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Federal Commercial Court of the Moscow District

Ruling of 10 July 2014 in Case No. A40-142261/12

Moscow

Operative part announced on **3 July 2014**.

Full text prepared on **10 July 2014**.

Currency reference for this translated act. The legally controlling penalty is **RUB 201,381,295.10**. At the official Bank of Russia exchange rate applicable on 10 July 2014, that amount was approximately **USD 5,909,803.88**. The equivalent is provided solely to convey historical scale.

Editorial note on the source text. The Russian text reproduced from the court act contains two apparent internal inconsistencies: the first page refers to a lower-court decision dated 29 January 2013, while the procedural history later identifies 29 January 2014; and one sentence describes an agreement “with OJSC Pharmstandard,” although the same act and the underlying FAS decision identify the other party as CJSC ROSTA. This unofficial translation preserves the source wording and flags, rather than silently corrects, those discrepancies.

The Federal Commercial Court of the Moscow District, composed of:

- Presiding Judge M. R. Agapov;
- Judges E. Yu. Voronina and R. R. Latypova,

with the following representatives participating in the hearing:

- for the applicant, Open Joint-Stock Company Pharmstandard: M. A. Arkhangelskaya, under Power of Attorney No. 24 of 17 January 2014;
- for the respondent, the Federal Antimonopoly Service: N. N. Zaitseva, under Power of Attorney No. IA/23880/14 of 16 June 2014,

having considered, at a hearing on 3 July 2014, the cassation appeal of the applicant, Open Joint-Stock Company Pharmstandard,

against the decision dated 29 January 2013 [as stated on page 1 of the source act] of the Commercial Court of the City of Moscow, adopted by Judge I. A. Blinnikova,

and against the ruling dated 27 March 2014 of the Ninth Commercial Court of Appeal, adopted by Judges Zh. V. Potashova, D. E. Lepikhin and L. G. Yakovleva,

in Case No. A40-142261/12, brought by Open Joint-Stock Company Pharmstandard (OJSC Pharmstandard, Primary State Registration No. 1060274031047) against the Federal Antimonopoly Service, challenging an administrative-liability ruling,

FOUND AS FOLLOWS

OJSC Pharmstandard applied to the Commercial Court of the City of Moscow seeking to have declared unlawful and set aside the ruling of the Federal Antimonopoly Service of 25 September 2012, No. 1 14.32/306-12, by which the applicant had been held administratively liable under Article 14.32(1) of the Code of Administrative Offences of the Russian Federation.

By decision of the Commercial Court of the City of Moscow of 19 March 2013, upheld by the ruling of the Ninth Commercial Court of Appeal of 12 July 2013, the application was granted. The challenged ruling of the antimonopoly authority was declared unlawful and set aside.

By ruling of the Federal Commercial Court of the Moscow District of 5 November 2013, those judicial acts were reversed and the matter was remitted to the Commercial Court of the City of Moscow for reconsideration.

By decision of the Commercial Court of the City of Moscow of 29 January 2014, upheld by the ruling of the Ninth Commercial Court of Appeal of 27 March 2014, the application was dismissed.

In its cassation appeal, OJSC Pharmstandard asks that the decision and appellate ruling be set aside, arguing that they are unlawful and unsubstantiated, were adopted in breach of law, and that the courts' conclusions do not correspond to the facts and evidence in the case.

At the hearing, representatives of OJSC Pharmstandard supported the arguments and relief sought in the cassation appeal. Representatives of FAS Russia opposed the appeal.

Having reviewed the correct application by the courts of first instance and appeal of substantive and procedural law, and having considered the arguments of the cassation appeal and the objections to it, the cassation court finds no grounds to set aside the challenged judicial acts.

By the challenged FAS Russia ruling of 25 September 2012, No. 1 14.32/306-12, OJSC Pharmstandard was held administratively liable under Article 14.32(1) of the Code of Administrative Offences and was fined **RUB 201,381,295.10 (approximately USD 5,909,803.88 at the official rate on 10 July 2014)** for conduct consisting of entering into and participating, from 25 December 2009 through 13 January 2010, in an anticompetitive agreement "with OJSC Pharmstandard" in the City of Moscow [wording as printed/extracted in the source; see the editorial note above], in violation of Article 11(1)(2) of Federal Law No. 135-FZ of 26 July 2006 "On Protection of Competition" (the "Competition Law").

Article 14.32(1) of the Code of Administrative Offences establishes liability for an undertaking's entry into an agreement prohibited under Russian antimonopoly law, participation in such an agreement, or implementation of concerted practices prohibited under antimonopoly law.

In considering the matter, the courts correctly established that the FAS Russia Commission's decision of 25 May 2012 in Case No. AC/16586 found that OJSC Pharmstandard and CJSC ROSTA had violated Article 11(1)(2) of the Competition Law by entering into and implementing an agreement that maintained the price in Auction No. 091127/001550/312, Lot No. 16.

By decision of the Commercial Court of the City of Moscow of 19 November 2012 in Case No. A40-94475/2012, upheld by the ruling of the Ninth Commercial Court of Appeal of 31 January 2013, the antimonopoly authority's decision of 25 May 2012 in Case No. AC/16586 was declared unlawful upon the application of OJSC Pharmstandard and CJSC ROSTA.

By ruling of the Federal Commercial Court of the Moscow District of 22 April 2013, those judicial acts were reversed and the claims of OJSC Pharmstandard and CJSC ROSTA were dismissed.

Under Article 69(2) of the Commercial Procedure Code of the Russian Federation, those circumstances have preclusive effect in the present case and are not subject to proof again.

Accordingly, the courts reasonably concluded that the applicant's conduct contained all elements of the charged administrative offence. The antimonopoly authority proved the applicant's fault.

Contrary to the applicant's arguments, the courts also correctly held that the respondent complied with the procedure for imposing administrative liability and that the amount of the fine was calculated lawfully.

In those circumstances, having comprehensively, fully and objectively examined all arguments and evidence and having given them proper assessment, the court of first instance and, upon reconsideration, the appellate court resolved the dispute without procedural violations requiring reversal of the challenged acts.

The conclusions of the courts of first instance and appeal concerning substantive law correspond to the facts they established and to the evidence in the case.

The arguments of the cassation appeal, which in substance seek a different assessment of the facts and evidence from that made by the lower courts, were examined and properly rejected and cannot justify reversal because they do not demonstrate any violation of law.

Guided by Articles 284–289 of the Commercial Procedure Code of the Russian Federation, the Federal Commercial Court of the Moscow District

RULED

To leave unchanged the decision of the Commercial Court of the City of Moscow of 29 January 2014 and the ruling of the Ninth Commercial Court of Appeal of 27 March 2014 in Case No. A40-142261/12, and to dismiss the cassation appeal.

Presiding Judge: M. R. Agapov

Judges: E. Yu. Voronina; R. R. Latypova

Translation status: complete unofficial English translation for reader convenience. The Russian-language court act controls.