

## Newsletter

### *Adoption of the Law on pre-installation of Russian applications*

December 4, 2019

Dear Ladies and Gentlemen,

On December 02, 2019, a Federal Law amending the Law on Protection of Consumer Rights and introducing the concept of pre-installation of Russian applications into the existing legislation was adopted. Adoption of this law is initiated by the need to adapt the current legislation to ensure protection of citizens' interests in time of modern technologies' development influencing the market conditions in general. The law comes into force on **July 01, 2020**.

The initial concept of pre-installation of Russian applications was developed by the Federal Antimonopoly Service (FAS) after a number of high-profile cases on antitrust violation of such IT giants as Google and Microsoft, during which the possibility of exercising uncompetitive advantages by international developers of programs via pre-installation of their own applications and, consequently, setting barriers for the Russian developers, had been revealed.

This concept was based on the Roadmap for the development of competition in the economic sectors of the Russian Federation and the transition of certain areas of natural monopolies from a state of a natural monopoly to a competitive market for 2018-2020. According to this, conditions for the development of competition in the market for applications for user equipment shall be created.

#### Contents of the law

According to the law, when selling certain types of technically-complex products with pre-installed programs for electronic devices (in particular, smartphones, computers, TVs with the Smart TV function), the producer shall be obliged to pre-install a number of Russian programs to such devices.

According to the explanatory note, the law is aimed at pre-installing additional applications and

programs focused on the Russian users, as well as at protecting interests of Russian internet companies, in order to reduce possible abuses of powers by large foreign companies active in the information technologies market.

List of devices, for the sale of which it would be necessary to comply with these requirements, as well as the list of applications to be installed, shall be approved by **the Russian Government**.

For implementation of such requirements, the State Duma currently considers a bill on amendments to the Code of the Russian Federation on Administrative Offenses. According to the bill, sale of certain types of technically-complex products with pre-installed programs for electronic computing devices in breach of these requirements on pre-installation of Russian applications will entail an administrative fine: from RUB 30 000 to 50 000 for the company's officials and from RUB 50 000 to 200 000 for the legal entities.

#### Main categories of pre-installed applications

The law does not currently contain direct reference to any categories of products, with regard to which the law might be applied. At the same time, according to the initial concept of pre-installation of Russian applications, proposed by the FAS in an alternative bill, the following categories of programs were supposed to be pre-installed:

- Antivirus software;
- Search engines;
- Navigation systems;
- Mail services and social medias.

Furthermore, there are also independent expert opinions distinguishing the following categories of applications, with regard to which Russian

developers may compete with foreign applications and, thus, which may be potentially considered for pre-installation:

- **Mobile applications:** search engines, mail, cloud services, navigation systems, social networks, document editors, antivirus applications, music services and Digital TV;
- **PC applications:** search engines, cloud services, navigation systems, music services, document editors and Digital TV.

### Our recommendations

The considered law will significantly change the conditions of functioning of the markets, create additional advantages for Russian developers carrying out their business activities in Russia.

Whereas, producers of technically-complex products shall regularly monitor the approved list of devices and applications, with regard to which pre-installation requirements are applied. Moreover, additional analysis and assurance of the technological capability of the alternative Russian software pre-installation might be required.

At the same time, at the moment it is not completely clear how compliance with the requirements for pre-installation of applications shall be monitored. It seems that there is a risk of holding manufacturers of technically-complex products liable for violations of the requirements for pre-installation of applications when selling products that had been put on sale prior to coming into effect of the considered law or prior to inclusion of the corresponding device or software in the list approved by the Russian Government. It is expected that some transitional period should be introduced, during which the activities of developers should be brought into compliance with the new legal requirements in Russia.

Furthermore, the Russian Government shall clarify also the list of devices and to-be-preinstalled applications.

Even though the law has not come into force yet, its provisions should be considered already now in order to effectively adapt business activities to the new legislative requirements in the future at a short notice.

We hope that the information provided herein will be useful for you. If any of your colleagues would also like to receive our newsletters, please let us know by sending us his/her email address in response to this message. If you would like to learn more about our **Telecommunications, media and technology Industry**, please let us know in reply to this email. We will be glad to provide you with our materials.

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If you have any questions, please, do not hesitate to contact ALRUD Partners



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