Press-release of 09.07.2010

09 июля 2010, 13:43

In an American prospective, can violations of competition law be minor? Russell Damtoft, the Associate Director of the Federal Trade Commission's Office of International Affairs, tried to address this question, speaking on 9th July 2010 at the Russian - American seminar on antimonopoly enforcement.

Russell Damtoft said that no type of business practice can be classified as legally minor under US antimonopoly law because the *per se* principle is applied only to the actions which by their nature restrict competition and under *the rule of reason* all other cases require proof of competition restrictions.

He reminded the workshop participants that in the US some types of actions are legally classified by the Supreme Court as restricting competition by their very nature. For instance, horizontal price fixing, horizontal market division, bid-rigging, as well as *per se* actions. In all other cases harm to competition must be proved, for instance, vertical price fixing, non-price restrictions, and *the rule of reason* is applied. Harm to competition must be proved by the claimant and can be contested by the respondent.

According to Mr. Damtoft, Russian antimonopoly law prohibits three categories of actions. First, agreements that by definition restrict competition, evidence of the lack of harm to competition is not accepted (Article 11.1 of the Federal Law "On Protection of Competition" about price fixing, market division, etc.; not covered by exception under Article 13 of the Law. This approach is similar to the American *per se* principle.)

Second, agreements when it is possible to talk about restriction of competition (agreements specified in Article 11.2 or 11.3 of the Federal Law "On Protection of Competition", that can be covered by exceptions under Article 13 of the Law. This approach is similar to the American *rule of reason*).

Third, agreements that can restrict completion or not, but there may be no evidence proving harm to competition. Some transactions specified in Article 11.1 of the Federal Law "On Protection of Competition" are related to the agreements that can restrict competition but also it is possible that such agreements inflict no harm to competition (for example, output reduction, price discrimination, fixing criteria for trade associations). According to Mr. Damtoft, in those cases it is important to develop a mechanism legislatively preventing agreements that do not restrict competition".

Russell Damtoft is the Associate Director of the Federal Trade Commission's Office of International Affairs. He is included in the groups of experts responsible for relationships between the FTC and antitrust agencies in Canada, Latin America, Russia, China, and India; managing portions of the FTC's technical assistance program for developing competition agencies; He has also served long-term as a resident advisor in Romania and Lithuania.

Mr. Damtoft has been with the Federal Trade Commission since 1985. Before the Office of

International Affairs was established, he performed similar duties in the Bureau of Competition, served as Assistant Regional Director of the FTC's Chicago Regional Office, as Assistant to the Director of the Bureau of Consumer Protection, and as a staff attorney in the Bureau of Consumer Protection.

He graduated from the University of Iowa College of Law in 1981 and from Grinnell College in 1976. He is a member of the American Bar Association, where he serves on the Editorial Board of Competition Laws Outside of the United States.