



A NEW DEVELOPMENT IN CRIMINAL LIABILITY FOR RESTRICTING COMPETITION

For the attention of CEOs and heads of legal departments

Pepeliaev Group Advises of Amendments to Article 178 of the Russian Criminal Code to Decriminalise Certain Offences and Introduce a New Condition for being Released from Criminal Liability for Restricting Competition


Main changes

On 20 March 2015, Federal Law No. 45-FZ "On Amending Article 178 of the Russian Criminal Code" (the "Law") dated 8 March 2015 came into effect.


The Law has narrowed the possibility of criminal liability being imposed on a person for restricting competition. It has decriminalised the repeated abuse of a dominant position in the form of setting and/or maintaining monopolistic high or low prices for goods, for refusing to conclude or for avoiding concluding a contract without grounds for doing so, and restricting access to the market.

The Law has also specified the objective aspect of a crime by excluding liability for not permitting or eliminating competition. Persons will be subject to criminal liability for restricting competition by concluding an agreement between competing legal entities that restricts competition (a cartel). This is prohibited in accordance with Russian antimonopoly laws, provided the act caused large (especially large) damage to individuals, companies or the state, or if the act resulted in large (especially large) income being obtained.

In addition, there has been a tenfold rise in the thresholds required for a breaches of antimonopoly regulation to be classified as an offence, most notably those determining "large income" (above RUB 50,000,000), "especially large income" (above RUB 250,000,000), "large damage" (above RUB 10,000,000) and "especially large damage" (above RUB 30,000,000).

 *Such a significant rise in the figures relating to income and damage will help to ensure that the only individuals who are subject to criminal prosecution will be those whose wrongdoings imply a public threat to competition.*

In addition to the existing provisions, the Law has introduced a new condition under which a person may be released from criminal liability. This is when a person is the first of a number of joint offenders who reveals the crime that has been committed.

 *Since it is possible to be released from liability only if all the criteria are met, the additional one above may be treated as a condition that worsens the position of other participants in a cartel who disclose their participation in a cartel after the first of the joint offenders does so. Consequently, the new version of article 178 of the Criminal Code within the meaning of article 10 of the Criminal Code does not have retroactive effect and must be applied to relationships that have arisen after the Law came into force, i.e. since 20 March 2015. Taking into account previous criminal cases initiated under article 178 of the Criminal Code when persons were released from administrative liability (comment 1 to article 14.32 of the Russian Code of Administrative Offences), the additional condition may not lead to unified practice in the area of being released from administrative and criminal liability for setting up a cartel.*

The new version of note 3 to article 178 of the Criminal Law does not provide for an opportunity to release officers or other employees of a legal entity from criminal liability, if the legal entity (the corresponding officer or other employee) was previously released from administrative liability in accordance with the procedure that article 14.32(1) of the Code of Administrative Offences provides for. On contrary, if there are signs of a crime having been committed, as stipulated by article 178 of the Criminal Code, release from criminal liability on the grounds specified in the note is possible only within the framework of criminal law procedures and if all the criteria are met.

Moreover, a decision of an antimonopoly agency to terminate proceedings in a case owing to a release from administrative liability in accordance with the procedure set in article 14.32 (1) of the Code of Administrative Offences will not have a prejudicial meaning in the sense of article 90 of the Criminal Procedure Code, but may only be attached to the files of the criminal case as evidence in the form of another document (article 74(2)(6) and article 84 of the Criminal Procedure Code). The evidence may be assessed as appropriate together with other evidence submitted.

Consequently, when legal entities and their officers are released from administrative liability in accordance with article 14.32(1) of the Code of Administrative Offences, this does not eliminate the risk of potential criminal prosecution of such officers under article 178 of the Criminal Code.

What to think about and what to do

The amendments on the whole attest to criminal liability for restricting competition becoming more relaxed. It is stipulated only for the most dangerous breaches of antimonopoly legislation, or setting up cartels. This is in line with the approaches existing in the legislation of other countries.

At the same time, taking into account previous criminal cases initiated under article 178 of the Criminal Code when persons were released from administrative liability in accordance with comment 1 to article 14.32 of the Code of Administrative Offences, it is worth monitoring how the new version of article 178 of the Criminal Code is applied in practice.

Since it is possible to impose criminal liability on officers or other employees of a legal entity for restricting competition under article 178 of the Criminal Code, companies should take this into account when they assign certain functions or powers to their employees and assess potential risks of company employees being held liable under both administrative and criminal legislation.

Help from your adviser

Pepeliaev Group's lawyers have considerable experience of advising and representing clients with regard to antimonopoly regulation and criminal defence of business. Our experts will provide the firm's clients with highly qualified legal assistance in their dealings with the antimonopoly agency and law enforcement bodies in relation to any issues involving, among other things, a criminal prosecution for restricting competition.

Contact details



Vladimir Sokov
Senior Partner,
Head of Corporate Division
Pepeliaev Group
T.: +7 (495) 967-00-07
v.sokov@pgplaw.ru



Elena Sokolovskaya
Head of Antimonopoly Regulation
Pepeliaev Group
Tel.: +7 (495) 967-00-07
E.Sokolovskaya@pgplaw.ru



Maxim Koshkin
Head of Practice for Criminal
Defence for Business
Pepeliaev Group
Tel.: +7 (495) 967-00-07
M.Koshkin@pgplaw.ru



Sergey Spasennov
Partner (St Petersburg)
Pepeliaev Group
Tel.: +7 (812) 640-60-10
E-mail: s.spasennov@pgplaw.ru



Egor Lysenko
Head of Siberian office
“Pepeliaev Group”
(Krasnoyarsk)
Phone: +7 (391) 277-73-00
E-mail: e.lysenko@pgplaw.ru