
Case law on the protection of competition

December 2017

Dispute between a Company and Board of Competition and Antitrust regulation

Amount of penalty: more than 217 mln ruble (more than 1 247 750 000 tenge)

Decision: Eurasian Economic Commission

Date: 26 September 2017

Main issue: abuse of a dominant position by creating discriminatory conditions in a cross-border market in the territories of two or more states of the EEU

Facts in issue:

On 26 September 2017, the Eurasian Economic Commission (“EEC”) decided "On the establishment of a violation of Article 76 of the Treaty on the Eurasian Economic Union (EEU Treaty) dated May 29 2014 with regard to the case of violation of competition rules in the cross-border market, No. 22-AC-01", referring to PJSC NLMK (“NLMK”) and LLC VIZ-Steel (“VIZ”) and imposed a penalty in the amount of more than 217 million rubles (KZT1, 247, 750, 000).

At present, the decision has been suspended until the Eurasian intergovernmental council examines and takes appropriate decision on it. This was as per the statement of the chairman of the government of the Russian Federation (“RF”), Dmitry Medvedev (dated 28 October 2017, No. 7879p-P13), issued in accordance with paragraph 30 of the Regulation on the Eurasian Economic Commission (Appendix No. 1 to the Treaty on the Eurasian Economic Union of May 29, 2014).

EEC considers that NLMK has discouraged competition and abused its’ dominant position by creating discriminatory conditions for the consumers of the Republic of Belarus (“RB”) and the Republic of Kazakhstan (“RK”), which had a negative impact on competition not only on a single market, but also on cross-border markets in the territories of two or more EEU states.

In particular, EEC argues that, NLMK and VIZ have formed a group of entities in a single market within the borders of RB, RK and RF during the period from 1 January 2015 to 30 June 2016 and held a dominant position with the market share of more than 99.9% for the electrical anisotropic steel grades 3407, 3408, 3409.

NLMK applied an additional coefficient (a monthly macroeconomic risk factor) to set the final price of the above mentioned steel grades for RB’s and RK’s enterprise-consumers. As a result, the final price of these steel grades for the given consumers was increased by up to 23% from the base price.

Position of the EEC Board:

The EEU Treaty dated 29 May 2014 prohibits price discrimination by its’ participants in the common market or part of the market within the borders of member states, as well as provision of better conditions to certain groups of consumers for acquisition of goods .

The action of NLMK was considered as an establishment of discriminatory conditions which deprived RB's and RK's manufacturers of their competitiveness in the general market of the end products (produced of the said steel grades) within the borders of RB, RK and RF.

Let's discuss

If you are interested in further information of how this might affect your business, please contact PwC team members servicing your company, or any person below:



Artem Petrukhin, Partner
Tax and legal services
michael.ahern@kz.pwc.com



Mira Dossova, Senior Manager
Legal services
mira.dossova@kz.pwc.com



Dariga Tokpayeva, Manager
Legal Services
dariga.tokpayeva@kz.pwc.com

PwC Kazakhstan

34 Al-Farabi Ave.
Building A, 4th floor
Almaty, Kazakhstan A25D5F6
Tel.: +7 (727) 330 32 00
Fax: +7 (727) 244 68 68
www.pwc.kz

15/1 Kabanbay Batyr Ave.
Business Centre "Q2", 4th floor
Astana, Kazakhstan Z05M6H9
Tel.: +7 (7172) 55 07 07
Fax: +7 (7172) 55 07 08
www.pwc.kz

15 B Satpayev St.,
Renaissance Hotel, 3rd floor
Atyrau, Kazakhstan, E02MoM8
Tel.: +7 (7122) 76 30 00
www.pwc.kz