

# Operative part of the judicial act · A40-142261-2012 · 18.03.2013

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Commercial Court of the City of Moscow

Operative part of the judicial act

UNOFFICIAL COMPLETE TRANSLATION. The Russian original is the legally controlling text. This translation was prepared for documentary access and should not be relied upon as a certified translation.

Monetary amounts are shown first in Russian roubles, followed by an approximate USD equivalent calculated at the official Bank of Russia historical rate for the date of the act.

Official Bank of Russia rate used: 1 USD = 30.719600 RUB; effective date 16.03.2013.

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Arbitration Court of the City of Moscow 115191, Moscow, St. Big Tula, d. 17 <http://www.msk.arbitr.ru> by name of the Russian Federation Moscow "19" March 2013 Case No. A40-142261/2012 The operative part of the decision was announced on 13.03.2013 The full text of the decision was made on 19.03.2013. The Moscow Arbitration Court consists of: Judge Blinnikova I.A. (120-1410) The protocol is conducted by the assistant judge D.V. Suliev. Having considered in open court the case on the application of Pharmstandard to FAS Russia With the participation of third parties: on the recognition of the illegal decree of 25.09.2012 in case No. 1 14.32/306-12 from the plaintiff Arkhgangelskaya M.A. Dov. from 09.01.2013 No. 2 (applicant) from defendant R. B. Koishibayev. Dov. from 24.01.2013 No IA/1999/13

EL:

Pharmstandard OJSC appealed to the Arbitration Court of the city. Moscow with a statement on the recognition of the illegal resolution of the Federal Antimonopoly service of Russia of 25.09.2012 in case No. 1 14.32/306-12 on bringing to administrative responsibility in part. 1 st. 14.32 RF Administrative Code. In support of the claims, the applicant refers to the absence of an event and the composition of an administrative offence, a violation by the administrative body of the procedure for bringing to administrative responsibility, as well as the imposition of an administrative penalty in an amount significantly exceeding the amount of an administrative fine provided for by applicable law. At the court hearing, the applicant supported the claims in full on the arguments of the application and written explanations. The defendant's response is in order Art. 131 AIC of the Russian Federation in the case materials did not submit, submitted copies of the materials of the administrative case. In the court session, he pointed out that the antimonopoly body complied with the procedure for bringing the company to administrative responsibility, compliance with the rules for imposing administrative punishment. Having examined the case materials, having listened to the arguments of the persons involved in the case, having assessed the evidence presented, the court recognized the application as subject to satisfaction on the following grounds. In accordance with the 6 of article 210 of the CPC of the Russian Federation when considering the case of challenging the decision of the administrative body on bringing to administrative responsibility, the arbitration court in the court session checks the legality and validity of the contested decision, establishes the availability of appropriate

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the powers of the administrative body that made the contested decision shall determine whether there were legal grounds for bringing to administrative responsibility, whether the established procedure for bringing to responsibility has been observed, whether the limitation periods for bringing to administrative responsibility have not expired, as well as other circumstances relevant to the case. In

accordance with Part 7 of Article 210 of the CPC of the Russian Federation, when considering a case challenging the decision of an administrative body, the arbitration court is not bound by the arguments contained in the application, and checks the contested decision in full. In accordance with the 1 st. 30.3 RF Administrative Code, para. 2 tbsp. 208 A request to challenge the decision in the case of an administrative offence may be submitted to the arbitration court within ten days from the date of receipt of a copy of the contested decision. The court has verified and established that the time limit for appeal is provided for. 2 tbsp. 208 APC RF, p. 1 st. 30.3 The applicant has complied with the administrative code. As follows from the case materials, the Order of the FAS of Russia from 02.03.2011. No. 145, case No. 1 11/45-11 was initiated on the grounds of violation of CJSC CV PROTEK and CJSC ROSTA paragraph 2 part 1 of Article 11 of the Law on Protection of Competition. The basis for initiating the case No. 1 11/45-11 was the order of the Prosecutor General's Office of the Russian Federation (v. No. 046762 DSP dated 29.09.2010), sent to the FAS of Russia following the results of an inspection of the Ministry of Health and Social Development of Russia, the subject of which was the compliance of this Ministry with the legislation of the Russian Federation when it conducted auctions for the purchase of medicines for state needs in 2008-2009. At the same time, the Investigative Committee under the Ministry of Internal Affairs of the Russian Federation 04.02.2011. criminal case No. 678509 on the grounds of a crime under paragraph 2 of Article 178 of the Criminal Code of the Russian Federation, on the fact of restricting competition during the Ministry of Health and Social Development of Russia auctions No. 081010/001550/45 of 10.10.2008, No. 090316/0011550/93 of 16.03.2009, No. 090428/001550/106 of 28.04.2009, No. 091009/001550/284 05.11.2009, No.091127/0015/309 from 25.12.2009 for the supply of medicines for state needs, which caused particularly large damage to the state. Subsequently, the definition of 19.07.2011. No. ATS/28039 to participate in the consideration of case No. 1 11/45-11 were involved as defendants of OJSC Pharmstandard and OOO Optimal Health. The reason for the initiation of the case on an administrative offense was the adoption of the FAS of Russia decision of 25.05.2012. in case No. 1 11/202-11 on the consideration of the case on violation of the antimonopoly legislation on the recognition of Pharmstandard OJSC and ROSTA CJSC as violating paragraph 2 of part 1 of Article 11 of the Law on Protection of Competition by concluding and implementing an agreement that led to the maintenance of the price at the auction No. 091127/001550/312 lot.16 During the administrative investigation by the authorized official of the FAS of Russia 21.06.2012 The case of administrative offense was initiated, protocol No. 1 14.32/306-12 of 19.07.2012 was drawn up. on an administrative offense against Pharmstandard OJSC on the fact of violation 1 st. 14.32 RF Administrative Code. By the decision of the FAS of Russia of 25.09.2012 in the case of administrative offense No. 1 14.32/306-12, Pharmstandard OJSC was brought to administrative responsibility under ch. 1 st. 14.32 The administrative code of the Russian Federation and the company was fined in the amount of 201 381 295, RUB 10 (approximately USD 0.33) Not agreeing with the decision, the applicant appealed to the Arbitration Court of Moscow with a statement on the recognition of it as illegal. In satisfying the applicant's claims, the court proceeds from the following. Decision of 25.05.2012. in case No. 1 11/202-11, the FAS Commission of Russia for the consideration of the case of violation of antimonopoly legislation recognized OJSC

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Pharmstandard and ROSTA CJSC violated clause 2 of part 1 of Article 11 of the Law on Protection of Competition by concluding and implementing an agreement that led to the maintenance of the price at auction No. 091127/001550/312 lot.16 Based on the decision of 21.06.2012, the FAS of Russia in respect of Pharmstandard OJSC was initiated case No. 1 14.32/306-12 on the administrative offense provided for in part. 1 st. 14.32 of the Administrative Code of the Russian Federation and the contested decision was made. The court has verified and established that the protocol on administrative offense and the contested decision were drawn up by authorized officials of the antimonopoly authority in accordance with their powers provided for in cl. 62 a.m. 2, h. 4 st. 28.3 RF Administrative Code, para. 2 tbsp. 23.48 Administrative Code of the Russian Federation, Regulations on the Federal Antimonopoly Service, approved by the Decree of the Government of the Russian Federation of 30.06.2004 No. 331 and Regulations on the territorial body of the Federal Antimonopoly Service, approved by the Order of the FAS of Russia of 15.12.2006 No. 324. As established by the court, the decision of the FAS of Russia of 25.05.2012. in case No. 1 11/202-11 appealed Pharmstandard OJSC in court. Upheld without amendment

by the decision of the Ninth Arbitration Court of Appeal of 31.01.2013 No 09AP-40346/2012 by the decision of the Arbitration Court of Moscow of 19.11.2012 in case No. A 40-94475/12-149-866 the decision of the Federal Antimonopoly Service of 25.05.2012. in case No. 1 11/202-11 on violation of antimonopoly legislation regarding the recognition of Pharmstandard OJSC and ROSTA CJSC as violating paragraph 2 of paragraph 1 of Article 11 of the Federal Law "On Protection of Competition" by concluding and implementing an agreement that led to the maintenance of prices at auction No. 091127/001550/312 on lot No. 16 was declared illegal. The courts of first instance and appeal instances in case No. A40-94475/12-149-866 came to the conclusion that the antimonopoly authority did not prove the conclusion of an anti-competitive agreement between Pharmstandard OJSC and ROSTA CJSC in the period from 23.12.2009. until 25.12.2009, as well as to the conclusion about the illegality and groundlessness of the contested decision of the Federal Antimonopoly Service of 25.05.2012. in case No. 1 11/202-11 as taken by the defendant in violation of the norms of the current legislation of the Russian Federation and violating the rights and legitimate interests of the applicants in the field of entrepreneurial and other economic activities. In accordance with the 2 tbsp. 69 CCRF circumstances established by the judicial act of the arbitration court in the previously considered case, which has entered into force, are not proved again when the arbitration court considers another case in which the same persons participate. Thus, the fact of absence of violation of paragraph 2 of part 1 of article 11 of the Federal law "On protection of competition" established by the court in case No. A40-94475/12-149-866, re-proof is not required. According to the article. 26.1 RF Administrative Code circumstances to be clarified in the case of an administrative offence are: the presence of an event of an administrative offence, a person who has committed illegal actions for which this Code or the law of a subject of the Russian Federation provides for administrative liability, the guilt of a person in an administrative offence, circumstances that mitigate and aggravate administrative liability, the nature and amount of damage caused by an administrative offence, the circumstances excluding proceedings in the case of an administrative offence. Based on the judicial act entered into force in case No. 40-94475/12-149-866, the court found that the actions of Pharmstandard OJSC lacked events and imputed composition of the offense provided for in part. 1 st. 14.32 RF Administrative Code.

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By virtue of part 1 of article 1.6 of the Code of the Russian Federation on administrative offences, a person brought to administrative responsibility may not be subjected to administrative punishment except on the grounds and in the manner prescribed by law. In accordance with article 1. 24.1 The administrative code of the Russian Federation among the tasks of the proceedings in cases of administrative offences is a comprehensive, complete, objective and timely clarification of the circumstances of each case. According to paragraph 1 of article. 25.1 The administrative code of the Russian Federation, the person in respect of whom the proceedings on the case of an administrative offence are conducted, has the right to get acquainted with all the materials of the case, give explanations, present evidence, file petitions and challenges, use legal assistance of a defense counsel, as well as other procedural rights in accordance with the administrative code of the Russian Federation. The existence of the applicant's explanations is one of the sources of evidence in the case under Art. 26.2 RF Administrative Code. Having checked the procedure for bringing the company to administrative responsibility, the court found that the administrative body violated the procedure for bringing the company to administrative responsibility provided for by the Administrative Code of the Russian Federation, which in itself is the basis for canceling the contested resolution in accordance with paragraph 10 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 02.06.2004 No. 10. The applicant's argument that the protocol of 19.07.2012 No. 1 14.32/3-6-12 was drawn up before the arrival of the representative and was issued to him for review immediately drawn up protocol, as evidenced by the explanation of the person in the record, the court considered and rejected, since not documented. The court found that the protocol on administrative offense of 19.07.2012. No. 1 14.32/3-6-12 was compiled in the presence of a representative of the company by proxy of Arkhangelskaya M.A. The person concerned exercised the right to explain the protocol and received a copy of it. There are no grounds for not trusting the administrative body of the court. The applicant has not provided evidence to the contrary. However, the contested decision of 25.09.2012 in case No. 1 14.32/306-12, the FAS of Russia issued in the absence of a representative of the company, while the

case materials do not contain any evidence of the notice of the company about the time and place of its preparation. Submitted to the court at the court hearing 13.03.2013 the defendant of the printout of the tracking of the postal item (postal identifier 12399553105825) from the official website of the Federal State Unitary Enterprise "Mail of Russia" is not recognized by the court as evidence of the notification of the person about the time and place of the decision on the case of an administrative offense, since it is not possible to identify the recipient and the contents of the item. Any registers, letters of correspondence delivery to the post, lists allowing to establish that the specified postal item with the postal identifier 12399553105825 to the address of Pharmstandard LLC sent a notice of the time and place of consideration of this particular case. The defendant explained to the court that he had no other evidence of the shipment. Thus, the court found that the applicant had no opportunity to exercise his rights under Article. 24.4, 24.5, 25.1, 25.4, 25.5 of the Administrative Code of the Russian Federation in the case of an administrative offense. The applicant was not properly informed of the date, place and time of the decision in the case of an administrative offence, and therefore the administrative authority's conclusions on the applicant's administrative offence were based on evidence obtained in violation of the law, which was inadmissible by virtue of h. 3 st. 26.2 RF Administrative Code. On the basis of the foregoing, as well as taking into account the established absence of an event and the composition of an administrative offense, which in accordance with s. 1, 2 of Art. 24.5 of the Administrative Code of the Russian Federation is a circumstance that excludes the proceedings in the case of

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administrative offence and is an unconditional ground for termination of proceedings in the case of an administrative offence. The court found the unlawfulness of the decision. In accordance with Part 2 of Article 211 of the CPC of the Russian Federation, the arbitration court, having established that the contested decision or the procedure for its adoption does not comply with the law, or there are no grounds for bringing to administrative responsibility or applying a specific measure of responsibility, or the contested decision was made by the body or official with excess of their powers. decides on the recognition of the illegal and on the cancellation of the contested decision in whole or in part or on changing the decision. In the above circumstances, the claimed claim shall be satisfied, the contested decision shall be declared illegal and revoked. According to p. 4 st. 208 APC of the Russian Federation, the application to challenge the decision of the administrative body on bringing to administrative responsibility state duty is not subject. Based on the Federal Law "On Protection of Competition" of 26.07.2006 No. 135-F3, Art. 2.1, 14.32, 25.1, 25.4, 28.2, 29.7, 30.1, 14.32 of the Administrative Code of the Russian Federation, and guided by Art. 64-68, 156, 167-170, 176, 180, 210, 211 APC of the Russian Federation, the court decided:

To recognize illegal and to cancel completely the resolution of the Federal Antimonopoly service of Russia of 25.09.2012. in case No. 1 14.32/306-12 on bringing to administrative responsibility in part. 1 st. 14.32 Administrative Code of the Russian Federation Open Joint Stock Company "Pharmstandard", located at: Moscow region, Dolgoprudny, Likhachsky passage, d. 5 B. The decision may be appealed within ten days from the date of its adoption in the Arbitration Court of Appeal.

Judge I.A. Blinnikova