

ALRUD

Countersanctions,
Foreign Investments,
Antitrust and Competition

2023 Year in Review



Dear Readers,

The year 2023 was marked by the further strengthening of control over transactions involving the sale of Russian assets owned by “unfriendly” foreign entities, as well as over Russian strategic companies. As for antimonopoly regulation, after several years of discussions and revisions, the fifth antimonopoly package was adopted, and a number of precedent-setting cases were considered. Please see below for more details about the key developments and highlights of 2023.

1. Countersanctions

The procedure has become clearer for obtaining approvals from the Subcommittee of the Government Commission for Control over Foreign Investment (the “Subcommittee”) for transactions (operations) pursuant to decrees concerning countersanctions: the consideration process has become more transparent, and approval criteria have been established that must be met in order to obtain a positive decision.

When making decisions on transactions (operations), special attention is paid to financial issues in the context of the impact on the volatility of the domestic currency market, as well as to the candidacy of the buyer. At the same time, businesses that must be sold should be able to operate and develop successfully afterwards.

2. Control by the Russian President

In 2023, Russian President Vladimir Putin adopted 34 decrees authorizing transactions (operations) in accordance with Decree No. 520 dated 5 August 2022 “On the Application of Special Economic Measures in the Financial and Fuel and Energy Sectors in Connection with the Unfriendly Actions of Certain Foreign States and International Organizations”. The assets that are to be acquired are mainly part of the fuel and energy sector and the oil and gas sector.

As for large Russian assets of “unfriendly” foreign entities with significant influence on the relevant parts of the Russian economy, the instrument of introducing the interim administration regime established by the Russian president was actively used. This mechanism was introduced as a response to “unfriendly” states illegally depriving or restricting Russian entities of their ownership rights.

3. Foreign Investments in Strategic Companies

Following amendments to Federal Law No. 57-FZ dated 29 April 2008 “On the Procedure for Foreign Investments in Companies of Strategic Importance for National Defence and State Security”, Russian citizens who have obtained a residence permit or other valid document confirming the right to permanent residence in a foreign state are now recognized as foreign investors. Now such individuals are also obliged to file an application for approval to establish control over a strategic company.

In addition, clarifications were made about the consequences of concluding transactions without complying with the requirements of legislation on strategic investments. If the parties to a transaction had an intent to violate the law, the shares (participatory interests) or property of the strategic company, as well as income acquired as a result of such a transaction, may be recovered as the income of the Russian Federation.

4. Antitrust Investigations and Litigation

In 2023, a number of precedent-setting antimonopoly cases were considered and challenged. In particular, construction companies (Koshelev-Project case) belonging to the same group were held liable for rigging bids. The companies challenged this decision by the antimonopoly authority by citing the existence of actual control. However, the courts did not accept this argument and ruled that immunity of control for participants in a cartel agreement cannot be applied.

In addition, the courts upheld the decision of the antimonopoly service to find large metallurgical companies guilty of setting monopolistically high prices on the market for flat rolled steel products.

5. Developments in Antimonopoly Regulation

The Fifth Antimonopoly Package was adopted to improve antimonopoly regulation in the context of the digital economy and to prevent and suppress the monopolization of digital markets.

In particular, the Fifth Antimonopoly Package introduced the definition of “network effects”, expanded bans of monopolistic activities on digital markets, subject to certain conditions, established new threshold criteria for merger control clearance, expanded the institution of expert examinations, and introduced new mechanisms within the procedure of obtaining clearance.

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