ART DE LEX

ANTITRUST REGULATION

17 years

Of knowing and implementing antitrust

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A violation of antimonopoly legislation can result in adverse consequences and cause serious damage to a business. ART DE LEX boasts more than 10 years of consultation and representation experience in the area of antimonopoly regulation and the protection of competition. We represent the interests of companies operating in a wide range of sectors in their dealings with the antimonopoly authorities.

The practice's key focus areas are: conduct in dominant players' markets; the abuse of market power and dominant market positions; the cartelization of the commodity markets; and other prohibited anticompetitive agreements.

The ART DE LEX antimonopoly practice is recognized as one of the best in Russia according to the Pravo.Ru-300 ranking of law firms and recommended by the international law firm rankings in Chambers Europe, The Legal 500 and Best Lawyers.

The practice's specialists are members of the leading expert platform in the area of antimonopoly regulation and policy, the Association of Antimonopoly Experts, where they regularly participate in the refinement of Russian antimonopoly legislation. They also are active members of expert councils under the auspices of Federal Antimonopoly Service of Russia (FAS Russia).

The practice's team is comprised of highly-qualified specialists with more than 17 years of professional experience. Their competencies in the area of economic analysis and stringent requirements governing the expertise of each associate make it possible to undertake the most complex and challenging projects at the intersection of jurisprudence and economics.

Professional achievements of the practice area

“The firm’s clients stress the broad competencies of its antimonopoly regulation practice, noting that the team’s experts are equally comfortable on both the Russian and the international market”

Chambers Europe – 2019

“The firm has earned a reputation as an experienced and reliable partner”

Chambers Europe – 2019

One of the practice’s standout achievements was listed as “representing the interests of a new freight-forwarding company in litigation with FAS Russia over allegations of price fixing and the abuse of dominant position.”

Chambers Europe – 2019

ART DE LEX is listed in the newspaper Kommersant ranking of Russian law firms in the area of antimonopoly disputes.

Kommersant

ART DE LEX represented the interests of Magnitogorsk Iron & Steel Works PJSC in dealings with FAS Russia in a case involving the abuse by the primary purchaser (UC Rusal Trading House JSC) of its dominant position resulting from the conclusion of an agreement for the supply of coal-tar pitch. The dispute was resolved by the parties' conclusion of a new supply agreement on mutually beneficial terms.

Successful case

ART DE LEX defended PC Aquarius LLC (part of the National Computer Corporation) in a series of high-profile cartel cases. As a result, the decisions of FAS Russia were declared unlawful, thereby prompting the formation of precedent-setting legal positions by the arbitration courts.

Successful case

Services

Consulting and defending the client's interests in dealings with the antimonopoly authorities

- Analysis of requests from the antimonopoly authorities for documents and information for the purposes of ensuring compliance with applicable law, including the preparation of appropriate responses
- Consulting and representing the client's interests in scheduled and unscheduled inspections by the antimonopoly authorities
- Defending the client in cases involving alleged violations of antimonopoly legislation and administrative offenses, including consultation and legal support with respect to the application of leniency programs and prosecutorial discharge
- Defending the client's officials during preliminary reviews and investigations, as well in criminal cases, about alleged cartels
- Drafting requests to FAS Russia for the clarification of legislation

Defending the client in court cases involving antimonopoly legislation

- Challenging regulatory acts that restrict competition, as well as non-regulatory acts, decisions, and actions (or inaction) of entities vested with public powers
- Challenging the warnings, decisions, instructions, resolutions, and other acts and actions of the antimonopoly authorities
- Application of measures of public-private responsibility for the violation of antimonopoly legislation
- Recovery of damages caused by the violation of antimonopoly legislation, as well as the application of other private-law remedies to defend the rights and interests of business entities

Consulting on issues of compliance with legislation on the protection of competition

- Antimonopoly due diligence on the activities of the client's company and preparation of reports on the findings
- Due diligence on, and the development of, business models, sales policies, compliance policies, dealer and distributor agreements, exclusivity contracts, joint venture agreements and other types of agreements for compliance with the requirements of applicable antimonopoly legislation
- Approval of draft policies and agreements with the antimonopoly authorities
- General consulting and drafting of legal conclusions
- Seminars and training on issues pertaining to the observance of antimonopoly legislation

Conducting antimonopoly due diligence on the activities of one of Russia's largest holdings in the area of communication network construction.

Developing internal policies for a major automobile distributor, aimed at minimizing antimonopoly risks in the company's operations.

Consulting one of Russia's largest producers of graphitized carbon products in its dealings with FAS Russia about its compliance with applicable antimonopoly legislation in the formulation of its commercial sales policy.

Conducting due diligence on a major rolling-stock operator's antimonopoly compliance policy.

Representing the interests of an international marine shipper in an antimonopoly investigation and resulting case arising from the alleged presence of indicia of an international cartel.

Conducting antimonopoly due diligence and defending the interests of a group of medical companies in a case alleging collusion at tenders, which had the risk of the client suffering hundreds of millions of rubles in adverse financial consequences.

Consulting about legislation on the contracts and procurement by certain types of legal entities

- Formulation of recommendations to boost the efficiency of procurement activity
- Due diligence on, and the drafting of, procurement documentation and clauses, and applications for participation in supplier qualification procedures
- Representation in dealings with FAS Russia and its territorial offices about the consideration of complaints, as well as in cases of the alleged violation of antimonopoly requirements governing tenders
- Representation in litigation over the voiding of tenders and the contracts concluded on the basis of their results, including challenges to the decisions and instructions by FAS Russia and its territorial offices
- Seminars and training for customers and clients participating in supplier-qualification procedures

Comprehensive consultations and defense of the interests of a large machine-building enterprise in its obtaining clearance to enter a major procurement market within the scope of programs for the repair of capital buildings in Russia, with an annual turnover of billions of rubles.

Developing policies for major participants in public procurements on compliance with antimonopoly legislation and the prevention of collusion at tenders.

Consulting on the application of advertising law

- Due diligence on internal documents determining the company's advertising and marketing activity, as well as advertising material, for their compliance with the requirements of advertising law
- Consulting and formulation of recommendations on any issues associated with the dissemination by competitors of false or unscrupulous advertising
- Representation of the company's interests in dealings with the antimonopoly authorities, including the drafting and submission of claims of the violation of advertising law
- Workshops on compliance with the requirements of advertising law in the development and dissemination of advertising materials

Conducting legal due diligence on the advertising campaign of an international FMCG producer for compliance with applicable advertising law.

Services in the area of economic analysis and antimonopoly regulation

- Comprehensive economic and legal antimonopoly due diligence on existing pricing policies and practices in the conduct of business in unregulated markets, including the drafting of such policies and their approval by the antimonopoly authorities
- Consulting on pricing issues and interaction with regulators, including the drafting of responses to requests for information
- Defending the interests of businesses occupying a dominant market position in the investigation and consideration of cases of suspected violation of antimonopoly legislation (e.g., setting of monopolistically-high prices, violation of pricing procedures)
- Drafting and submission to the antimonopoly authorities of petitions concerning the application and/or adjustment of a previously established tariff, as well as the drafting of the corresponding objections to the amount of the approved tariff
- Defending the interests of regulated businesses and consumers in court challenges to decisions by regulators concerning the application, introduction, and adjustment of tariffs, as well as decisions adopted following the pre-litigation of disputes
- Evaluation and critique of reports prepared by the antimonopoly authorities on the status of competition in the commodity markets

Defending one of Russia's largest marine-port operators before FAS Russia and in the arbitration courts in cases involving the alleged setting of monopolistically-high prices for container transshipment services in the Northeast and Far East basins, resulting in amicable settlements with FAS Russia and the repeal of directives ordering our client to forfeit more than RUB 7 bln in revenue.

Representing the interests of a leading container-terminal operator in arbitration court in its challenge to FAS Russia's instruction on switching to a ruble-denominated service tariff, issued under the approval of a transaction involving the sale of the business. The dispute was resolved out of court in connection with FAS Russia's acknowledgement of the actions taken by the client in the furtherance of the instruction.

Defending the interests of a major Russian transport holding in the review by the antimonopoly authorities of a series of cases involving the alleged abuse of dominant position, as expressed in its setting of monopolistically-high service prices and forcing unfavorable contract terms on counter-parties, as well as representation in court in a claim challenging the acts by FAS Russia, resulting in the withdrawal of a portion of the imposed fines in the amount of roughly RUB 1 bln.

Advising one of the leading stevedore operators in the Baltic and Far East basins on issues related to the development of a client-discount system and the prevention of possible violations of Art. 10 of the Law on the Protection of Competition.

Defending one of Russia's leading metallurgical enterprises in an inspection by FAS Russia checking for compliance with applicable antimonopoly legislation governing the setting of prices for metallurgical products.

Defending the interests of a large producer of coke-chemical products at FAS Russia in a case alleging the abuse by the primary purchaser of its dominant position under the conclusion of a supply agreement, resulting in the conclusion of a new supply agreement on mutually-beneficial terms.

Representing the interests of a major transport holding in an FAS Russia case involving the alleged abuse of dominant position, as expressed in the violation of the established pricing procedure, as well as in a court action challenging FAS Russia's action, resulting in the withdrawal of a RUB 370 mln fine.

Consulting in the structuring of transactions involving economic concentration, including international M&A transactions, and in investments in strategically significant companies

- Evaluation of the need to obtain approvals, by FAS Russia and/or the Governmental Commission for the Oversight of Foreign Investments, to proceed with a particular transaction
- Drafting of petitions for the approval of transactions by FAS Russia and/or the Governmental Commission for the Oversight of Foreign Investments
- Interaction with FAS Russia during the consideration of petitions for transaction approval, including with the involvement of antimonopoly economists

Consulting on issues related to organizing, holding, and participating in tenders

- Comprehensive legal support for tender customers and organizers in the organization and holding of tenders (inter alia, per 44-FZ and 222-FZ, privatization procedures, tenders for the right to conclude concession or other agreements on public-private partnership, agreements on the lease of state property), including due diligence on, and the drafting of, tender documentation, a review of the records and resolutions compiled and drafted in the course of tenders, and defending tender customers and organizers in the consideration by the antimonopoly authorities of complaints
- Comprehensive legal support for the participants in qualifications, tenders, and other competitive procedures for the conclusion of agreements, including the analysis of tender documentation, the drafting of requests for the clarification of such documentation, the drafting and review of applications for tender participation, and consultations during tenders
- Drafting of complaints about the actions of tender customers and organizers, tender commissions, e-platform operators, as well as representation in the consideration by FAS Russia and its territorial offices of complaints

Defending the interests of one of the largest elevator building plants in the performance of pre-qualifications and tenders of contractors in the Russian regions by capital-repair funds, as well as defending the client's interests in the consideration of customer petitions to have the plant added to the list of unscrupulous contractors.

Antimonopoly compliance

- Development and implementation of an antimonopoly compliance system or its individual elements
- Antimonopoly audit of company operations
- Mock dawn raid (simulation of an unscheduled inspection by the antimonopoly authorities)
- Development of the internal audits, policies, and instructions required for the implementation of antimonopoly compliance
- Development and implementation of corporate mechanisms and procedures for identifying and lowering the level of antimonopoly risks
- Approval of the compliance system by the antimonopoly authorities
- Training sessions on antimonopoly compliance and regulation
- Due diligence on the existing antimonopoly compliance system

Developing an antimonopoly compliance program for one of Russia's largest energy holdings for the purposes of assessing the risks associated with its violation of applicable antimonopoly legislation, in particular its abuse of dominant position estimated at over RUB 1 bln.

Advising one of Russia's largest marine port operators on issues related to the development and implementation of antimonopoly compliance, as well as on the regulation of tariffs, for the purposes of preventing violations of the Law on the Protection of Competition, in particular the abuse of dominant position.

Team

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