



EUROWATCH

WorldTrade Executive

The International
Business Information
Source™

REPORTING ON LEGAL AND REGULATORY DEVELOPMENTS AFFECTING FOREIGN COMPANIES OPERATING IN THE EU

February 28, 2010
Volume 22, Number 4

New Legislation Addresses Competition and Price Issues in Wholesale and Retail Food and Beverage Sector

By Timur Djabbarov (Dechert LLP)

On February 1, 2010, a new Russian law, "On basics of trade activity regulation in the Russian Federation" No. 381-FZ of December 28, 2009 (the "Law"), came into force that will significantly affect both the wholesale and retail food and beverage sectors in Russia. While the Law is mostly aimed at supporting domestic producers, there is also a significant anti-monopoly component, including restrictions on sudden price increases and regulation of expansion of both wholesale and retail chains into other regions.

In addition, the Law will regulate the following issues for the first time:

- the restriction on the receipt of premiums on contractual sale prices by retailers and wholesalers (which could be very disruptive to standard retail practice);
- the establishment of time limits for the payment of suppliers;
- the establishment of a threshold for market dominance of the sale of food and beverage products; and
- a prohibition on forcing market participants to accept unfair contractual terms.

Scope of Regulation

The Law governs "trade activity" between two economic entities, or between an economic entity and a state or local authority, but excludes the following types of transactions from its scope:

- the international sale of goods;
- commodities exchange trade;
- trade in traditional, covered or open food markets or bazaars;

- trade in securities, real estate rights, industrial and technological products, electricity, heating or trade in other energy resources; and
- the sale of restricted goods, such as certain pharmaceutical products or hand weapons.

The Law also defines a "trade chain" as two or more commercial entities, under "common management" (a concept which is still relatively unclear under Russian law and may in practice be interpreted rather broadly), or operating under a common brand name or other close commercial relationship. A trade chain will in practice refer to a wholesale or retail seller of a range of products from different suppliers.

The scope of the Law is not limited to the supply of food and beverage products, yet the key provisions of the Law, as discussed in this article, will only apply to this sector.

Key Provisions of the Law

Introduction of a "Dominance Threshold"

The Law introduces a provision prohibiting the acquisition or lease of additional floor space or sale premises by trade chains if such trade chain's share in the market for food and beverage products exceeds 25% of the value of all food and beverage products sold. This provision applies where such market share is established in the previous financial year within specified administrative areas (these include constituent territories of the Russian Federation, city districts and municipal districts).

This amendment is intended to both provide improved regulatory conditions for the growth of smaller wholesalers and retailers and also to facilitate the entry of larger retailers into the provincial regions.

The Imposition of Price Ceilings after Prices Have Risen Dramatically

The contract price for the supply of food and beverage products remains a matter to be determined through the agreement of the parties. However, the new

Timur Djabbarov is an Associate based in the firm's Moscow office. He specializes in international arbitration and dispute resolution with a focus on commercial litigation, intellectual property, real estate, debt recovery and product liability matters. He also represents clients in bankruptcy and criminal matters. (timur.djabbarov@dechert.com)

legislation provides for the possibility that the Russian government may establish maximum prices for certain types of essential food and beverage products (such as bread, milk, salt or sugar—these will appear on a list to be published by the government), where there has been a sudden price increase of 30% within 30 calendar days in a constituent territory of the Russian Federation.

Restrictions on Premiums in Supply Contracts

Since the adoption of the Law, contractual premiums on certain activities involved with the sale of food and beverage products must not exceed 10% of the basic contractual price for the product. Currently, premiums “for access to shelves” are often included in the supply price of products, increasing such prices considerably. The Law will restrict this practice. In addition, such premiums will be illegal for the sale of certain types of essential food and beverage products (which will appear on the same list published by the government with respect to regulating sudden price increases). In addition, introducing other types of premiums payable to a trade chain into the price of the supply contract will not be legal under the Law. These new restrictions could be very disruptive to standard retail practice.

Time Limitations for Payment?

The Law imposes time limits for payments made under supply agreements for food and beverage products. Subject to the provision of an invoice, products whose shelf lives are less than 10 days must be paid for within 10 business days from the date of delivery and acceptance. If the shelf life is from 10 to 30 days (inclusive), then payment must be made within 30 calendar days. For products whose shelf life exceeds 30 days and for Russian-made alcoholic beverages, payment must be made within 45 calendar days.

Competition Provisions

The Law also contains several competition provisions which restate and amend Federal Law “On Protection of competition” No. 135-FZ of July 26, 2006, by now prohibiting both suppliers and trade chains in the food and beverage products sector from carrying out certain anti-competitive actions, in particular:

- creating distortions in the market, by hindering the access of competitors to the market, or through of the imposition of artificial price levels;
- to force on other market participants any of the following types of contractual terms:
 - restrictions on their ability to conduct trade with competitors;
 - unfair or one-sided contractual terms;

- provision of information on contracts with competitors;
- payments for access to supply to new or existing outlets or operations;
- imposing restrictions on the prices of products;
- the return of unsold products where ownership and liability for the product has already passed to the trade chain; or
- the reimbursement for loss or damage to products where ownership in the products had passed to the trade chain before such loss or damage was caused and the loss or damage was not due to any fault of the supplier; and
- carrying out wholesale activities using a commission agency contract or otherwise a mixed contract which includes commission agency provisions.

Legal Status

Supply contracts concluded prior to commencement of the Law must be amended to comply with the Law within 180 days of the entry into force of the Law. Any agreements concluded after the commencement of the Law in violation of its procedures and restrictions will be considered void under Russian law and could be unwound under Article 169 of the Civil Code.

Liability

The Law does not introduce any special liability for breaches of its provisions so such breaches shall create civil, administrative and criminal liability in accordance with the usual laws of the Russian Federation.

Conclusions

The Law has been adopted as an additional anti-crisis measure aimed at assisting domestic producers and suppliers of food and beverage products. At the same time, quite a few of its innovations significantly restrict the business activities and freedom of contract of larger retailers and wholesalers, both foreign and domestic, and will significantly impact standard practices in the retail industry. In practice, the Law may lead to a contraction of the economic activities of the larger food and beverage product retailers and wholesalers and to a partial loss of the investment appeal of this sector.

Reprinted from *EuroWatch*

Copyright Thomson Reuters/WorldTrade Executive

More information on *EuroWatch* is available at www.wtexecutive.com or by contacting Jay Stanley at 978-287-0391, or jay.stanley@thomsonreuters.com