

## LT In Focus

# Antitrust legislation compliance: the advantages of “self-control”

One of the key trends in the development of antitrust legislation is the tightening of liability for “anticompetitive behaviour”: the legislator has introduced so-called “revenue” fines for companies, while a company’s management can now face criminal charges for the violation of competition legislation.

Such circumstances force companies to undertake measures of precaution regarding possible violations of antitrust legislation. Presently, internal antitrust inspection is the most effective.

The Federal Antimonopoly Service has devised a draft law with [a set of amendments to the Law “On the Protection of Competition”](#), which, if adopted, will introduce a new institution to antitrust legislation, “antitrust compliance”.

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### **The definition and the elements of the internal antitrust compliance system**

The system of internal compliance with antitrust legislation (“antitrust compliance”) refers to a set of legal and organisational measures that are:

- Developed by a company for its needs or the needs of other companies that are members of the same group of persons;
- Aimed at compliance with the requirements of antitrust legislation and prevention of their violation.

The draft law envisages the mandatory elements of the system of internal antitrust compliance, including:

- A set of measures aimed at decreasing the risks of violation of the law by a company;
- Requirements for conducting internal assessment of the risks of violating antitrust legislation in the course of the company’s activities;
- Measures to control the functioning of compliance systems in a company;
- The procedure of introducing employees to the compliance system of a company;
- Information regarding the official who is responsible for the operation of antitrust compliance in a company.

## The legal significance of internal antitrust compliance in the determination of the scope of administrative liability

The draft law also stipulates that the implementation of compliance procedures shall be considered a circumstance mitigating administrative liability. In the event of violation of antitrust legislation, a company secures the right to prove the presence of the antitrust compliance system composed of all the elements set forth by the law.

## The establishment of the obligation to implement internal antitrust compliance for certain types of companies

It is also important to point out that the draft law obligates certain types of companies to implement antitrust compliance with a deadline set at 1 January 2017. The adoption of antitrust compliance shall be ensured by:

- State corporations and companies;
- Subjects of natural monopolies;
- Entities performing regulated activities in electricity, gas, heat or water supply as well as waste water disposal and treatment, in addition

## Law enforcement practice

When assessing antitrust compliance as a new institution in the Russian legal system, it is crucial to note that domestic oil, gas, manufacturing and technology companies are already implementing compliance procedures and are clearly demonstrating the positive effects of introducing the innovation.

An example of successful implementation of compliance procedures may be found in the FAS decision on Case No. 1-10-207/00-05-14 of 14 October 2015. A manufacturing company, the monopolist on the market, decided to modernise production and increase the price of produced goods by the amount equal to the investment. The company negotiated the new price with its key customers in compliance with the adopted internal policy. The company also conducted a benchmark study on the compliance of the pricing

mechanism with the requirements of antitrust legislation. Since the company had started to sell carnallite at a higher price, its business partners addressed the antitrust authorities with a complaint on the commodity's unjustifiably high price. Within the administrative proceedings, the company managed to prove its *bona fides* and the validity of the increase in the price of carnallite.

to processing, utilisation, neutralisation and burial of municipal solid waste;

- Institutions in the form of a state unitary enterprise and municipal unitary enterprise, and also autonomous institutions;
- Business companies with a share in charter capital exceeding 50 percent held by the Russian Federation, a subject of the Russian Federation or a municipality.

Thus, the implementation of the internal antitrust compliance system (before the legal establishment of said institute) is perceived positively by the court as proof of the economic entity's *bona fides*. However, pursuant to the draft law the implementation of the internal antitrust compliance system will only mitigate liability, but not condone it. Therefore, the practical value of the institute for the business is yet to be assessed.

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The Deloitte team is actively monitoring the development of internal antitrust compliance both in Russia and abroad. We understand that the adoption of the draft law on antitrust compliance is a matter of time; hence, we will keep you up-to-date on the main changes regarding the draft law's status. However, we advise all our clients to immediately assess the possibility of implementing internal antitrust compliance procedures into their business processes. Should you have any questions regarding the implementation of antitrust compliance, please contact the representatives of our Legal Services Group listed below.

Best regards,

**Partners of Deloitte CIS**

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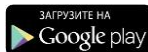
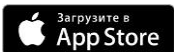


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## TaxSmart app



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