

Order · A40-94475-2012 · 15.07.2013

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Supreme Commercial Court of the Russian Federation

Order

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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 = 32.642900 RUB; effective date 13.07.2013.

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Supreme Court of the Russian Federation

DECISION on refusal to transfer the case to the Presidium of the Supreme Arbitration Court of the Russian Federation

No BAS-8933/13

Moscow July 15, 2013

The panel of judges of the Supreme Arbitration Court of the Russian Federation consisting of the presiding judge V. N. Alexandrov, judges Andreev E. I., Berezia A. E., having considered in the court session the statement of the open joint-stock company Pharmstandard on reviewing the decision of the Federal Arbitration Court of the Moscow District dated 22.04.2013 in case No. A40-94475/12-149-866 of the Arbitration Court of Moscow, USTANOVIL: Open Joint Stock Company "Pharmstandard" (Moscow region); further – Famstandard) and closed joint-stock company "ROSTA" (Moscow region); further – ROSTA) appealed to the Arbitration Court of Moscow with applications for recognition of the decision of the Federal Antimonopoly Service (hereinafter – the antimonopoly authority) of 25.05.2012 No. 11/202-11 on violation of antimonopoly legislation in terms of recognition of Pharmstandard and ROSTA as violating the provisions of paragraph 2 of part 1 of Article 11

Official website of the Supreme Arbitration Court of the Russian Federation: <http://www.arbitr.ru/> (information on the progress of the case, reference materials, etc.).

2 of Federal Law No. 135-FZ "On Protection of Competition" by concluding and implementing an agreement that led to maintaining the price of the drug on lot No. 16 of the open auction No. 091127/001550/312. The Ministry of Health and Social Development of the Russian Federation was involved in the case as a third party, not declaring independent claims regarding the subject of the dispute. The decision of the Arbitration Court of Moscow of 19.11.2012 satisfied the claim. By the decision of the Ninth Arbitration Court of Appeal of 31.01.2013, the decision of the court of first instance was left unchanged. The Federal Arbitration Court of the Moscow District by a resolution of 22.04.2013, the decision of the court of first instance and the decision of the court of appeal canceled, refused Pharmstandard and ROSTA in satisfaction of the stated claim. In a statement submitted to the Supreme Arbitration Court of the Russian Federation on the review of the decision of the court of cassation in the order of supervision, Famstandard asks it to be canceled, referring to the incorrect application of the law by the court of cassation. In accordance with part 4 of article 299 of the Arbitration procedural code of the Russian Federation, the case may be transferred to the Presidium of the Supreme Arbitration Court of the Russian Federation for review of judicial acts in the manner of supervision in the presence of grounds provided for in article 304 of the Arbitration procedural code of the Russian Federation. According to

Article 304 of the Arbitration Procedure Code of the Russian Federation, the grounds for changing or canceling judicial acts that have entered into legal force in the order of supervision are: violation of the contested judicial act of uniformity in interpretation and

3 application of the rules of law by arbitration courts; violation of human and citizen rights and freedoms in accordance with generally recognized principles and norms of international law, international treaties of the Russian Federation; violation of the rights and legitimate interests of an indefinite circle of persons or other public interests. As follows from the court acts, the courts established that the decision of 25.05.2012 in case No. 1 11/202-11, the antimonopoly authority recognized the presence in the actions of Pharmstandard and ROSTA of a violation of paragraph 2 of part 1 of article 11 of the Federal Law of 26.07.2006 No. 135-FZ "On Protection of Competition" (hereinafter - the Law on Protection of Competition), which was expressed in the agreement, aimed at maintaining the price of the drug on lot No. 16 of the open auction No. 091127/001550/312. Courts of first instance and appeal instances, satisfying the requirements of Pharmstandard and ROSTA, proceeded from the illegality of the decision taken by the antimonopoly authority and the absence of violations of Article 11 of the Law on Protection of Competition in the actions of the companies. The Court of Cassation, revoking the decision of the court of first instance and the decision of the court of appeal, pointed to the incorrect application by the courts of the Law on Protection of Competition and concluded that the antimonopoly body proved the existence of an agreement between the companies, which led to the maintenance of the price at the auction on lot No. 16 of the open auction for the right to conclude a state contract for the supply of medicines. Having studied all the arguments of Pharmstandard, stated in the application, the panel of judges believes that the arguments presented do not indicate the existence of grounds provided for in Article 304 of the Arbitration Procedure Code of the Russian Federation for transferring the case to the Presidium of the Supreme Arbitration Court of the Russian Federation for review of the contested judicial act in the order of supervision.

4 Taking into account the foregoing and being guided by Article 184, Part 8 of Article 299, Article 301 of the Arbitration Procedure Code of the Russian Federation, the panel of judges has determined: in the transfer of case No. A40-94475/12-149-866 of the Moscow Arbitration Court to the Presidium of the Supreme Arbitration Court of the Russian Federation for review in the order of supervision of the decision of the Federal Arbitration Court of the Moscow District of 22.04.2013.

Presiding judge V.N.Alexandrov

Judge E.I. Andreev

Judge A.E. Berezii