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Agenda Item: 8

FAS Recent Legal Initiatives- The Third Antitrust Package

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FAS Recent Legal Initiatives – The Third Antitrust Package

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Specification of Definition of “Related” Persons

- Reduction of criteria of recognition of several companies as belonging to the same “group of persons.”
- Abandoning criteria that were not used in enforcement practice in recent years.
- Ref: According to the Russian competition law the companies belonging to the same group of persons, e.g. to the same holding company are treated as the same company for the purposes of antitrust law enforcement and merger review.

Specification of the definition of excessive price

- Price established by a dominant company cannot be recognized as excessive (monopoly high) in case it does not exceed the price in commodity exchange where the trade is organized with observation of the antitrust regulations. (E.g. the volume of goods sold cannot be less than that sold in the previous year or in the period when no violations took place.)
- The excessive price can be determined basing on data on trade in or out commodity exchange of the same commodity in international markets.

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Access to essential facilities

- The suggested amendments provide the Government of the RF with powers to establish rules of non-discriminatory access to infrastructure facilities used for production and/or distribution of goods/services by natural monopolies.
- These amendment is intended to prevent abuses by companies possessing this types of essential facilities.

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Limitation of application of the per se principle to anticompetitive agreements

- Limitation of the use of the per se principle applicably to horizontal agreements (these among competing companies) only.
- Application of effect based approach to all vertical agreements, including price discrimination.
- Ref: both horizontal and vertical agreements are now considered in Article 11 of the “Law on Protection of Competition in the RF.” In international practice only horizontal agreements are recognized as collusive or cartel agreements, while vertical anticompetitive agreements are considered as unilateral abuses.

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State Aid Control Modification

- State or municipal preferences can be granted to SMEs meeting the requirements provided for by federal, regional or municipal programs of support to SME development

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Additional Provisions against Bid Rigging

- FAS receives powers to issue warnings to organizers of tender bids intended to prevent potential violations of fair bidding procedures.
- Powers of nullification of the results of a tended bid conducted with violation of competition rules.

Merger Control

- Substantial increase in value of turnover/assets of merging companies when merger requires a preliminary consent by antitrust authority.
- Increase of notification thresholds by twice.