been lodged with the State Duma

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After several years of discussion, the Government submitted draft amendments to the Competition Law to the State Duma. The amendments introduce a concept of “antitrust compliance,” a framework of corporate rules designed to mitigate the risk of violating antitrust legislation.

Legal practitioners have been familiar with this concept for some time as a way to avoid claims from the Federal Antitrust Service (FAS), lengthy investigations or substantial fines. While many companies have proactively established their own antitrust compliance frameworks but until now these could not be regarded even as a mitigating factor in case of an antitrust violation.

New requirements for antitrust compliance

Under the [draft law](#), antitrust compliance rules must be set in the company’s internal documents and should cover at least the following aspects:

1. Assessment of antitrust risk. The company must establish a procedure to assess potential antitrust risk inherent in the partner onboarding process, contract negotiation, marketing campaigns and other business processes.
2. Safeguards to mitigate antitrust risk. These may include an economic analysis to support higher price rates, revising the terms of a questionable contract, canceling an illicit advertising campaign, etc. The adequacy of steps taken by a company to mitigate risks will be one of the key metrics to assess its compliance-related performance.
3. Controls over the application of antitrust compliance. In our experience the most effective control is one consisting of specific actions taken at regular intervals (employee interviews, internal document reviews, checks of risks factored into management decisions, etc.).
4. Employee awareness procedure. Along with traditional training, employees will also have to go through a formal process to familiarize themselves with local regulations in accordance with the rules prescribed by labor law.
5. Antitrust Compliance Officer. While antitrust compliance has generally been within the competence of a legal counsel or compliance officer, it would be better now to place it in the hands of a higher-ranked executive.

In addition to these mandatory elements, companies are also allowed to embed other components in their antitrust compliance framework.

Compliance to become public

The draft law requires that companies publish their corporate antitrust compliance documents in the Internet. While no direct sanctions are envisaged, failure to meet this requirement will most likely come to the attention of the FAS should it decide to open a probe.

Since in many cases compliance rules form part of a corporate sales/marketing policy and pricing regulations, companies will need to find the best way to adopt all compliance-related elements

required by law, while at the same time not disclosing sensitive information about their business processes.

Once the draft is enacted into law, companies will be able to adopt corporate compliance documents at the group level rather than at the level of an individual legal entity. This will make the formalization of antitrust compliance much easier.

We believe that ultimately companies will start using a single comprehensive public document that combines all significant compliance rules maintained at the group level. Antitrust policies of general nature will become a thing of the past.

The effect of antitrust compliance is what matters most

Companies will have the right to seek approval of their internal compliance documents from the FAS, which will have to provide its opinion within 30 days. While the approval has no direct impact, the notes to the draft law specify that a company cannot be considered guilty if it followed internal antitrust compliance documents approved by the FAS.

Thus, the company will not face any fines if it complies with its own policies approved by the FAS. Should the regulator follow the proposed approach in practice, antitrust compliance will become a truly effective mechanism for mitigating antitrust risk and should be applied unconditionally.

What's next?

If your company has already established an antitrust compliance framework, we recommend that you run a health check against the new law to ensure that it is (i) inclusive of the minimum requirements, (ii) available to the general public, and (iii) approved by the FAS. If you haven't established an antitrust compliance framework yet, it's about time that you do. With the advantages that this novelty brings, we expect to see a real boom in the uptake of antitrust compliance rules. Since many companies will wish to have their policies approved by the FAS, the regulator will be overloaded with work once the law comes into effect.

We will be glad to respond to any questions that you may have and help you establish an antitrust

compliance framework tailored to your business needs. EY has extensive multi-sector experience in delivering antitrust compliance projects for Russian and international clients.

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