

Asset and Share Acquisitions in Russia

When do I need to obtain approval or notify the Federal Antimonopoly Service?

When considering a transaction with a Russia-based company involving a significant acquisition of shares or assets, or the acquisition of an interest in a company that will result in a change of control over a direct or indirect Russia-based subsidiary or a group reorganization, you need to consider whether you will need to obtain the prior approval of the Federal Antimonopoly Service (FAS) of Russia. Notification and pre-approval requirements also apply to entity formation, mergers and certain transactions involving financial institutions. Please see our other Quick Reference Guides on these topics.

FAS is responsible for enforcing compliance with the antimonopoly legislation of Russia. The primary law in this field is Federal Law No. 135-F3, "On the Protection of Competition," dated 26 July 2006 (as amended) (the Competition Law). Failure to comply with the Competition Law may result in fines and render your transaction void, so it is critical to closely analyze whether your transaction is subject to FAS approval or notification.

Pre-Approval and Post-Closing Notice Analysis

1. Determine whether you are proposing to enter into a triggering transaction.
2. If yes, depending on the size and type of transaction, you may need to (i) obtain pre-approval from FAS to complete the transaction, or (ii) notify FAS of the transaction.

Triggering Share and Assets Acquisition Transactions

1. Acquisitions of assets (including intangible assets, but excluding real estate) from a legal entity with a value greater than 20 percent of the book value of all of the seller's assets, excluding real estate;
2. Direct acquisitions of voting shares of a joint stock company in amounts equal to or greater than 25, 50, 75 or 100 percent of the voting shares of the target;

3. Direct acquisitions of membership interests of a limited liability company in amounts equal to or greater than 33.3, 50, 66.6 or 100 percent of the membership interests of the target; and
4. Acquisition of (direct or indirect) rights to (i) define the terms and conditions of a Russia-based entity's business activities or (ii) perform the executive functions of a Russia-based entity.

Note: Many transactions involving a change of control of Russia-based entities are effected through the use of offshore vehicles and are captured under this trigger. Moreover, absent qualification for a transparency exemption, triggering transactions among entities of the same group are subject to FAS approval, even if there is no change in the ultimate controlling entity.

FAS Pre-Approval

Prior approval for a triggering transaction must be obtained from FAS if it passes any of these tests:

1. **Book Value Test:** the aggregate book value per the most recent balance sheets of both the acquiring entity (and its group of entities) and the target (in a share deal) or selling entity (in an asset deal) (and its group of entities) exceeds 3 billion rubles (approximately US\$97 million at a rate of 31 rubles to the dollar) and the book value per the most recent balance sheets of the target or selling entity (and its group of entities) exceeds 150 million rubles (approximately US\$4.8 million at a rate of 31 rubles to the dollar); or
2. **Revenue Test:** the aggregate revenue in the preceding year of the acquiring entity (and its group of entities) and the target or selling entity (and its group of entities) exceeds 6 billion rubles (approximately US\$194 million at the rate of 31 rubles to the dollar) and the book value per the most recent balance sheets of the target or selling entity (and its group of entities) exceeds 150 million rubles (approximately US\$4.8 million at the rate of 31 rubles to the dollar); or
3. **Register Test:** the acquiring entity, the target or selling entity or any member of their respective groups are identified in the register of entities holding more than a 35 percent share of the relevant market, which is maintained by FAS.

FAS Notification

If prior approval is not required, you will need to notify FAS of the transaction within 45 days of closing if it passes either of these tests:

1. **Book Value Test:** the *aggregate book value* per the most recent balance sheets of both the acquiring entity (and its group of entities) and the target or selling entity (and its group of entities) **exceeds 200 million rubles** (approximately US\$6.4 million at a rate of 31 rubles to the dollar) **and** the *book value* per the most recent balance sheets of the target or selling entity (and its group of entities) **exceeds 30 million rubles** (approximately US\$968 million at a rate of 31 rubles to the dollar); or
2. **Revenue Test:** the *aggregate revenue* in the preceding year of the acquiring entity (and its group of entities) and the target or selling entity (and its group of entities) **exceeds 200 million rubles** (approximately US\$6.4 million at a rate of 31 rubles to the dollar) **and** the *book value* per the most recent balance sheets of the target or selling entity (and its group of entities) **exceeds 30 million rubles** (approximately US\$968 million at a rate of 31 rubles to the dollar).

Group of Entities

The Competition Law defines a “*group of entities*” to include:

- **Parent and Direct Subsidiaries:** a company and each person (legal or natural) holding the right to more than 50 percent of the votes of the company and any other company in which such a person holds more than 50 percent of the votes;
- **Shared Management and Company:** a company and its sole executive authority (e.g., general director) and any company managed by the same sole executive authority;
- **Binding Authority and Company:** a company and any person (legal or natural) with the right to give binding instructions to the company and any other company that is subject to binding instructions of the same person;
- **Nominator of Management and Company:** a company and any person (legal or natural) who proposed the candidacy of the sole executive authority (e.g., general director) or more than 50 percent of the collective executive authority or board, if their candidates were appointed, and any other company whose sole executive authority, or more than 50 percent of its collective executive authority or board, were appointed upon proposal of the same person;
- **Overlapping Board and Companies:** companies whose collective executive authority or boards are made up by more than 50 percent of the same individuals;
- **Family Members:** natural persons and their spouses, parents, adult children (natural or adopted) and siblings (whether whole or half blood) who are shareholders, board members or sole executive

officers or have any rights to give binding instructions to another company; and

- **Members of Other Groups:** Any person (legal or natural) who is a member of a group is also deemed to be a member of any group of which members of its group are a part.

FAS has also taken the position, which has been upheld by court practice, that the following also constitutes a group of entities:

- **Parent, Intermediaries Under Common Control and Company:** a company and its shareholders who are under common control of a third party and that third party, if those shareholders collectively hold the right to more than 50 percent of the votes of the company.

Caveat

This Guideline is intended only to provide a general overview of the issues covered and help you quickly determine whether your transaction is likely subject to FAS approval or notification. Interpretation and application of the Competition Law may involve complex issues, particularly in applying the law to a *group of entities*. Accordingly, legal advice should be obtained with respect to your unique facts.

For More Information

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The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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