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Antitrust regulation in the EAEU cross-border markets in the light of the “Caterpillar case”

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On October 22, Astana (Kazakhstan) hosted the International Conference “Industrial Competition Advocacy in the EAEU cross-border markets”, where issues related to the antitrust regulation in the EAEU were discussed.

One of the most important issues in the competition area of the EAEU development is the establishment of regulatory framework for the EAEU antitrust regulation and harmonization of the national competition legislation of the EAEU Member States and, consequently, start of the relevant enforcement practices.

In 2015, the European Economic Commission (“EEC”), being the controlling authority on the competition issues within the EAEU, reviewed 16 applications on grounds of violations of the antimonopoly legislation. In 2016, 4 applications were reviewed, 2 investigations are running now on grounds of violations of antimonopoly legislation on the cross-border trade markets.

The relevant example showing the application of the common antitrust rules within the EAEU is the recent “Caterpillar case”. The case concerns actions of Caterpillar and its dealers, which resulted in refusal to supply products to the Kazakhstan^[1] market. The relevant complaint was sent to EEC by the competition authority of the Republic of Kazakhstan.

Caterpillar is one of the largest manufacturer of the specialized machinery, which are used in the mining industry. The main customers of the products in this market are the industrial enterprises of Russia and Kazakhstan.

The ECC did an analysis of the cross-border market in this area upon the request of TOO Eurasian Group, located in Kazakhstan. It was found that the Russian dealer of Caterpillar refused to sell products to the Kazakhstan entity, whereas the price of Caterpillar product at the official dealer in Kazakhstan was higher than that at the official dealer in Russia.

According to Article 76 of the Treaty, agreements between economic entities are prohibited if such agreements led or might lead to the restriction of competition. The EEC carried out an analysis of the cross-border market and made a conclusion that allocation of territory between dealers and distributors has led to unequal conditions for access to the products for the customers. Herewith, the difference in prices on the markets of Russia and Kazakhstan exceeded 40%.

In July 2016, during the session of the Subcommittee on Competition and Antitrust Regulation of

the EEC, the results of the “Caterpillar case” were considered.

As a consequence of joint work of the European Economic Commission and the Federal Antimonopoly Service of Russia, the main international contracts between Caterpillar and its dealers were amended. Amendments were also made to the certificate letters on the dealers’ service areas (Eastern Technology LLC, Zeppelin Russland, Mantrac East LLC, Borusan Makina Kazakhstan LLP).

Thus, Caterpillar’s dealers have stopped the practice of refraining from concluding agreements for the sale of machinery and spare parts manufactured by Caterpillar on the territory of EAEU with economic entities operating outside the dealer’s service area. This means that buyers from any EAEU country can buy the necessary technology and have the right for appropriate technical maintenance at any of the dealers. This fully complies with the practice of the dealer networks in the European Union and will allow Kazakhstan’s mining and metallurgical companies to profitably acquire Caterpillar equipment and spare parts from suppliers in Russia, which should reduce prices on equivalent goods and services in Kazakhstan.

Caterpillar and its dealers on the territory of the EAEU made a joint statement of commitment to ensuring equal and fair competition in the Eurasian Economic Union among all market participants including Caterpillar dealers.

Summarizing the results of the executed work, EEC Minister, Nurlan Aldabergenov, declared that this was the first time when a world-leading producer had changed its contractual practices in the EAEU after consultation with the Eurasian Economic Commission and that contractual practices of the company had been brought in line with the best practices adopted in the European Union. He noted that this should serve as a signal for other market participants on necessity to change their distribution systems towards developing competition and inadmissibility of violation of the common competition rules established by the Treaty[2].

Herewith, Stats-Secretary, Deputy Head of the Federal antimonopoly Service of Russia, Mr. Andrey Tsarikovskiy, highlighted that the “Caterpillar case” is a great example of implementation of the “soft regulation method”, because the main goal of competition authority is not to punish the companies, but to support the economic growth of the EAEU states.

Consequently, in a view of the recent EEC practice, the companies engaged in commercial activity within the EAEU should pay particular attention to the economic activities within the different member countries, in particular to cooperation with the distributors, pricing, territory allocation and other issues.

[1] The Republic of Kazakhstan is one of the EAEU member states, alongside with the Russian Federation, the Republic of Belarus, the Republic of Armenia and the Kyrgyz Republic (as of December 2016).

[2] Please see more details at:
<http://www.eurasiancommission.org/en/nae/news/Pages/29-07-2016-4.aspx>.

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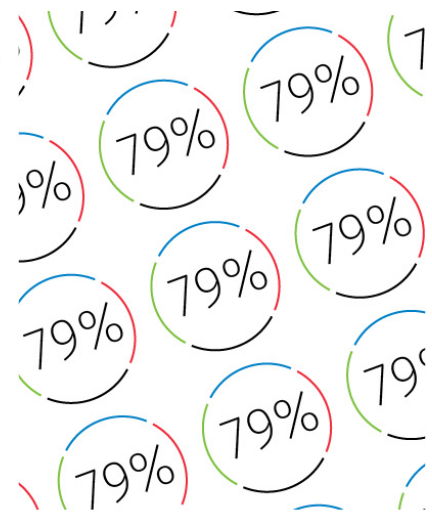
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