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Supreme Court of the Russian Federation

Resolution of 18 February 2016 No. 305-AD14-3104

Case No. A40-142261/2012

Moscow

The legally controlling fine is RUB 201,381,295.10. At the official Bank of Russia rate applicable on 18 February 2016, that amount was approximately USD 2,586,776.10. The equivalent is provided solely to convey historical scale.

Judge A. G. Pershutov of the Supreme Court of the Russian Federation, having examined, on the basis of the requested case file, the complaint of Public Joint-Stock Company Pharmstandard against the decision of the Commercial Court of the City of Moscow dated 29 January 2014 in Case No. A40-142261/2012, the ruling of the Ninth Commercial Court of Appeal dated 27 March 2014, and the ruling of the Commercial Court of the Moscow District dated 10 July 2014 in the same case, arising from the application of Open Joint-Stock Company Pharmstandard against the Federal Antimonopoly Service seeking to have declared unlawful and set aside the ruling of 25 September 2012 in administrative case No. 1 14.32/306-12, by which the company was held liable under Article 14.32(1) of the Code of Administrative Offences of the Russian Federation,

FOUND AS FOLLOWS:

Open Joint-Stock Company Pharmstandard (now a public joint-stock company; hereinafter, the "Company") applied to the Commercial Court of the City of Moscow against the Federal Antimonopoly Service (hereinafter, the "administrative authority"), seeking to have declared unlawful and set aside the ruling of 25 September 2012 in administrative case No. 1 14.32/306-12, by which it had been held administratively liable under Article 14.32(1) of the Code of Administrative Offences of the Russian Federation (the "Administrative Offences Code").

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

By ruling dated 5 November 2013, the Federal Commercial Court of the Moscow District reversed those judicial acts and remitted the case to the court of first instance for reconsideration.

Upon reconsideration, by decision of the Commercial Court of the City of Moscow dated 29 January 2014, upheld by the ruling of the Ninth Commercial Court of Appeal dated 27 March 2014, the Company's application was dismissed.

By ruling dated 10 July 2014, the Commercial Court of the Moscow District left unchanged the first-instance decision dated 29 January 2014 and the appellate ruling dated 27 March 2014.

The Company filed a complaint with the Supreme Court of the Russian Federation against the first-instance decision dated 29 January 2014, the appellate ruling dated 27 March 2014 and the cassation ruling dated 10 July 2014, asking that they be varied by imposing on the Company an administrative fine of RUB 100,000.

By letter of a judge of the Supreme Court of the Russian Federation dated 15 December 2015, the case file was requested from the Commercial Court of the City of Moscow.

Having examined the arguments of the complaint against the requested case file and the judicial acts adopted in the case, the Court found no grounds for granting the complaint.

As follows from the case file and as established by the courts, by the administrative authority's ruling of 25 September 2012 in case No. 1 14.32/306-12 the Company was held administratively liable under Article 14.32(1) of the Administrative Offences Code and was fined RUB 201,381,295.10.

The basis for that administrative liability was the established fact that the Company had violated Article 11(1)(2) of Federal Law No. 135-FZ of 26 July 2006 "On Protection of Competition" (the "Competition Law") by entering into and implementing an agreement that maintained the price at auction.

Disagreeing with the administrative authority's ruling, the Company challenged it before the Commercial Court of the City of Moscow.

Article 14.32(1) of the Administrative Offences Code establishes administrative liability where an undertaking enters into an agreement prohibited under the antimonopoly legislation of the Russian Federation, participates in such an agreement, or implements concerted practices prohibited under that legislation.

Having assessed the evidence in the case file and found it proved that the Company and Closed Joint-Stock Company ROSTA had entered into and implemented an anticompetitive agreement, the courts concluded that the Company's conduct contained the elements of the administrative offence provided for by Article 14.32(1) of the Administrative Offences Code.

Having established all circumstances material to the administrative-offence case on the basis of a full and comprehensive examination of the evidence and having given that evidence proper legal assessment, the courts concluded that the challenged ruling of the administrative authority was lawful and also found the amount of the administrative fine imposed on the Company to be correct.

In assessing the evidence collectively and in its interrelationship with the established facts of the offence, the courts further concluded that the administrative authority had complied with the prescribed procedure for holding the Company administratively liable.

In challenging those judicial acts before the Supreme Court of the Russian Federation, the Company argues that the administrative authority and the courts incorrectly determined the amount of the administrative fine, which in the Company's view should be reduced to RUB 100,000.

However, those arguments were considered by the lower courts and were given proper legal assessment in light of the established circumstances of the offence and the applicable penalty. The Company's arguments rest on calculations whose verification would require establishing different facts and assessing additional evidence beyond the matters examined and determined by the lower courts. Articles 30.16–30.19 of the Administrative Offences Code do not permit such fact-finding and evidentiary reassessment when the Supreme Court reviews final rulings in administrative-offence cases and decisions on complaints or protests. Article 30.17 contains an exhaustive list of the rulings that may be made on such review and permits reversal and remittal for reconsideration where a substantial breach of procedural requirements prevented a comprehensive, complete and objective examination of the case.

The Company's arguments that the antimonopoly authority miscalculated the fine seek a reassessment of the conclusions reached by the judicial instances on the basis of the evidence, the established facts and the sentencing rules of the Administrative Offences Code.

The arguments set out in the complaint do not show that the courts committed substantial procedural violations under the Administrative Offences Code that prevented a comprehensive, complete and objective examination of the case.

When considering the administrative-offence case, the courts carried out a full and comprehensive analysis of the evidence, established all legally significant circumstances of the offence, and classified the Company's conduct in accordance with the facts and the requirements of the Administrative Offences Code.

The courts found no grounds to treat the Company's offence as insignificant or to release the Company from administrative liability under Article 2.9 of the Administrative Offences Code. They likewise found no grounds to reduce the administrative fine in light of the circumstances of the offence, its nature and its consequences.

The courts found no breach of the procedure for holding the Company administratively liable.

Because the courts established all circumstances material to the administrative-offence case through a full and comprehensive examination of the evidence and gave those circumstances proper legal assessment, there are no grounds to grant the Company's complaint or to set aside or vary the challenged judicial acts.

On the foregoing grounds, and pursuant to Articles 30.13 and 30.17 of the Code of Administrative Offences of the Russian Federation, the Judge of the Supreme Court of the Russian Federation

RESOLVED:

To leave unchanged the decision of the Commercial Court of the City of Moscow dated 29 January 2014 in Case No. A40-142261/2012, the ruling of the Ninth Commercial Court of Appeal dated 27 March 2014 and the ruling of the Commercial Court of the Moscow District dated 10 July 2014 in the same case, and to dismiss the complaint of Public Joint-Stock Company Pharmstandard.

Complete unofficial English translation for reader convenience. The Russian-language judicial act controls.