

Trade Legislation Developments in 2010

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From the beginning of the global economic crisis, the Russian retail sector went through a challenging period and experienced serious problems of reduced consumer purchasing power and slumping demand, as compared to the previous booming consumption period. At the same time, it has been a beneficial period for certain formats of retail chains (e.g., discounters) to increase their presence on the market. Given the overall market recovery, the retail market remains one of the most promising sectors of the economy in Russia. This Overview outlines the regulations on trade enacted in 2010 and takes a look forward to 2011.

Trade Regulations

Federal Law No. 381-FZ "On the Principles of State Regulation of Trade in the Russian Federation," dated 28 December 2009 (the "**Law on Trade**") (discussed in detail in our update issued in April 2010) has been in force since 1 February 2010. It introduces a legal framework for state regulation of trading activities and has become one of the most actively discussed and highly anticipated legislative developments.

Most of the requirements of the Law on Trade to supply contracts and protection of competition apply only to entities working on the food markets. According to the Law on Trade, the food products include not only natural or processed products being in circulation and at by individuals, bottled drinking water, alcohol products, beer and beer-based beverages, non-alcohol beverages, and chewing gum, but also supplements and biologically active supplements.

In particular, the Law on Trade establishes:

- Information disclosure requirements: both retail chains and product suppliers must disclose their criteria for choosing counterparties to and essential terms of food supply agreements;
- Requirements to bonuses and services of retail chains: only the so-called volume bonuses not exceeding 10% of the products' price may be offered to retail chains (save for certain exceptions), and a party may not be forced to execute a services agreement when entering into the supply agreement;
- Requirements to payments for products: the supplied food products must be paid for within a certain period from the day of their acceptance as established under the Law on Trade, depending on their shelf life term;
- Prohibitions of actions limiting competition: retail chains and food suppliers may not create discriminatory conditions, wholesale the products under commission agreements, or impose certain conditions on the counterparty (e.g., prohibition to execute contracts with other market players, product entry premium for a retail chain);
- Limitations of horizontal development: retail chains are prohibited from acquiring or leasing additional trading facilities if their market share exceeds 25% of all sold food products within a constituent entity of Russia.

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Liability for Breaching the Law on Trade

On 28 December 2010 the President signed Federal Law No. 411-FZ amending the Administrative Offences Code to establish administrative liability for breaching the Law on Trade (in force as of 31 December 2010). Administrative liability may be imposed on retail chains trading in food products and their suppliers for:

- breaching the antimonopoly rules established under the Law on Trade (e.g., imposition of discriminatory conditions on companies wishing to enter the market);
- failure to disclose the criteria for choosing counterparties to food supply agreements and the essential terms of such agreements; and
- inclusion in supply agreements of certain provisions prohibited under the Law on Trade (e.g., forcing a party to execute a services agreement to promote food products when concluding the supply agreement).

An administrative fine may be imposed on officers and legal entities and may amount to up to RUB 50,000 (approximately, USD 1,670) and RUB 5 million (approximately, USD 166,670), respectively.

Market Practice

Implementation of the Law on Trade raises at least three practical and commercially sensitive issues: (i) what commercial entities are subject to the new regulations; (ii) what is the new regime for distributing food products; and (iii) what contractual types of food supply to retail chains are now prohibited.

The Law on Trade has introduced a number of new regulations applicable to retail chains and food suppliers. Not surprisingly, market players question the definitions of the above categories. For instance, a retail chain is defined as two or more sales outlets under common management or using one commercial designation (brand) or other means of individualization. The law does not specify what "common management" and "the use of one commercial designation" mean. However, representatives of the Federal Antimonopoly Service ("**FAS**")¹ have commented that entities belonging to one group of persons and a franchiser together with each of its franchisees shall be considered a retail chain.

Another important development relates to food distribution. The Law on Trade prohibits parties to a food supply agreement to regulate product marketing and advertising services under such agreement. This effectively means that complex food product distribution agreements have been banned: the parties are to conclude sale and purchase agreements and separate services/ marketing agreements to regulate provision of food product-related services and payments.

The Law on Trade also limits the contractual types of food supply arrangements: suppliers of food products are prohibited from making food supply under a commission agreement. According to FAS, this prohibition relates to other forms of indirect supply of food products to retail chains such as agency.

Distribution agreements executed in violation of the Law on Trade may be challenged and invalidated in court (as per general civil law rules).

FAS closely monitors the implementation of the Law on Trade. According to publicly available information, in 2010 FAS performed more than 460 inspections of retail chains and initiated more than 100 cases on breaches of the Law on Trade (since 1 August 2010).²

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Prospective Legislation Developments

FAS representatives stress the need to further improve/amend the Law on Trade based on market and court practice, in particular, to specify: (i) a definition of a retail chain and trading standards; (ii) a list of prohibited practices of retail chains and suppliers; and (iii) antitrust rules (e.g., rules on tying and discrimination).³

At the same time, there is a number of legislative initiatives with respect to sales and advertising of biologically active supplements ("**BAS**"). In particular, the proposed amendments aim to: (i) restrict places and mass media where a BAS may be advertised and specify requirements to BAS advertising; (ii) specify the requirements to labels and inserts of BAS and information on BAS to be provided to consumers; (iii) allow only pharmacies to sell BAS and introduce administrative liability for a breach of this requirement; (iv) introduce criminal liability for production, sales, storage and transportation of counterfeited BAS and sales of BAS as medicines (in case resulted in harm to health or human death); and (v) introduce administrative liability for selling BAS without their state registration certificate and providing misleading information on BAS being medicines or having medical qualities.

This update is a general summary of recent and prospective legislative developments and should not be treated as legal advice. Readers should seek the advice of legal counsel on any specific question. All translations of terminology in this update are unofficial.

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¹ We refer to the comments provided at the public discussions on the Law on Trade initiated by the Community Council on the Retail Markets of FAS. Minutes of the hearings are available at: http://www.fas.gov.ru/community-councils/community-councils_10.html.

² See <http://www.rg.ru/2011/02/01/rinok.html>.

³ Idem.