

“Freedom of competition and efficient protection of entrepreneurship for the sake of future of Russia”



FEDERAL ANTIMONOPOLY SERVICE

**INTRODUCING AN INSTITUTION OF INTERNAL COMPLIANCE
WITH THE REQUIREMENTS
OF ANTIMONOPOLY LEGISLATION
(antimonopoly compliance)**

BACKGROUND INFORMATION

Compliance – a corporate program (policy) on compliance with antimonopoly legislation

- Is one of the tools for prevention and mitigation of antimonopoly risks for companies.

It is proposed to call compliance in Russian as the **“system of internal compliance with the requirements of antimonopoly legislation”**.

- The purpose of introduction of antimonopoly compliance is to reduce a risk of antimonopoly violation and, consequently, a risk of antimonopoly penalties.



FOREIGN EXPERIENCE

EUROPE:

Possibility to reduce penalties for companies with compliance programs in place:

- UK, France – by 10%,
- Italy – by 15%

USA and EU (U.S. Ministry of Justice and European Commission):

- deliberately *abandoned* use of antimonopoly compliance as a ground for fines' decrease

In the course of proceedings the decision is mainly within **the discretion of the antimonopoly agency.**

Acts on antimonopoly compliance developed by the national antimonopoly agencies are primarily of informational and recommendation nature.



RECOMMENDED

DOMESTIC EXPERIENCE

- Currently there are no statutory rules encouraging introduction of a compliance system among the market participants.
- However, there are organizations, which have independently developed and introduced local acts on internal prevention of violations of antimonopoly legislation:



- MTS PJSC



- Sibur Holding PJSC

- Uralkali PJSC



- Baltika Breweries LLC





**“On Amending the Federal Law “On Protection of Competition”
and the Russian Federation Code on Administrative Offences”
(ID 02/04/06-16/000501178)**

**the system of internal compliance with the requirements of
antimonopoly legislation (antimonopoly compliance)**

– is a set of legal and organizational measures envisaged by internal act(s) of a business entity or other entity being part of the same group with such business entity, if such internal acts apply to such business entity and are aimed at its compliance with the requirements of antimonopoly legislation and prevention of violation thereof.

LEGISLATION

- ✓ For the purposes of compliance with antimonopoly legislation and prevention of violation thereof a business entity **has the right** to organize a system of internal compliance with the requirements of antimonopoly legislation (antimonopoly compliance)
- ✓ Information on adoption (implementation) of an internal act is **published on the corporate website** in the informational and telecommunication network Internet. Such information shall be published in Russian language.
- ✓ In case of commencing proceedings and consideration of case on violation of antimonopoly legislation the relevant business entity **shall be obliged to prove** the fact of organization of the system of internal compliance with the requirements of antimonopoly legislation and its functioning

LEGISLATION



For the purposes of organization of **compliance** a business entity shall adopt internal act(s) and/or apply other internal acts, including those of another entity being part of the same group with such business entity, if such internal acts apply to such business entity, while such acts should jointly specify:

- 1) **the requirements for the procedure for assessment of risks** of violation of antimonopoly legislation related to performance of activities by the business entity;
- 2) **the measures aimed at mitigation of risks** of violation of antimonopoly legislation related to performance of activities by the business entity;
- 3) **the measures aimed at performance of control by the business entity** over functioning of the antimonopoly compliance;
- 4) **the procedure for familiarizing of employees** of the business entity with such act(s) and/or these documents (internal policies, codes);
- 5) **the information on the official** who is responsible for functioning of the antimonopoly compliance.

LEGISLATION



The public corporations, state-owned companies, natural monopolies, organizations engaged in the regulated types of activities in the field of electricity supply, gas supply, heat supply, water supply, sewerage, sewage treatment, processing, recycling, detoxification and disposal of municipal solid waste, state unitary enterprises, municipal unitary enterprises, autonomous institutions as well as business companies, in whose charter capitals the equity share owned by the Russian Federation, constituent member of the Russian Federation or municipal formation jointly exceeds fifty percent

are obliged to develop and adopt before 1 January 2017 internal acts for organization of the system of internal compliance with the requirements of antimonopoly legislation (antimonopoly compliance) in accordance with the requirements of Article 9¹ of this Federal Law.



Note 2 Article 14.31 of the Administrative Code:

“2. In addition the following factor mitigating administrative liability shall be taken into account:

organization by a legal entity, prior to commission of an administrative violation envisaged by Articles 14.31, 14.31², 14.32 or 14.33, of the system of internal compliance with the requirements of antimonopoly legislation (antimonopoly compliance) and **its functioning**, which is proven, *inter alia*, by **termination of violation of antimonopoly legislation**.

Article 14.31¹. Failure to follow the requirements for adoption of internal acts for organization of the system of internal compliance with the requirements of the Russian Federation antimonopoly legislation (antimonopoly compliance)

The draft law was placed on the website regulation.gov.ru from 29.08.2016 to 14.10.2016



Main comments to the draft law:

- 1. To exclude compliance obligations for natural monopolies, state unitary enterprises and municipal unitary enterprises;**
- 2. To shift the deadline for natural monopolies, state unitary enterprises and municipal unitary enterprises;**
- 3. To exclude obligation related to familiarizing of employees with compliance-related acts;**
- 4. To exclude obligation related to publication on website of information on adoption (implementation) of internal acts on compliance;**
- 5. To set compliance obligations for natural monopolies depending on the amount of proceeds from the natural monopolistic activities (over 10%);**
- 6. To remove the burden of proof of compliance from business entities;**
- 7. To specify the description of the mitigating factor**

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international@fas.gov.ru