

# Press-release of 21.06.2010

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On 15th June 2010, the Presidium of the Supreme Arbitration Court of the Russian Federation pronounced legitimacy of the decision and determination of the Krasnodar OFAS Russia that "Krasnodarregiongaz" Ltd. had violated the antimonopoly law (Part 1 Article 10 of the Federal Law "On Protection of Completion") by including the clause on additional penalties for excessive gas take-off in the long-term gas supply contract.

"Krasnodarregiongaz" Ltd. filed a lawsuit to the Krasnodar Regional Arbitration Court on invalidating the decision and determination of the Krasnodar OFAS Russia. On 29th January 2009, the Court allowed the claim.

On 29th June 2009, the 15th Arbitration Appeal Court overruled the judgment of the Krasnodar Regional Arbitration Court and pronounced validity of the actions undertaken by the antimonopoly body.

On 25th September 2009, the Federal Arbitration Court of the North Caucasus District revoked the ruling of the 15th Arbitration Appeal Court, finding the decision and determination of the Krasnodar OFAS Russia unlawful.

The challenged judicial acts violate consistency of interpretation and application of legal rules by Arbitration Courts, which constituted the grounds for overruling a judicial act under Article 304 of the Arbitration Procedural Code of the Russian Federation.

On 25th December 2009, the Krasnodar OFAS Russia approached the Supreme Arbitration Court of the Russian Federation for supervisory review of the above judicial acts.

On 15th June 2010, the Presidium of the Supreme Arbitration Court of the Russian Federation pronounced legitimacy of the decision and determination of Krasnodar OFAS Russia regarding "Krasnodarregiongaz" Ltd.

On 28th October 2008, the Krasnodar OFAS Russia investigated a petition of "Labinsky PPZ" OJSC that "Krasnodarregiongaz" Ltd. had included Clauses 3.3 and 3.5 in the gas supply contract introducing penalties for under - or over take-off of the contract gas volume, and found that "Krasnodarregiongaz" Ltd. violated Part 1 Article 10 of the Federal Law "On Protection of Completion".

The decision of the Krasnodar OFAS Russia states that including clauses on additional penalties in the gas supply contract "for exceeding a monthly volume of gas within a month of supplies" violated Part 1 Article 10 of the Federal Law "On Protection of Completion".

"Labinsky PPZ" OJSC and "Krasnodarregiongaz" Ltd. concluded a gas supply contract without the protocol of disagreements.

However, when "Labinsky PPZ" OJSC was executing its contract obligations, the decision was

made to change contract conditions - apply penalties for under and -over take-off of the contract gas volumes, which affected the economic profit and infringed legitimate rights and interests of the company.

Commenting on the situation, Anatoly Golomolzin said that it was not the first ruling of the Supreme Arbitration Court on the issue. A similar ruling was also made about the decision of the Karchaevo-Cherkessia OFAS Russia. Mr. Golomolzin also said that already at the stage of concluding long-term gas supply contracts under a "take or pay" principle, FAS Russia had warned "Mezhregiongaz" Ltd. about inadmissibility of including increasing coefficients in the contract other than provided for in Article 17 of the Gas Supply Regulations.

The FAS Russia's warning was ignored. As a result, upon establishing the facts of violations (additional contract penalties for gas over take-off) by gas suppliers, the antimonopoly authority not only requests to restore competitive conditions but also imposes significant fines upon the violators.