

By the Judgement of 17 February 2022 No. 7-II the Constitutional Court assessed constitutionality of Article 14.8, part 3 of the Law “On Protection of Competition”.

These provisions were subject to examination insofar as they served as legal basis of resolving the issue of recognising as unfair competition the actions of an entity who had applied to participate in an electronic auction within the framework of the contractual system in the procurement of goods, works, services for state and municipal needs in the absence of a properly issued license to carry out activities necessary for the execution of a state (municipal) contract, and the income received from unfair competition, which, in this case, is subject to transfer to the federal budget on the basis of an order of the antimonopoly authority.

The challenged norms were recognised as not contravening the Constitution of the Russian Federation since by their constitutional and legal meaning in the system of current legal regulation, they assume that the participation of an economic entity in an electronic auction and the execution of a contract concluded according to its results in the absence of the specified license cannot be recognised as unfair competition and entail the obligation to transfer to the federal budget the income received by it under this state (municipal) contract, on the sole basis, that he does not have such a permit, if this discrepancy with the provisions of the legislation requiring a permit could have been established by the procurement commission as part of the performance of its duties with ordinary care and prudence, and the business entity did not commit any actions (inaction) aimed at concealing this discrepancy.