

**REPORT ON COMPETITION POLICY  
IN THE RUSSIAN FEDERATION IN 2014**

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## **Introduction**

2014 was a very rich year for the Federal Antimonopoly Service in terms of positive changes in the field of antimonopoly law and enforcement, achieved in line with the best world practices, as well as development of institutional and functional structure of FAS.

The main event in the past year was approving a package of amendments to Russian antimonopoly law – the so-called “forth antimonopoly package” by the Government of the Russian Federation and adopting it in the first reading by the State Duma of the Russian Federation (the lower chamber of the Russian Parliament). Representatives of business community, the best Russian practicing lawyers and economists were involved in the work on the “forth antimonopoly package”, which was drafted taking into consideration OECD Recommendations.

The draft Law considerably expands the institutions of warnings and admonitions, gives the right to the Government of the Russian Federation to determine the Rules for non-discriminatory access to the goods on highly concentrated markets, and introduces a conciliatory procedure for establishing state and municipal unitary enterprises.

Also, with enacting the “forth antimonopoly package”, FAS will focus on the cases on abusing market dominance that constitute a considerable threat to competition or infringe the interest of consumers at large: the prohibition of abusing dominance is clarified; a company with less than 35% market share cannot be recognized individually dominant; the Register of economic entities with over 35% market share is abolished (dominant entities).

2014 was difficult for Russian economy and FAS intensified its efforts in those sectors where it was especially necessary. In August 2014, after special economic measures were adopted, FAS and its 85 regional Offices opened the “hot line” to collect information to monitor prices on Russian market. During the “hot line” period, more than 4500 complaints from individuals and businesses were received. Complaints from individuals constituted the grounds for numerous inspections across the entire country. Over 20 cases were opened in the regions upon the facts of fixing monopolistically high prices on local markets.

In 2014 several new functions were assigned to FAS. Under a Decree<sup>1</sup> of the Government of the Russian Federation the functions of Rosoboronzakaz to control compliance with the competition rules and the bidding procedures in public defence procurement are transferred to FAS.

In 2014 FAS investigated a lot of cases, including violations of the antimonopoly law on socially important markets, for example, cases against the largest Russian companies (“Russian Railways” OJSC, “Gazprom” OJSC, “MTS” OJSC, etc.)

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<sup>1</sup> No.1489 Decree of the Government of the Russian Federation of 25 December 2014.

In 2014 FAS investigated the first case that led to a real criminal sentence for a physical person. The case was investigated by Novgorod OFAS Russia upon a fact of violating Clause 2 Part 1 Article 11 of the Federal Law “On Protection of Competition” (a bid-rigging cartel): achieving an agreement for the right to conclude a government contract to carry out the works for construction of a motor bridge.

Under the frame of Eurasian integration in 2014, a Treaty on the Eurasian Economic Union was signed – a very important document for the existence of the Eurasian Economic Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation. FAS drafted the Section on the “General Principles and Competition Rules” that formalized new norms for interaction between the Eurasian Economic Commission and national antimonopoly bodies, particular, joint inspections and investigations on the cross-border markets.

Important changes also concerned FAS judicial practice. In 2014 the Supreme Court and the Supreme Arbitration Court were unified in the single structure of the Supreme Court of the Russian Federation, which at the moment is the supreme instance to hear appeals on criminal, administrative, civil-law cases, as well as solve economic disputes.

For the first time in Russian history, FAS prepared complete academic Article-for-Article commentary to the Federal Law “On Protection of Competition”, which, hopefully, will help legal and business community better understand the Federal Law and abide by it more efficiently.

# **1. Proposed and adopted changes to the competition law**

## **1.1 Review of the new legal conditions in the competition law and relevant legislation**

In 2014 FAS continued its efforts to improve the antimonopoly regulation by adopting several federal laws of the Russian Federation.

On 4 September 2014, the Government of the Russian Federation approved the Federal Law “On Introducing Changes to the Federal Law “On Protection of Competition” and Some Legislative Acts of the Russian Federation (the so-called “forth antimonopoly package”).

The main element of the “forth antimonopoly package” is to eliminate excessive FAS powers and functions, reduce considerably administrative restrictions for business, simultaneously reducing the state participation in the economy. The document takes into account recommendations given by experts of the Organization for Economic Cooperation and Development.

The draft law removes relations on the cross-border markets from the scope of the antimonopoly law. Such control now falls under the competence of the Eurasian Economic Commission. The draft law also excludes possibility to recognize market dominance of an economic entity if its share on the market of particular goods does not exceed 35 %. Criteria for allowed “vertical” agreements are clarified. Such agreements can be allowed if neither a seller, nor a buyer has more than 20 % share on the market of the goods that are subject of a “vertical” agreement.

Actions of dominant economic entities infringing the interests of citizens or organizations in the cases not related to business operations are excluded from FAS competence. Concerted actions of economic entities under the frame of joint operating agreements, concluded with a preliminary approval by the antimonopoly body, are allowed. Information that constitutes tax secrets is added to the list of information to be submitted to the antimonopoly body upon its reasonable request is added.

The draft law clarifies the concept of “cartel”. Not only agreements between economic entities that sell goods on the same markets are recognized as cartels but also agreements between economic entities that buy them: competitors in consumption of such goods (buyers’ cartel). Establishing state and municipal unitary enterprises without FAS prior consent is prohibited.

The draft law defined the legal status of FAS Presidium. FAS Presidium studies, summarizes and gives explanations on the issues of enforcement practice of the antimonopoly law. FAS Presidium is given the powers to review decisions of FAS regional Offices on the cases on antimonopoly violations if such decisions break uniformity of interpreting and enforcement of the norms of the antimonopoly law by antimonopoly bodies or infringes the rights and legitimate interests of general public and other public interests.

Overall, the “forth antimonopoly package” is designed to considerably decrease administrative intervention in economic activities of market participants and reduce administrative burden upon business.

On 22.10.2014 the draft law was adopted by the State Duma of the Russian Federation in the first reading and is now being prepared for the second reading.

### *Control over the authorities*

Draft amendments to No. 19585-6 draft Federal Law “On Introducing Changes to the Federal Law “On Protection of Competition” (further on referred to as draft amendments) introduce mandatory approval by FAS for decisions of the authorities and local self-government bodies to form legal entities – state and municipal unitary enterprises, economic entities with over 50 % stock (shares) belonging to the state, except cases directly provided for by the federal laws, decisions of the President of the Russian Federation and the Government of the Russian Federation. The draft amendments are included in the “forth antimonopoly package”.

### *Financial market services*

*Excluding the norms from some legislative acts that give the right to attract funds from some categories of citizens as bank deposits only to the banks where no less than 50% of shares (stocks) of the authorized capital belong to the Russian Federation.*

On 05.11.2014 came into effect No. 333-FZ Federal Law “On Introducing Changes to Some Legislative Acts of the Russian Federation in the Part of Excluding the provisions Giving Advantages to Some Economic Entities” of 04.11.2014 drafted by FAS (further on referred to as No. 333-FZ Federal Law).

Adopting No. 333-FZ Federal Law is of high social importance because the law entitles the specified categories of citizens (graduates, social workers, trustees and guardians) to select banks for depositing money based on their personal considerations, including economic ones.

It created conditions for developing competition on the market of services for depositing funds of individuals (placing into accounts), eliminating unreasonable competitive advantages in attracting such funds to the banks where no less than half shares (stocks) belong to the Russian Federation. 850 other banks participating in the insurance system for deposits of physical persons will be able to compete for those funds.

Attracting such funds as deposits, the banks that were not able to attract funds of the

particular categories of individuals to deposits will increase liquidity and the scope of lending to various sectors of the economy offering loans at more beneficial conditions.

Enhancing possibilities for other sectors of the economy to obtain loans will be a positive performance factor for these sectors, encouraging their development.

*Creating regulatory conditions for preventing unfair competition by creditors (lenders) granting consumer loans (lending).*

On 01.07.2014 came into force No. 353-FZ Federal Law “On Consumer Loans (Lending)” of 21.12.2013 (further on referred to as the Law on consumer loans), regulating relations emerged due to granting loans (lending) to physical persons for the purposes not related to business operations.

FAS was actively involved in drafting the Federal law and amendments to it, particularly, at the sessions of a social Working group comprising representatives of the interested departments as well participants of the market of banking services.

As a result of FAS efforts, the following norms were included in the Law on consumer loans (lending):

- Eliminate imposing additional paid services upon borrowers directly by creditors (lenders) as well as third parties through introducing a mandatory requirement to get an additionally expressed borrower’s consent for an additional service
- Creditors (lenders) inform borrowers about the full loan costs under an agreement in such a form which helps borrowers to better understand this information and enable them to compare loan (lending) services offered by various creditors (lenders)
- An obligation of creditors (lenders) to notify a borrower before concluding a loan (lending) contract for 100,000 RUB and more that they possibly may not honour contractual obligations and fines can be imposed if within a year the overall debt on all borrower’s liabilities exceeds 50% of its annual income.

The Law on consumer loans factoring in the norms proposed by FAS is a very important social factor because it ensures additional protection of civil rights for timely obtaining full and correct information about consumer qualities and characteristics of the relevant loan (lending) products.

*Legislative formalization of a competitive mechanism for establishing a national professional association of insurers providing OSAGO (RVU).*

A high-profile event for developing competition on the market of mandatory automobile third party liability insurance (OSAGO) in 2014 was a legislative formalization upon a FAS proposal of a competitive mechanism for establishing the governing bodies of the national professional association of insurers rendering OSAGO services (the Russian Vehicle Insurers Union - RVU).

The mechanism is formalized by No. 223-FZ Federal Law “On Introducing Changes to the Federal Law “On Mandatory Civil Liability Insurance of Vehicle Owners” and Some Legislative Acts of the Russian Federation” of 21.07.2014 (further on referred to as No. 223-FZ Federal Law), that came into force on 01.09.2014, and is based on the principles of the equal rights of all members of the association (RVU) for nominating candidates to the governing bodies and participating in RVU management.

It was important to establish the new procedure to form the governing bodies because the old procedure provided for establishing RVU permanent collegial management bodies depending on the share of insurance premium collected by an insurer and upon a proposal of insurance companies that have significant share on the OSAGO market.

The procedures created advantages to large insurers in determining general OSAGO conditions, particularly, in approving the rules for professional activities (PAR) that in some cases infringed the interests of small and medium insurers – RVU members which could lead to pushing them away from the market.

Legislative formalization of a competitive mechanism of establishing the governing bodies enables equal participation of all RVU members in organizing and managing such bodies and will allow to take into account the interests of small and medium insurers providing OSAGO services and, as a consequence, will facilitate development of competition on the OSAGO market and have a positive social effect.

#### *Foreign investments*

One of the priorities in 2014 was further improving the law of the Russian Federation on foreign investments in the part of eliminating excessive administrative barriers for foreign investors in the course of transactions with regard to the economic entities of strategic importance for the national defence and state security as well as clarifying some provisions of No. 57-FZ Federal Law “On the Procedure of Foreign Investments in the Business Entities of Strategic Importance for the National Defence and State Security” of 29.04.2008 (further on referred to as No. 57-FZ Federal Law).

Enforcement practice of No. 57-FZ Federal Law showed the need for further improvement of the law on foreign investments aimed at creating favourable legal environment for foreign investments in Russian economy, combining accessibility and quality of government services with efficient control, as well as clarifying certain provisions of the Law.

In 2014 No. 343-FZ Federal Law “On Introducing Changes to the Federal Law “On the Procedure of Foreign Investments in the Business Entities of Strategic Importance for the National Defence and State Security” and Some Legislative Acts of the Russian Federation” of 04.11.2014, drafted upon a FAS initiative, was adopted. In particular, some amendments liberalize the law of the Russian Federation on foreign investments:



- Excluded from strategic types of activities: use of infectious agents by economic entities mainly involved in production of food products
- Eliminated the need to approve intra-group transactions, particularly, with regard to users of mineral resources, exercised by foreign investors controlled by the same person
- Eliminated the need for prior approval of transactions involving foreign investors if they already own over 75 % shares of Russian companies – users of mineral resources as well as intra-group transactions with regard to such economic entities of strategic importance for the national defence and state security
- Foreign investors are given a possibility to extend the validity period of an earlier issued transaction approval without repeatedly submitting the documents and going through the entire procedure
- Foreign investors are obligated to notify the authorized body on exercising transactions that were preapproved by the Government Commission for Control over Foreign Investments in the Russian Federation
- A more efficient system is introduced to control foreign investments in stevedoring companies because of the forthcoming termination of the government regulation of the tariffs for the holders of natural monopolies on cargo loading, unloading and storage in the ports of the Russian Federation.

### *Oil and gas market*

FAS drafted federal Laws “On Specifics of Circulation of Oil and Petrochemicals in the Russian Federation” and “On Market Pricing for Oil and Petrochemicals in the Russian Federation” to execute instructions of the Government of the Russian Federation on increasing predictability and objectivity of the pricing mechanisms on the markets of oil and petrochemicals in the Russian Federation. The draft Laws comply with the main directions of the Energy Strategy of the Russia for the period until 2030<sup>2</sup>.

The draft Law “On Specifics of Circulation of Oil and Petrochemicals in the Russian Federation” formulates several structural and conduct requirements that encourage competitive conditions on the domestic market. In particular, the point at issue is to prevent mergers and acquisitions or allocating plots of land for building up filling stations of the companies, which market shares already exceed the threshold. It also establishes a requirement for organizational separation of companies, involved in wholesale and retail sales of petrochemicals, by types of activities. Independent economic entities that own filling stations must buy fuel on the same conditions as sales companies – owners of filling stations that are included in the group of persons of vertically-integrated oil companies. Separate costs and revenue accounting on the main types of activities and oil companies agreeing upon take-down refining capacities for repair become mandatory. The draft Law also establishes an obligation to publish information on the residuals of petrochemicals in oil depots.

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<sup>2</sup> The Strategy is approved by No. 1715-r Decree of the Government of the Russian Federation of 13.11.2009.

The draft Law “On Market Pricing for Oil and Petrochemicals in the Russian Federation” proposes to use three base indices of market prices: exchange quotations for oil and the main petrochemicals, off-exchange prices for oil and the main petrochemicals, comparable prices on foreign markets. Price arbitration between the above three indices will gear prices for petrochemicals to the market level and prevent their unreasonable growth.

In July up-to-date conclusions on the draft laws were submitted to the Administrative Office of the President of the Russian Federation.

## **1.2. Other relevant regulatory legal acts and guidelines, etc.**

### *Anti-cartel efforts*

FAS took part in drafting and supporting legislative initiatives (amendments to No. 144-FZ Federal Law “On Operational and Investigative Activities” of 12.08.1995, the Criminal Code and the Criminal Procedural Code of the Russian Federation).

The following proposals are submitted to the President of the Russian Federation, Vladimir Putin, and the Chairman of the Government of the Russian Federation, Dmitry Medvedev:

- On the need to assign the powers of a body of inquiry to FAS
- On drafting an international Anti-Cartel Convention
- On amendments to the Criminal Code and the Criminal Procedural Code of the Russian Federation and the Federal Law “On Operational and Investigative Activities”.

### *Coal market*

To form price and volume indicators of the off-exchange coal market, FAS, together with the Ministry of Energy under the frame of the Working Group established by an order of the Ministry of Energy, devised the Concept for determining price indices for solid fuel and its derivatives at Russian exchange and electronic trading sites (further on referred to as the Concept).

The Concept gives an indicative price index for coking, hard, power plant, brown coals and anthracite. Such a price index for coal products will facilitate developing competition environment on the coal market, increase attractiveness of coal and its derivatives as fuel for the domestic market.

The developed price index of off-exchange coal market is based on a unified coal mix factoring in the information submitted to a commodity exchange to include an off-exchange contract in the Register of off-exchange contracts; it is calculated for the market segments of the main use of coal products. The key specifics of applying the index is to account for

and capture an effect of coal qualities and transportation costs upon the price and reflect the regional specifics of coal pricing.

It is expected that, based on the Concept, in 2015 methods for calculating price indices for coking, hard, power plant, brown coals and anthracite shall be devised.

#### *Pharmaceutical market*

New requirements are added to the law: procure medicinal drugs under international non-proprietary names rather than trade names; including different medicines in the same lot for sums exceeding the government-set threshold is not allowed; mixed lots cannot combine narcotic, psychotropic, radiopharmaceutical medicines and unique drugs. The requirements are introduced to prescribe drugs by medical officers on prescription forms using international non-proprietary names, and in their absence - grouping names. Pharmaceutical companies are prohibited to conduct unfair marketing policy to promote medicinal drugs through corruption with particular doctors, and doctors and pharmacists are prohibited to take part in such interactions.

FAS also drafted and submitted to the Government several legal acts regulating relations in various sectors of the economy and drafted and published the guidelines for allowing agreements on joint operations by competitors.

#### *Financial services markets*

FAS drafted the Law “On Approving the Procedure for Analyzing the State of Competition to Establish Dominance of a Financial Organization Supervised by the Central Bank of the Russian Federation” The Law is drafted under Clause 3 Part 2 Article 23 of the Federal Law “On Protection of Competition” and it must be approved in agreement with the Bank of Russia.

To adjust the legal framework in line with the Law, FAS drafted an Order “On Introducing Changes to No. 129 FAS Order “On approving the Form of presenting information to the antimonopoly body when filing pre-merger and post-merger notification under Articles 27-31 of the Federal Law “On Protection of Competition” of 17.04.2008”.

Due to the changes in regulating financial markets and transferring the powers to regulate, control and supervise operations of non-credit financial organizations to the Bank of Russia, FAS drafted Decrees of the Government of the Russian Federation on amending No. 359 Decree the Government of the Russian Federation “On approving the conditions for recognizing dominance of a financial organization (except credit organizations) and the Rules for establishing dominance of a financial organization (except credit organizations)” of 03.06.2007 to establish dominance of a financial organization not supervised by the Central Bank of the Russian Federation, and No. 409 Decree “On approving the conditions for recognizing dominance of a credit organization and the Rules for establishing dominance

of a credit organization” of 26.06.2007 to establish dominance of a financial organization supervised by the Central Bank of the Russian Federation.

On 18 October 2014 the Government of the Russian Federation adopted <sup>3</sup> No.1071 Decree “On Amendments to No. 334 Decree of the Government of the Russian Federation of 30 May2007” and No. 1072 Decree “On establishing assets values of financial organizations supervised by the Central Bank of the Russian Federation for the purposes of antimonopoly control” (that approved asset values of financial organizations, exceeding which the antimonopoly bodies should be notified about exercising transactions subject to government control, other actions with regard to such organizations).

The Decrees were drafted under the frame of the annual review of the asset values of credit and micro-financing organizations as well as due to transfer the functions to control and supervise financial markets to the Bank of Russia and formalizing the norm of the Federal Law “On Protection of Competition” on establishing, in agreement with the Bank of Russia, the asset values of financial organizations supervised by the Bank of Russia.

The asset values of credit and other financial organizations, which are defined as financial by the Federal Law “On Protection of Competition” and are supervised by the Bank of Russia, are specified in No. 1072 Decree. The specified asset values of financial organizations supervised by the Bank of Russia have not changed in comparison with the norms in the earlier acts. The exception is only the asset values of the credit organizations where the growth rate of consolidated asset value of credit organizations in the past period increased to 29 billion RUB.

No. 1071 Decree approved changes, according to which No. 334 Decree of the Government of the Russian Federation “On establishing asset values of leasing organizations for the purposes of antimonopoly control” of 30.05.2007 preserves the asset values of financial organizations not supervised by the Bank of Russia, and defined as financial organizations in the Federal Law “On Protection of Competition” – only leasing organizations.

On 29 April 2014, the Government of the Russian Federation passed No. 394 Decree “On Amending No. 386 Decree of the Government of the Russian Federation of 30.04.2009”, extending for three years (till 2017) the validity period of the General exceptions to the agreements between credit and insurance organizations, approved by No. 386 Decree of the Government of the Russian Federation of 30.04.2009.

The General exceptions determine the procedure for interaction between credit and insurance organizations to insure borrowers’ risks in the absence of sufficient number of statutory requirement for insurance organizations characterizing their financial strength and solvency.

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<sup>3</sup> No. 1071 Decree of the Government of the Russian Federation “On Amendments to No.334 Decree of the Government of the Russian Federation of 30 May 2007”.

## *Oil and petrochemicals market*

*The Rules for non-discriminatory access to gas-distribution networks, gas transportation services, the Rules for connecting to the main gas pipelines*

Following No. 115-r Order of the Government of the Russian Federation of 03.02.2014, FAS drafted a Decree of the Government of the Russian Federation “On approving the Rules for non-discriminatory access to the services of gas transportation by the main gas pipelines, the Rules for connection (technological connection) to the main gas pipelines, and on invalidating some acts of the Government of the Russian Federation” (further on referred to as the Draft Decree on approving the Rules for non-discriminatory access).

The Draft Decree on approving the Rules for non-discriminatory access optimizes the existing system for access of organizations to the main gas pipelines. For instance, it introduces the concept of “free capacity of a main gas pipeline” which creates equal conditions for access to the capacity of the main gas pipelines. Introducing this principle will simplify consumer access to the main gas pipelines.

An important difference of the Draft Decree on approving the Rules for non-discriminatory access from the existing Decree<sup>4</sup> of the Government of the Russian Federation “On providing access of independent organizations to the gas transportation system of “Gazprom” Russian Shareholding Company” is extrapolating it to all main gas pipelines in the Russian Federation rather than only gas pipelines of “Gazprom” OJSC. The draft Decree puts all organizations involved in gas transportation by the main gas pipelines in equal conditions.

FAS has forwarded the Draft Decree on approving the Rules for non-discriminatory access to the Ministry of Economic Development to evaluate its regulatory impact.

Following the instructions from the Government of the Russian Federation, FAS is also drafting a Decree of the Government of the Russian Federation “On ensuring non-discriminatory access to the gas-distribution networks in the Russian Federation” (further on referred to as the Draft Decree on ensuring non-discriminatory access) that abolishes the current No.1370 Decree of the Government of the Russian Federation “On approving the Regulations to ensure access of organizations to the local gas-distribution networks” of 24.11.1998.

The Draft Decree on ensuring non-discriminatory access optimizes the systems of access of organizations to the gas-distributing networks delivering gas to end consumers. For instance,

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<sup>4</sup> No. 858 Decree of the Government of the Russian Federation of 14.07.1997.

the Draft Decree clarifies the definition of free capacity of gas-distribution networks and creates equal conditions for access to the above capacities for the organizations of the “Gazprom” Group of persons and independent organizations. Introducing the principles simplifies consumer access to gas-distribution networks.

The draft Decree provides for introducing essential contract conditions for gas transportation services. It is necessary for normative consolidation of the main contract provisions to exclude possible incidents of discriminating consumers of gas transportation services independent from the owners of gas-distribution networks by setting unreasonable requirements by the organizations involved in gas transportation by gas-distribution networks.

Executing the Protocol of the Commission at the President of the Russian Federation on developing fuel-and-energy complex and environmental safety of 04.07.2014, FAS formed the Working Group on organized trading with natural gas that within several months devised and approved the Action Plan to develop exchange trading with natural gas. As a result, the first exchange trading with gas at St Petersburg International Mercantile Exchange took place on 24.10.2014, on the first day of trading 7 contracts were concluded for 14,500,000 cubic m.

As of the end of 2014, FAS, in accord with the Action Plan, devised jointly with the Central Bank and “SPIMEX” CJSC to further develop exchange trading with gas in 2014-2015, is refining technologies of exchange trading with gas (particularly, ensuring exchange trading with gas for decade and the day ahead), and plans to undertake measures to expand the range of trading participants and increase the volume of natural gas sales through organized trading.

Together with participants of the natural gas market, FAS is drafting proposals on organizing exchange trading and registering off-exchange contracts for export of natural gas at a commodity exchange for Russian currency.

FAS also drafted a joint Order of FAS and the Ministry of Energy “On approving the lowest value of natural gas sold through exchange and the requirements to exchange trading when transactions with natural gas are concluded, for economic entities that have the dominant position on the relevant market” (further on referred to as a Draft Order), where FAS proposed to tie the lowest value of natural gas sold through exchange to the level of its production as the most stable value, that does not change depending on the scope of export gas supplies that can vary considerably due to economic and political factors of influence.

Working on an off-exchange index of natural gas prices, FAS drafted a Decree of the Government of the Russian Federation, introducing changes to No. 623 Decree of the Government of the Russian Federation “On approving the Regulations on submitting information on the contracts concluded by the parties not through organized trading, obligations on which include transferring the property rights for the goods allowed for

organized trading, and keeping the Register of such contracts and submitting information from the Register” of 23.07.2013 (No. 623 Draft Decree), in the part of including natural gas in the list of goods, for which information about off-exchange contracts is submitted to a commodity exchange for registration.

As of the end of 2014 No. 623 Draft Decree is submitted to the Government of the Russian Federation.

*On making changes to No. 313/13/225 Order of FAS and the Ministry of Energy “On approving the lowest value of petrochemicals sold through exchange and requirements for exchange trading, during which transactions with petrochemicals are concluded with an economic entity that has the dominant position on the relevant markets” of 30.04.2013 and to No. 623 Decree of the Government of the Russian Federation “On approving the Regulations on submitting information on the contracts concluded by the parties not through organized trading, obligations on which include transferring the property rights for the goods allowed for organized trading, and keeping the Register of such contracts and submitting information from the Register” of 23.07.2013.*

To establish criteria for non-monopolistically high price for liquefied hydrocarbon gases under Part 5 Article 6 of the Federal Law “On Protection of Competition”, FAS drafted an Order of FAS and the Ministry of Energy “On introducing changes to the order of FAS and the Ministry of Energy<sup>5</sup> “On approving the lowest value of petrochemicals sold through exchange and requirements to exchange trading, during which transactions with petrochemicals are concluded with an economic entity that has the dominant position on relevant markets” (Draft Joint Order) that approved the lowest value of liquefied hydrocarbon gases sold through exchange.

For instance, FAS proposes to set the lowest value of liquefied hydrocarbon gases used for the household needs and motor transport, guided by the level of domestic consumption in the Russian Federation, at 5%.

The Draft Joint Order also sets 4% lowest volume for sale through exchange of the above liquefied hydrocarbon gases produced and (or) sold by dominant economic entities, including participants of exchange trading, that act in the interests and at the expense of the above persons.

As of the end of 2014 No. 623 Draft Decree is submitted to the Government of the Russian Federation.

*Changing subject matter jurisdiction for control over registering off-exchange contracts*

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<sup>5</sup> No. 313/13/225 Order of FAS and the Ministry of Energy of 30.04.2013.

Following the instructions from the Government of the Russian Federation of 20.09.2013, FAS had to elaborate on the issue of making amendments to the law of the Russian Federation on control over providing information to economic entities on the contracts concluded not through organized trading, obligations on which include transferring the property rights for the goods allowed for organized trading.

Exchange trading and pricing are not the only elements of market infrastructure of the oil and petrochemicals market. How pricing in the off-exchange sector is organized and to what extent it is market pricing, also are important factors; the off-exchange sector accounts for around 80-90% of the total domestic market.

Under No. 86-FZ Federal Law “On the Central Bank of the Russian Federation” of 10.07.2002, the Bank of Russia regulates, controls and supervises financial markets. The Bank of Russia does not have the powers to control economic entities trading with physical commodities in the off-exchange segment, particularly, oil and petrochemicals. FAS has such powers.

To exercise FAS powers under Article 23 of the Federal Law “On Protection of Competition”, it was necessary to change subject matter jurisdiction to control whether economic entities comply with the rules, established by normative legal acts of the Government of the Russian Federation, on providing information on the contracts concluded not through organized trading, obligations on which include transferring the property rights for the goods allowed for organized trading.

FAS drafted the Federal Law “On Making Changes to Articles 23.48 and 23.74 of the Code of the Russian Federation on Administrative Violations” agreed upon with the Bank of Russia and the Ministry of Justice. The Ministry of Justice, the Institute of legislation and Comparative Law at the Government of the Russian Federation, and the Ministry of Economic Development gave positive opinions.

No. 438-FZ Federal Law of 22.12.2014 made changes to Articles 23.48 and 23.74 of the Code of the Russian Federation on Administrative Violations on subject matter jurisdiction of Russian federal antimonopoly body and its regional Offices for investigating administrative cases under Part 6 Article 14.24 “Violating the law on organized trading” of the Code of the Russian Federation on Administrative Violations, simultaneously excluding them from the subject matter jurisdiction of the Bank of Russia.

*Providing non-discriminatory access to the services of the holders of natural monopolies on oil (petrochemicals) transportation by the main pipelines in the Russian Federation.*

To develop competition and in accord with the Action Plan (“Road Map”) on “Developing Competition and Implementing the Antimonopoly Policy” and the Action Plan for



developing competition on particular markets, including the petrochemicals market, approved by No. 2579-r Order of the Government of the Russian Federation of 28.12.2012, that provides for introducing changes to the Rules for non-discriminatory access to the services of natural monopolies for oil (oil products) transportation by the main pipelines in the Russian Federation, approved by No.218 Decree of the Government of the Russian Federation of 29.03.2011, in the part of creating conditions for independent participants of the petrochemicals markets, enhancing efficiency of using the capacities of the main oil and oil-product pipelines, the Federal Antimonopoly Service drafted a Decree of the Government of the Russian Federation “On making changes to the Rules for non-discriminatory access to the services of the holders of natural monopolies for oil (oil products) transportation by the main pipelines in the Russian Federation” и 27.09.2013 submitted to the Government of the Russian Federation.

#### *Access of independent participants of exchange trading to the main oil pipelines and oil-product pipelines*

On 16 August 2014, changes are made to the Rules for non-discriminatory access to the services of the holders of natural monopolies for transporting oil and petrochemicals by the main pipelines, approved by No. 819 Decree of the Government of the Russian Federation of 16.08.2014. The excessive requirements were excluded from the Rules: submitting notary-certified copies of licenses for the right to use subsoil and an extract from the Register of refineries in the Russian Federations or an extract from the Register business entities producing oil for applicants - participants of exchange trading.

The amendments were drafted by the Federal Antimonopoly Service (FAS Russia) to implement the “Road Map” approved by the Decree of the Government of the Russian Federation, in the part of creating conditions for operations of independent participants of the petrochemicals market and increasing efficiency of using the capacities of the main oil pipelines and oil-product pipelines.

The changes simplify access of independent economic entities participating in exchange trading to the main oil pipelines and oil-product pipelines.

#### *Disclosing information by holders of natural monopolies*

To efficiently exercise the functions of government control (supervision), the Federal Antimonopoly Service (FAS Russia) drafted No. 231/14 Order “On approving the forms, time-frame and frequency of disclosing information by holders of natural monopolies that provide gas transportation services by pipelines” of 07.04.2014, registered by the Ministry of Justice on 29.07.2014 (No. 33342). The Order came into force on 02.09.2014.

No. 231/14 Order is aimed at increasing transparency of providing information by holders of natural monopolies that render gas transportation services by pipelines. For instance, it established the new forms and time-frame for disclosing information by holders of natural monopolies that provide gas transportation services by pipelines.

## 2. Applying Competition Law and Pursuing Competition Policy

In 2014 FAS received 39 689 complaints on violating the antimonopoly law. To prevent and suppress anticompetitive practices, in 2014 FAS initiated 9 755 cases, of which 3 270 upon initiatives of FAS and its regional Offices. The antimonopoly bodies exposed 8 109 violations of the antimonopoly law and imposed fines for the total amount - 6.83 billion RUB (around US\$ 136.6 million).

### 2.1. Efforts against monopolistic activities

#### 2.1.1. Work of competition authorities and judicial bodies

In 2014 FAS and its regional offices FAS initiated 3 361 cases upon elements of monopolistic activity (abusing dominance and anticompetitive agreements of economic entities) on the goods and financial markets.

##### *Suppressing abuses of dominance*

In 2014 the antimonopoly bodies received 26 588 complaints on abusing dominance by economic entities. 3 092 cases were opened of which 299 – upon an initiative of the antimonopoly bodies, proceedings on 567 cases were terminated because the facts of violations were not confirmed. On the remaining cases 2 524 decisions were made to recognize violations and 1 913 determinations were issued. 1873 decisions, including 716 made in 2014, were appealed at Courts. Judicial bodies fully accepted 791 decisions, fully invalidated 204 decisions and partly invalidated – 33 decisions, the remaining cases are being appealed.

##### *Suppressing anticompetitive agreements between economic entities*

In 2014 the antimonopoly bodies received 1 718 complaints on competition-restricting agreements (concerted actions) of economic entities. 311 cases were initiated, on 240 decisions were made to recognize violations and 342 determinations were issued. 124 decisions, including those made in 2014 are challenged at Courts, of which 47 decisions are recognized fully valid, 22 decisions were fully invalidated and 5 decisions – partially invalidated, the remaining cases are being appealed.

## *Leniency programme*

Under Russian law only the first applicant can hope for relief from administrative liability for taking part in a cartel.

In 2014 FAS received 28 administrative leniency applications from cartel participants.

### 2.1.2. Typical cases

#### *Suppressing abuses of dominance*

##### *The case against producers of cards for tachographs*

On 24 September 2014 the FAS Commission found that the main supplier of cards for tachographs, such as: driver card, enterprise card, workshop card and controller card, that meet the requirements of an international treaty – the “European Agreement concerning work of crew of vehicles engaged in international road transport” (ECTP), “RusAvtoCart” Ltd., “RusTAKHONET” OJSC and “NIIAT” OJSC violated Clause 1 Part 1 Article 10 of the Federal Law “On Protection of Competition”. The companies fixed monopolistically high prices for the enterprise cards for tachographs.

In the course of the case investigation it was established that prices approved by “RusAvtoCart” Ltd., “RusTAKHONET” OJSC and “NIIAT” OJSC for the enterprise cards for tachographs that meet ECTP requirements, were monopolistically high and exceeded the sum of expenses and profit required to produce and sell the goods.

Upon the investigation, FAS issued a determination to “RusAvtoCart” Ltd. and “RusTAKHONET” OJSC to stop violating the antimonopoly law by fixing economically and technologically justified price for the enterprise cards for tachographs in compliance with ECTP, comparable with the price fixed in 2012-2013 for the workshop card for tachographs in line ECTP requirements, taking into account the differences in production costs.

“RusAvtoCart” Ltd. notified FAS on executing the determination and reduced the costs of enterprise cards by 34% of the original price.

“RusTAKHONET” OJSC also notified FAS on executing the determination and reduced the costs of enterprise cards by 33% of the original price.

##### *The case of “Russian Railways”*

In 2014 the decision was made on the case upon signs of violating the antimonopoly law by a group of persons comprising: “Russian Railways” OJSC (a holder of natural monopoly –

freight rail carrier, an owner of railway infrastructure), the “First Freight Company” OJSC and the “Second Freight Company” OJSC (rolling stock owners). Having investigated the case, FAS found that “Russian Railways” OJSC violated Clauses 3, 4 and 5 Part 1 Article 10 of the Federal Law “On Protection of Competition” (abusing dominance).

Implementing the Programme for a structural reform on the railway transport, “Russian Railways” OJSC must render an integrated transport service for freight carriage, acting as the “provider of last resort”, particularly, freight carriage by cars, using cars of third persons.

“Russian Railways” OJSC avoiding such activities, imposing disadvantageous tariff policy and avoiding contracts “Russian Railways” OJSC resulted in car shortage; increased costs of carriage for up to 30% and more, car elements – raised uptwofold; reduced availability of services from 90% to 60% (large consignors); from 75-80% to 30% (for small and medium business).

The FAS decision is aimed at providing a guaranteed transport service for freightage, reducing transportation costs, identifying prerequisites for developing commercial market infrastructure in rail freight.

The Supreme Arbitration Court of the Russian Federation supported FAS decision.

*The case of “Dobrynya” Ltd.*

FAS received information that in the Belgorod region there is a single distributor of alcohol products - “Dobrynya” Ltd. that support and promotes products of local producers (3 plants). “Dobrynya” Ltd. fixed a mark-up for the brought-in products at 45 - 65 %, and for the products of local plants — 25 %. The brought-in products underwent “voluntary certification”, fining with an additional mark.

FAS instructed Belgorod OFAS to verify this information.

As a result, FAS opened a case upon elements of violating the antimonopoly law – fixing different mark-ups for alcohol products depending on the production region. The case was transferred for consideration to the Central FAS Office.

In the course of the investigation, “Dobrynya” Ltd. presented some economic-and-legal grounds for fixing mark-ups, and the Commission requested documents confirming the costs of the brought-in products.

Having examined the evidence, the FAS Commission established that the mark-up for the brought-in products had been unreasonably increased by 8 - 12 % of the purchasing prices. Also, the percentage of returned products as a result of “voluntary certification” was 0.22 %.

Based on the above, the Commission concluded that “Dobrynya” Ltd. violated Clauses 6

and 8 Part 1 Article 10 of the Federal Law “On Protection of Competition”. “Dobrynya” Ltd. executed the determination on the case.

After an administrative investigation, “Dobrynya” Ltd. was fined 28,150,015 RUB.

### ***Combating concerted actions of economic entities that restrict competition***

#### *The “Pollack” case*

FAS decision (finally came into effect in 2014) established a cartel on the market of Pollack catching and sales in the Russian Federation, the objective of which was to maintain prices and decrease production (Pollack and products of its processing). The “Association of Pollack Catchers” Non-Profit Organization was coordinating the cartel.

The “Pollack” cartel is the largest cartel on the market that the Federal Antimonopoly Service proved at three Court instances. The cartel comprised practically all economic entities operating on this market; the cartel existed for nearly 4 years.

The investigation on the market of catching and sales was started upon the instructions from the Government of the Russian Federation simultaneously with investigating a violation of the law on strategic investments. The main evidence on the case was the materials obtained in the course of dawn raids carried out jointly with the Federal Security Service. The case investigation and the decisions of the Government Commission on Foreign Investments led to cartel destruction and considerable changes on the Russian market of harvesting biological resources.

Upon the outcome of the investigation, FAS imposed administrative fines for over 118 million RUB.

Upon FAS making the decision on violating the antimonopoly law, the case materials were transferred to the law enforcement bodies to initiate a criminal case under Article 178 of the Criminal Code of the Russian Federation.

Arbitration Courts of three instances supported FAS decision.

#### *The first criminal case in FAS practice*

Novgorod OFAS investigated a case upon a fact of violating Clause 2 Part 1 Article 11 of the Federal Law “On Protection of Competition” (a bid-rigging cartel): reaching an agreement for the right to conclude a government contract to carry out the works for constructing a bridge across the Perekhoda river, that resulted in maintaining tender prices. On 14 May 2014 Novgorod District Court found that the director of a company involved in the case committed several offences. The cumulative sentencing was: 3 years 8 months

suspended sentence (probation - 4 years); depriving of the right to be engaged in a particular activity for 2 years 6 months; and a 300,000 RUB fine.

### *Investigating a case with an international aspect*

In 2014 FAS investigated a case on violating the antimonopoly law on the market of ocean (sea) liner container shipments. The antimonopoly case was initiated against 14 Russian economic entities that are agents or subsidiaries of the largest transnational container carriers. In the course of the investigation, FAS consulted with the Competition Directorate of the European Commission when participants discussed common issues and considered possible approaches to investigating such type of violations.

## **2.2. Government Control over Economic Concentration**

### *2.2.1. Statistics on the number, volume and type of transactions that were notified and / or are controlled in accordance with the competition law*

In 2013 FAS investigated 1928 pre-merger notifications and 318 post-merger notifications from economic entities: granted (noted) – 1899 pre-merger notifications (of which 157 – with issuing a determination) and 309 post-merger notifications; dismissed – 29 pre-merger notifications and 9 pre-merger notifications. Since 30 January 2014 post-merger notifications are abolished.

### **2.2.2. Typical cases**

#### ***Approving a pre-merger notification with issuing a determination***

Having considered a pre-merger notification of “Fresenius Kabi Binnopharm GmbH and Co. KG” (Germany) on acquiring “Binnopharm” CJSC and “Fresenius Kabi” Ltd., FAS established that as a result of the transaction “Fresenius Kabi Binnopharm GmbH and Co. KG” would gain the right to indirectly control 100 % votes on the shares of the authorized capital of “Alium” Production Pharmaceutical Company” Ltd. “Binnopharm” CJSC and “Alium” Production Pharmaceutical Company” Ltd. produce vital and essential medicines, particularly, drugs for treating socially important diseases, included in the list approved by No. 715 Decree of the Government of the Russian Federation of 01.12.2004. Guided by Clause 4 Part 2 Article 33 of the Federal Law “On Protection of Competition”, the pre-merger notification was granted and simultaneously FAS issued a determination to “Fresenius Kabi Binnopharm GmbH and Co. KG” to exercise actions to protect competition.

The determination included the following mandatory steps:

- Prior to completing the transaction, adjust the draft contract for buying-

and-selling shares in line with the antimonopoly law

- Do not conclude agreements aimed at preventing, restricting, eliminating competition on the market, particularly, that can prevent market entry or push independent economic entities (sellers) from the market within the geographic boundaries of the Krasnodar region
- Inform FAS about the concluded agreements under the frame of the merger within 20 days after the date of concluding such agreements (enclosing relevant documents).

### ***Refusing a pre-merger notification***

#### *Refusing a pre-merger notification due to submitting incorrect information*

Having considered a notification of “PALESORA LIMITED” (Cyprus) on acquiring “Aptechnaya Set 36.6” OJSC, FAS established that the information submitted to FAS with the notification did not match the information on the list of the affiliated persons of “Aptechnaya Set 36.6” OJSC. Therefore, under Clause 5 Part 2 Article 33 of the Federal Law “On Protection of Competition”, FAS refused to grant the notification of “PALESORA LIMITED” due to submitting incorrect information.

According to the information submitted to the antimonopoly authority on 31 January 2014, the main shareholders of “Aptechnaya Set 36.6” OJSC are “Zapa Holdings inc.”, “Maraval Holdings Limited”, that each owns 24.5% voting shares of “Aptechnaya Set 36.6” OJSC, and a citizen of the Russian Federation, A. Tochilin (2% voting shares of the company).

Along with the notification, “PALESORA LIMITED” submitted to FAS draft contracts for buying-and-selling shares of the authorized capital of “Aptechnaya Set 36.6” OJSC where sellers of shares of “Aptechnaya Set 36.6” are the main shareholders of the chain.

The official web-site of “Aptechnaya Set 36.6” OJSC publishes the lists of company’s affiliated persons as of 31 December 2013, 15 January 2014 and 31 March 2014. FAS points out that as of the above dates the main shareholders of “Aptechnaya Set 36.6” are “36.6 Investments Limited”, that owns 40.01% shares of the authorized capital of “Aptechnaya Set 36.6” OJSC and “Hi Capital Corporation” that owns 17.83% shares. At the same time, the antimonopoly authority notes that the above lists of affiliated persons do not have any information about “Zapa Holdings inc.” and “Maraval Holdings Limited”.

Available to FAS information about shareholders of “Aptechnaya Set 36.6” OJSC also matches the information in the lists of company’s affiliated persons as of 31 December 2013, 15 January 2014 and 31 March 2014.

#### *Refusing a pre-merger notification due to an increased dominance*

Having considered a notification of “Rigla” Ltd. on acquiring “Tsentralnie Apteki” OJSC within the geographic boundaries of the Yaroslavl region, it was established that the transaction would increase the dominant position of “Rigla” Ltd., which share on the market in the Yaroslavl region would reach 50.61%. Under Clause 5 Part 2 Article 33 of the Federal Law “On Protection of Competition” the pre-merger notification was refused.

### ***Granting a pre-merger notification***

In 2014 FAS considered a notification of a limited liability public company “Beaulieu International Group” (Belgium) on acquiring the rights enabling to determine the conditions of business activities of “Opus TD” Ltd., “Opus-Voronezh” Ltd., “Opus-Yekaterinburg” Ltd., “Opus-Novosibirsk” Ltd., “Opus-Irkutsk” Ltd., “Opus-DV” Ltd. In the course of the investigation FAS analyzed the market of wholesale sales of floor coverings.

The purpose of the transaction was vertical integration of the Buyer on the Russian market using a network of distributing Companies. To determine possible consequences of the transaction, FAS surveyed the market of wholesale sales with floor coverings (carpets and other non-hard products used as floor coverings). The market has many players (more than ten). The aggregate shares of the Companies in 2012 and 2013 on the markets of wholesale trade with floor coverings (carpets and other non-hard products used as floor coverings) in the Russian Federation were 36.88% and 33% accordingly. Therefore, the shares of the Companies on the markets of wholesale trade with floor coverings (carpets and other non-hard products used as floor coverings) in the Russian Federation was reducing.

FAS decided to approve the notification without issuing a determination because the Buyer and the Companies operate on different markets and the consolidated share of the Companies does not exceed 50 % and the market of wholesale trade with floor coverings has over 10 players.

### **Considering a notification with an international aspect**

“AERCAP IRELAND LIMITED” notified on acquiring 100% voting shares of “INTERNATIONAL LEASE FINANCE CORPORATION”.

To make a decision FAS analyzed the market of leasing services in the segment of aircraft leasing.

Since the geographic boundaries of the aircraft leasing market are not limited to the Russian Federation, FAS applied the waiver procedure, and as a result FAS obtained information that formed the basis for making decisions on the transaction by foreign competition authorities, including:

- Federal competition authority of Germany
- Ireland antimonopoly body
- The Ministry of Commerce of the People’s Republic of China



- Mexico's Federal Commission on economic competition
- Korean Fair Trade Commission
- US Federal Trade Commission
- US Ministry of Justice
- Ecuador's Market Power Inspectorate
- Competition Commission of South.

Analyzing the market of leasing services in the aircraft leasing segment, FAS directly took into account the information from Ireland antimonopoly body, the Federal competition authority of Germany and Portugal's competition authority.

Examining the notification, FAS also had a meeting with representatives of the companies participating in the merger and held telephone negotiations with foreign competition authorities.

As a result of the analysis, FAS established that the transaction would not restrict competition on the market in question.

Therefore, FAS granted the notification.

*2.3. Government control of competition-restricting acts, actions, agreements or concerted actions of the federal executive bodies, the authorities of the constituent territories of the Russian Federation, local self-government bodies, other bodies or organizations assigned the functions or rights of the above authorities, the Central Bank of the Russian Federation*

#### 2.3.1. Work of competition authorities and judicial bodies

In 2014 FAS considered 4 477 petitions on acts and actions by the authorities (Article 15). 1 609 of them were filed due to unreasonable prevention of activities of economic entities. 3 068 cases were opened. Violations were recognized on 2647 cases and 1755 determinations issued. 321 decisions were appealed; Courts fully confirmed 92 decisions, partially – 3, fully invalidated – 8, the appeals continue – 218.

In 2013 FAS received 340 petitions on anticompetitive agreements involving the authorities (Article 16). 350 cases were opened, some upon FAS initiative. Violations were recognized on 299 cases and 285 determinations were issued. 140 decisions were appealed, including 61 in 2014. Out of 61 appealed decisions Courts fully confirmed 16 decisions, 1 was fully invalidated, 1 – partly invalidated. Other decisions are in the process of appealing.

2 420 petitions concerned non-observance of antimonopoly bidding requirements (Article 17). 1 028 cases were initiated. Violations are recognized on 837 cases and 436

determinations were issued. 112 decisions were appealed; Courts fully supported 43 decisions, 12 decisions were partly invalidated, other decisions are in the process of appealing.

### 2.3.2. Typical cases

#### *The case against Rosrybolovstvo*

In 2014 FAS investigated two cases against the Federal Fishery Agency (Rosrybolovstvo), and issued decisions and determinations.

In the first case Rosrybolovstvo assigned to the companies - members of the Association of Russian Fisheries Operating in African West Coast Zones the functions of an executive fishery body for allocating quotas for catching (harvesting) aquatic biological resources in the Atlantic part of the exclusive economic zone of the Morocco Kingdom. It breached the procedures for quotas allocating and determining and allowing companies – members of the Association to exercise the above government function, contrary to Part 3 Article 15 of No.135-FZ Federal Law “On Protection of Competition” of 26.07.2006.

In the second case, Rosrybolovstvo issued No. 35-r Order “On Implementing the Second Session of Russian-Moroccan Joint Fishery Commission under the Frame of the Agreement between the Government of the Russian Federation and the Government of Morocco on Cooperation in the Field of Deep-Sea Fishing” and assigned powers to allocate quotas for catching aquatic biological resources in the exclusive economic zone of the Morocco Kingdom to “Natsrybresurs” Federal State Unitary Enterprise in breach of Parts 1, 3 Article 15 of No.135-FZ Federal Law “On Protection of Competition” of 26.07.2006.

Moscow Arbitration Court dismissed the appeal by the Federal Fishery Agency of FAS decisions and the determination on the case.

Following the decisions and determinations on the cases, Rosrybolovstvo was required to exercise actions to support competition, in the part of allocating quotas for catching (harvesting) aquatic biological resources under non-discriminatory conditions.

The results of the efforts of the antimonopoly body was that the Ministry of Agriculture forwarded for FAS approved a draft Federal Law “On Fishing and Preserving Aquatic Biological Resources, drafted to regulate and improve the mechanism for giving opportunities to Russian legal entities and individual entrepreneurs to exercise commercial fishing in the areas covered by the international treaties of the Russian Federation that provide for special conditions of commercial fishing.

#### *The case on violating the antimonopoly law granting subsidies to agricultural*

*producers*

In 2014 FAS investigated an antimonopoly case against Ivanovo Regional Department of Agriculture and Food Products (further on referred to as the Department) and the Government of the Ivanovo region.

FAS analyzed how subsidies for sale of bread-grain and oil-seeds were allocated during an unscheduled inspection of the Department upon complaints from “Agro-Soyuz” SPK” Ltd. and “Service Profi” Ltd. FAS found that the Government of the Ivanovo region created discriminatory conditions for particular agricultural producers (crop farming) in the Ivanovo region. The Government of the Ivanovo region passed a Decree that made changes to the Procedure for granting subsidies in 2013-2015 to compensate some costs of paying the interest on the loans from Russian credit organizations and agricultural consumer credit co-operatives.

FAS found that the Government of the Ivanovo region violated Part 1 Article 15 of No.135-FZ Federal Law “On Protection of Competition” of 26.07.2006 and issued a determination to the Government of the Ivanovo region to stop violating the antimonopoly law.

The Government of the Ivanovo region has filed a claim to Arbitration Court to invalidate the decision and determination on the case.

*The case against the largest equipment customer in the fuel-and-energy complex*

In April 2014 FAS found that “FSK-EES” OJSC violated the antimonopoly law. The company unlawfully required mandatory certification of the equipment offered for procurement.

“FSK-EES” OJSC is the largest ordering customer in the fuel-and-energy complex. Taking advantage of its position, the company included a condition in the procurement documents that all organizations intending to take part in tenders for supplying equipment, technologies and materials to the facilities of “FSK-EES” OJSC were obligated to pass an additional paid certification of their equipment at the base of “FSK-EES” OJSC. The certification costs were from 350,000 RUB to 2 million RUB. Absence of the documents confirming additional certification constituted the grounds to refuse a commercial offer of a tender bidder.

As a result of the actions by “FSK-EES” OJSC, companies that had certificates issued by the competent authorities in accordance with the current law had to undergo an additional certification with “FSK-EES” OJSC.

Based on the above, FAS found that “FSK-EES” violated Part 1 Article 17 of the Federal Law “On Protection of Competition” and issued a determination to exclude the mandatory certification requirement from the procurement documentation.

## 2.4. Suppressing unfair competition

### 2.4.1. Work of competition authorities and judicial bodies

The total number of petitions investigated to prevent and suppress unfair competition (Article 14 of the Federal Law “On Protection of Competition”) in 2014 was 3051. 1136 cases were opened. Violations were recognized on 864 cases and 536 determinations were issued.

Overall, 165 decisions made by FAS in 2014 were appealed at Courts. Judicial bodies fully confirmed 47 decisions, partly invalidated 1 decision and fully invalidated 3 decisions, appeals on 114 decisions continue.

### 2.4.2. Typical cases on unfair competition

#### *Unfair competition in the form of disseminating false, incorrect information*

In 2014 FAS investigated a claim of “Megafon” OJSC against “Mobile TeleSystems” OJSC upon elements of violating Paragraph 1 Part 1 Article 14 of No.135-FZ Federal Law “On Protection of Competition” of 26.07.2006 (disseminating, false, incorrect or distorted information that can inflict damages upon an economic entity or harm its business reputation). “MTS” OJSC violated the antimonopoly law by refusing applications to transfer a subscriber number, which eliminates the right, provided for in the federal law, for keeping a subscriber number when a new agreement for mobile wireless communications services is concluded (MNP).

As a result of the actions by “MTS” OJSC, “Megafon” OJSC was deprived of a possibility to render mobile wireless communications services to government customers (Moscow Department for Housing & Utilities and Urban Amenities, the Administrative Office of the Federation Council of the Federal Assembly of the Russian Federation), in spite of the concluded government contracts.

In the course of the investigation, the respondent - “MTS” OJSC referred to ambiguity of legislative regulation and to the issues with application decoding, of which they were informed repeatedly.

Although “MTS” OJSC was aware in advance about “Megafon” OJSC concluding the government contract with the Federation Council for communications services and the government customer wished to transfer subscriber numbers from “MTS” OJSC due to the fact of concluding the government contract, the company did nothing to enable porting the

subscriber numbers of the Federation Council from the donor operator (“MTS” OJSC) to the recipient operator (“Megafon” OJSC) in the absence of any overwhelming technical obstacles.

Having investigated the case, FAS found that “MTS” OJSC violated the antimonopoly law and fined the operator.

*Unfair competition related to acquiring and using an exclusive right for the means of individualization of a legal entity, the means of individualization of products, works or services.*

FAS investigated a claim of “Essentuki Brewing Works” Ltd. against “Zhigulevskoe Beer” OJSC upon elements of violating Part 2 Article 14 of No.135-FZ Federal Law “On Protection of Competition” of 26.07.2006 (acquiring and using an exclusive right for the means of individualization of a legal entity, the means of individualization of products, works or services). The unfair competition was in acquiring and using the exclusive rights for “SAYANY” combined trademark. “SAYANY” tonic beverage was developed at the end of the 1950s and during a long period of time was one of the most popular and favourable drink of Russian people.

The antimonopoly body found that using the exclusive rights for “SAYANY” verbal mark (name), “Zhigulevskoe Beer” attempted to prevent other producers of this carbonated beverage using the name. Most of the complaining companies have been producing this beverage since the Soviet period and some of the producers were involved in developing and evaluating the beverage.

Having investigated the case, FAS fined “Zhigulevskoe Beer” and its general director 300,000 RUB and 12,000 RUB accordingly for unfair competition.

### **3. The Role of Competition Bodies in Shaping and Implementing Other Policies**

#### ***3.1. Executing the Road Map for “Developing Competition and Improving the Antimonopoly Policy”***

Following the instructions by the Government of the Russian Federation, the Actions Plan (“Road Map”) for “Developing Competition and Improving the Antimonopoly Policy” is drafted<sup>6</sup>. It determined high-priority measures to develop competition on particular sectoral markets, implementing which improves the quality of life in Russia within a short time. The devised measures cover the market of medicinal drugs, air transportation, communications

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<sup>6</sup> No. 2579-r Decree of the Government of the Russian Federation of 28.12.2012

services, pre-school education, and petrochemicals.

FAS is the Road Map coordinator<sup>7</sup>. Under the frame of implementing the measures specified in the Road Map, FAS ensures cooperation with 15 federal executive bodies and the “Strategic Initiatives Agency for Promoting New Projects” Autonomous Non-Profit Organization and is a responsible executor of a quarter of these measures. The Road Map is planned for 2013-2015.

As of the end of 2014, around 80% Road Map measures were executed.

### *3.2. Developing competition in different sectors*

#### *Oil industry*

##### *Developing the practice of devising “model policies” by oil companies*

To prevent antimonopoly violations by participants of oil and petrochemicals markets and in accord with No. 2579-r Order by the Government of the Russian Federation of 28.12.2012, the Action Plan (“Road Map”) for “Developing Competition and Improving the Antimonopoly Policy” is approved. It includes a measure on improving informational transparency of the industry by developing the practice of drafting “model policies” by oil companies. FAS undertakes efforts to introduce and develop model policies by economic entities.

For instance, in 2014 FAS approved upon the following trading policies:

- Trading policies of the Group of “LUKOIL” OJSC for wholesale sales of gasoline and diesel fuel in the Russian Federation that formalize the LUKOIL Group orientation towards fully granting the applications of end consumers and third parties for supplies of motor fuel directly from refineries as well as through oil depots of subsidiaries, particularly, by splitting off wholesale and retail sale of petrochemicals, after the technical Regulations come into effect that prohibit circulation of gasoline below the V emission standard in the Russian Federation and complete transition of the market to the above standards in 2016.

- A new version of the trading policy of “Bashneft” ANK” OJSC regarding gasoline sales on the wholesale markets in the Russian Federation, that made changes about possibility to increase supplies of petrochemicals to the organizations, not included in the group of persons of “Bashneft” ANK” OJSC and not affiliated with the company, by supplying through exchange trading as well as direct wholesale contracts from refineries and oil depots.

- A trading policy of “Alliance” NK” OJSC on wholesale sales of gasoline and diesel

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<sup>7</sup> № 1459-r Decree of the Government of the Russian Federation of 17.08.2013

fuel in the Russian Federation. The trading policy is devised by “Alliance” NK” OJSC for the most efficient cooperation with all potential and actual buyers; establishing non-discriminatory conditions for sale of petrochemicals to buyers; maximum transparency of selling petrochemicals in the Russian Federation and supporting informational openness of the policy of “Alliance” and sales companies in wholesale and small wholesale sales of petrochemicals in the Russian Federation, particularly, on the procedure for selecting counteragents, pricing, other conditions for selling petrochemicals.

The objectives of the trading policies are:

- Supporting the maximum transparency of sales operations by oil companies for the actual and potential buyers, regulators, employees of oil companies and other interested persons
- Preventing violations of the current law in the Russian Federation
- Informing about the policy of oil companies on selling petrochemicals on the wholesale markets in the Russian Federation, including the procedures for selecting counteragents and pricing.

It is also necessary to point out that earlier FAS approved of the trading policies of “TNK-BP Holding” OJSC – “Pricing procedures and the general principles of selling diesel fuel on the wholesale markets in the Russian Federation”, “Bashneft” ANK” OJSC - “Pricing procedures and the general principles of selling diesel fuel on the wholesale markets” and “Gazprom Neft” OJSC on sales of aviation fuel and gasoline and diesel fuel on the wholesale market in the Russian Federation.

### *3.3. Introducing the Competition Development Standard in the constituent territories of the Russian Federation*

To execute Clause 2 of the Road Map for “Developing Competition and Improving the Antimonopoly Policy”, in 2014 the Competition Development Standard for the constituent territories of the Russian Federation is devised and approved by the Government of the Russian Federation (further on referred to as the Standard). The objectives of the Standard are:

- Establishing the requirements to the work of the authorities of the subjects of the Russian Federation aimed at creating conditions for developing competition in sectors of economic activities of market participants on a particular territory
- Supporting a system-wide and unified approach to competition development efforts across the entire Russian Federation, in line with the specifics of regional economics and markets performance
- Shaping a transparent system of the work of regional authorities in the part of result-oriented and efficient measures for developing competition in the interests of end consumers of goods and services, subjects of business activity, citizens of the Russian Federation and society in general
- Creating incentives and conditions for developing and protecting small and medium

companies, eliminating administrative barriers

- Achieving the key target figures characterizing competition development on the markets in the subjects of the Russian Federation.

Introducing the Standard is a system-wide measure to increase satisfaction of consumers, actors of economic relations and the society in general with the quality of goods and services, and, overall, improving the investment climate on various markets across the region.

Upon a FAS initiative, several consultations, meetings, Round Tables, workshops on introducing the Standards took place on different platforms.

FAS assisted in pilot introduction of the Standard in 6 regions: the Republic of Tatarstan, Khabarovsk, Volgograd, Nizhny Novgorod, Ulyanovsk regions and St Petersburg. 15 subjects of the Russian Federation initiated introducing the Standard in 2014.

As a result of pilot introduction of the Standard in 2014:

1. A methodological basis for introducing the Standard is devised:

Explanations on the issues of Standard implementation (on the results of the workshops)

An informational note, summarizing the experiences of the regions with references to the workshop materials

Recommendation on participation of FAS regional bodies in implementing the Standard

Recommendations to executive bodies of the subjects of the Russian Federation to monitor administrative barriers and evaluate competitive environment by subjects of business activity

Recommendations to draft a report on competition in a region.

2. Drafted a standard municipal Road Map

3. Drafted questionnaires to monitor consumer satisfaction with the quality of goods and services on the markets in a region and the state of price competition

4. Approved sectoral Road Maps

5. The outcome of the efforts to introduce the Standard in 2014 is No. 705 Order of the President of the Russian Federation of 04.11.2014, under which since 1 January 2015 all governors are evaluated using a new criterion – supporting development of competition on the basis of the Standard.

To develop competition in the regions, the Heads of the constituent territories of the Russian Federation (governors), in accord with the Standard, must form a collegial body to consider competition development issues, approve the list of priority and socially important markets in view with the specifics of developing regional economy, determine system-wide and sectoral indices of competition development, draft the “Road Map” to support competition in a region, monitor competitive environment and evaluate performance of the authorities. Introducing the Standard will encourage transparent system of the work of regional



authorities, create incentives and conditions for development and protection of small and medium companies, and eliminate administrative barriers, help achieve the key targets of developing competition on the regional markets. Thus, since 2015 the efforts to introduce the Standard are being undertaken in all regions of the Russian Federation.

### *3.4. Developing international cooperation*

FAS continued efforts to develop international cooperation, particularly, in enforcement.

By 2014 the international legislative framework supporting international enforcement cooperation with foreign competition authorities on a bilateral as well as multilateral basis comprises around 10 Agreements of the so-called “new level” (with the competition authorities of Austria, Hungary, Mexico, Serbia, Italy, Spain, the European Commission).

Russian competition authority identifies for its work two key tracks of international economic cooperation.

The first track is active participation in discussing the latest global trends in the field of competition policy using the platforms of international organizations addressing competition policy issues, such as the Organization for Economic Cooperation and Development (OECD), the International Competition Network (ICN), UN Conference on Trade and Development (UNCTAD).

The track in the field of international economic cooperation is related directly to modern developments in the field of competition policy in the practical work of the antimonopoly authority. It concerns improving the antimonopoly law and enforcement practice, and result-oriented cooperation of antimonopoly bodies.

In 2014 international cooperation in the field of competition protection and development was exercised through joint programmes and other measures with international organizations, integration associations and foreign competition authorities, particularly, CIS member-states, both on bilateral and multilateral basis, in accord with international treaties and the law of the Russian Federation.

Traditionally, cooperation with **OECD** was a priority for Russia’s competition authority in international cooperation.

To execute the Recommendations issued upon the results of negotiations on Russia ascending OECD in the field of competition, robust effort were undertaken to improve Russian antimonopoly law, the outcome of which is reflected in the so-called “forth antimonopoly package of amendments”.

During 2014, Russian antimonopoly authority also took an active part in OECD discussions of the pressing issues of competition policy, the results of which usually form the basis of OECD Recommendations on particular areas of competition policy.

In 2014 Russian Federation joined the Recommendation of OECD Council concerning International Cooperation in Competition Investigations and Proceedings [C(2014)18], of 16 September 2014. The Recommendation is designed to facilitate coherent policy in the field of efficient international cooperation between competition authorities.

One of the most important areas of FAS cooperation with OECD is interaction **with OECD Regional Competition Centre - Hungary**. In October 2014 a workshop on “the Issues of Competition on the Market of Air Transportation Services in Airports (Airport Operations)” was organized in Kazan at FAS Centre for Education and Methodics. The key speakers were the leading OECD experts and FAS representatives. Specialists exchanged experience of government regulation of airport services and discussed various aspects of competition on the market of airport services.

In 2014 Russian antimonopoly authority paid considerable attention to cooperation with **UN Conference on Trade and Development (UNCTAD)**. FAS representatives traditionally took part in UNCTAD 14<sup>th</sup> session of the Intergovernmental group of experts in the field of competition law and policy (further on referred to as IGE). In 2014 IGE discussed informal cooperation between competition authorities in investigating antimonopoly cases, communications strategies as the means of enhancing efficiency of competition authorities, independence and accountability of competition authorities.

In 2014 top FAS executives had meetings with UNCTAD, particularly, UNCTAD Deputy General Secretary, Draganov, and the Head of UNCTAD Competition and Consumer Policy Branch, H. Qaqaya.

Cooperation with **the International Competition Network (ICN)** – an international organization engaged exclusively in competition policy – developed intensively in 2014.

A significant event in 2014 was electing FAS a co-chair of No. 2 Sub-Group (enforcement) of ICN Cartel Working Group.

Also in 2014, under the frame of ICN Steering Committee, FAS together with several competition authorities started and continued drafting a Chapter of ICN Anti-Cartel Guidelines for “Building up Relations between Competition Authorities and Public Procurement Bodies”.

Electing FAS a co-chair of No. 2 Working Sub-Group confirms sustainable positive reputation of FAS as an organizer and responsible executor of international projects among the leading antimonopoly bodies in the world.

In 2014 FAS continued to actively develop cooperation under the **BRICS format (Brazil, India, China and South Africa)**. This area is especially important in light of preparing for Russia presidency in BRICS in 2015.

In 2014 FAS paid the maximum attention to agreeing with BRICS partners upon the text of the Memorandum of Understanding in BRICS cooperation expected to be signed in 2015.

Also in September 2014 there was a Round Table in St Petersburg on the “Code of Conduct for Car Manufacturers: creating fair rules of the game on the car market”. The objective was to discuss opportunities for implementing Russian experience on applying the standards of the Code of Conduct for Car Manufacturers (further on referred to as the Code) in BRICS as well as other countries. The Code was drafted by the Association of European Business together with FAS in 2013 and its application in Russia started at the beginning of 2014. The document formalized the main principles of implementing fair competitive strategies, employing which has reduced the market entry barriers, supported non-discriminatory access to cars and spare parts, increased competition and decreased the number of violations of the antimonopoly law.

Development of cooperation between BRICS nations on a broad range of economic issues, including the field of competition policy, which has been observed in recent years, ensured that BRICS has transformed from an informal association of countries into a fully-fledged association, with an efficient mechanism of interaction on the key issues of global economics.

In 2014 FAS cooperation with the nations of the **Asian-Pacific region (APEC)** advanced progressively through bilateral relations between competition authorities in the region as well as under the frame of “**Asian-Pacific Economic Cooperation**” Forum (APEC).

The key event in bilateral cooperation between FAS and the antimonopoly bodies of Asian-Pacific nations was signing the Memorandum of Understanding on cooperation in the antimonopoly field between the Federal Antimonopoly Service (the Russian Federation) and the Ministry of Commerce of the People’s Republic of China (13 October 2014, Moscow).

In 2014 Russian antimonopoly body continued active participation in APEC Forum Working group on competition policy as well as APEC projects. FAS put forward an initiative to hold the next APEC competition training in 2015 in the Russian Federation. Having passed a multi-stage procedure of considering project applications specified in APEC Regulations, in December 2014 APEC Secretariat approved FAS project application.

In 2014 FAS held a series of consultations with the **General Directorate on Competition** of the **European Commission** on some investigations carried out by FAS and analyzed issues of interest for the Service.

Another area of FAS international cooperation further advanced in 2014 was **activities of international Working Groups on developing competition in the socially important markets** (further on referred to as the International Working Groups).

In particular, there were two sessions of the International Working Group on studying competition issues in the pharmaceutical sector (further on referred to as the Pharmaceutical Working Group), co-chaired by FAS and Italy competition authority.

The Pharmaceutical Working Group focuses on the methodological issues of defining pharmaceutical markets, analysis of pharmaceutical markets (particularly, in the context of substitutability criteria), stimulating production and consumption of generic drugs. Materials prepared for the meetings of the Pharmaceutical Working Group, were further used to draft FAS Report “On the results of evaluating accessibility of medicinal drugs on the basis of analyzing consumer prices and medicinal drug pricing in the Russian Federation (particular, in the subjects of the Russian Federation) and on comparable markets of the countries, including the CIS, the European Union and BRICS”.

In 2014 activities of the International Working Group on developing markets of international communications in roaming (further on referred to as the Roaming Working Group) was progressing. The Group co-chairs are FAS and Turkey competition authority.

In 2014 the Roaming Working Group paid attention to the specifics of pricing on the markets of international telecommunications, the existing pricing problem of unreasonably increased tariffs for the roaming services that infringes consumer interests. During the discussions it was mentioned that price per minute of conversation for the persons staying in another country and using the services of their home operator, is 60-70 RUB. The situation is possible because roaming partners mutually set unreasonably overrated inter-operator tariffs, applying which brings over 80% of the profit while the tariffs form 70-120% of the subscriber tariff.

Summing up the discussions, the Roaming Working Group formulated the so-called “Fair Roaming Principles” and devised the “Road Map for Reducing Roaming Tariffs and Developing Competition” (further on referred to as the Roaming Road Map).

In 2015 the Working Group on Roaming will be discussing execution of the measures specified in the Roaming Road Map.

**Cooperation with the antimonopoly authorities of the CIS member-states** also continued advancing throughout 2014.

The main platform for interacting in the given format is **the Inter-State Council on Antimonopoly Policy (ICAP)**, acting under the framework of the Agreement on coherent antimonopoly policy of 25.01.2000.

In May 2014, the Council of the Heads of CIS Governments considered a report “On the Work of the Inter-State Council on Antimonopoly Policy”, reflecting ICAP efforts for 20 years. The report was praised highly by the Council of the Heads of CIS Governments that directed ICAP to continue joint efforts with the antimonopoly authorities of the CIS nations to develop competition on the socially important markets, particularly to eliminate anticompetitive agreements and discriminatory practices against economic entities.

The work in this field started in 2006 when ICAP members decided to form the Headquarters for Joint Investigations of Violations of the Antimonopoly Law of the CIS member-states (further on referred to as the Headquarters).

In 2014 the Headquarters continued its robust efforts. In this period the subjects of the Headquarters’ studies were the grain markets, pharmaceutical markets, and oil and petrochemical markets, some of the surveys are completed. In particular, the Headquarters completed drafting the Report “On the State of Competition on the Markets of Medicinal Drugs in the CIS Member-States”, that following the ICAP decision was forwarded for consideration to the CIS Executive Committee in accord with the established procedures.

In November 2014 the Council of the Heads of CIS Governments considered a Report “On the State of Competition and Pricing on the Markets of Oil and Petrochemicals” and gave it a positive evaluation.

Taking into account the importance of pricing in the oil and petrochemicals sector for developing the economy of the CIS nations, the Inter-State Council on Antimonopoly Policy was directed to continue efforts in this area together with the national antimonopoly bodies and the regulators.

ICAP determined that in the near future the Headquarters shall survey the markets of economy-class housing construction and the market of aggregates, as well as studying the issues of improving the systems of subsidizing agricultural producers in the CIS member-states to support competitive conditions in granting subsidies.

An important event in 2014 was adopting the Model Law “On Competition Protection”, drafted by ICAP, at the 41<sup>st</sup> Plenary Session of the Inter-Parliamentary Assembly of the Commonwealth of Independent States (IPA CIS).

The Model Law was drafted in line with the best world practices in antimonopoly regulation as well as experience of building up competition protection systems in integration associations with different levels of integration.

The Model Law is a necessary and key tool for improving the antimonopoly law of the CIS member-states.

In No. 41-11 Decree of 28 November 2014, IPA CIS recommended the Parliaments of the CIS member-states to apply the Model Law “On Competition Protection” in the national laws.

**Bilateral cooperation** has a special place in the system of international economic relations in the field of competition protection; in 2014 FAS paid significant attention to its development.

Expanding the international agreement-based framework, in 2014 FAS signed bilateral documents with the Administrative Council on Economic Security at the Government of the Federative Republic of Brazil, the Chinese Ministry of Commerce, and the Antimonopoly Service of the Republic of Ecuador. These documents determined the main areas and forms of cooperation between FAS and the above bodies.

FAS continued developing cooperation with foreign competition authorities under the frame of the earlier concluded bilateral documents. Such cooperation took the forms of exchanging information, consultations on enforcement; as usual, FAS specialists were trained at the competition authorities of Finland, Serbia, the Czech Republic, Bulgaria and Romania.

In their turn, representatives of the competition authorities of such countries as Serbia, Belarus, Bulgaria, Kazakhstan, Kyrgyzstan, Ecuador, Indonesia, Japan took part in an annual FAS training on 14-16 May 2014 in Kazan on the basis of FAS Centre for Education and Methodics. The training focused on “Compliance with the antimonopoly law in agro-industrial complex”.

#### *Cooperation under the frame of integration associations*

2014 was marked with an important event in developing Eurasian integration – on 29 May 2014 in Astana (the Republic of Kazakhstan) the Presidents of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation signed a Treaty on the Eurasian Economic Union – EAEU (further on referred to as the Union Treaty).

The Union Treaty is a result of the 3-year efforts; it formalizes the main principle of the Eurasian Economic Union - the 3-freedom principle: free movement of goods and services, capital and labour force. The Union Treaty also determines coordinated, coherent or unified policy in the key economic sectors by the member-states.

The Eurasian Economic Commission (EEC) continued working, now as a permanent Union regulator. EEC has the Council and Collegium. The main EEC objectives are establishing conditions for EAEU performance and development as well as drafting proposals on economic integration under the Union frame.

The Union Treaty is a global document of 28 Sections and 118 Articles. It not only codifies the earlier concluded agreements regulating the Customs Union and the Common Economic

Space but also determines particular steps and the timescales of EAEU development for the next ten years.

Overall, around 70 documents were codified. Such efforts were also undertaken in the part concerning competition policy. The Union Treaty includes Articles on the common principles and rules of competition, regulating activities of holders of natural monopolies in general and in particular fields (energy and transport), public (municipal) procurement, industrial subsidies and government support of agriculture.

Common competition principles formalized in the Union Treaty, in particular:

- The laws of EAEU member-state should prohibit agreements between the authorities or between the authorities and economic entities that resulted or can result in preventing, restricting or eliminating competition, and should prohibit granting public or municipal preferences, except particular cases. EAEU nations are obligated to undertake efficient measures to observe the outlined principles
- Efficient control over economic concentration
- Fines specified in the law and applied in EAEU member-states
- Each EAEU country should have a body responsible for implementing and (or) pursuing competition policy with a particular package of powers provided for by the Union Treaty
- Informational openness of competition (antimonopoly) policy conducted by the national antimonopoly authorities of EAEU member-states, particularly, by publishing information about their work in mass media and the Internet
- Interaction between national antimonopoly bodies of EAEU member-states.

The Union Treaty clearly defined EEC competence, assigning the powers to control compliance of economic entities of EAEU states with the so-called general competition rules.

The Union Treaty determines the content and specifics of applying common competition rules on the cross-border markets, penalties for violating them, the procedures of EEC control over observing the common competition rules on the cross-border markets. The Union Treaty also determines the procedure for interaction between the antimonopoly bodies of the Union member-states as well as with EEC, describing in detail the grounds and specific forms of such cooperation. The objective of such cooperation is to enhance efficiency of antimonopoly investigations on the cross-border as well national markets.

EEC decisions in the field of competition are appealed at the Union Court, which is an ongoing judicial EAEU body. It should be noted that there are special rules for filing claims on EEC decisions on antimonopoly cases to the Union Court, in accord with its Statute.

If any other dispute is not accepted for consideration by the Union Court without a preliminary claim to a EAEU member-state or EEC for pre-court dispute resolution through consultations and negotiations or other methods, provided for by the EAEU Treaty and

international agreements under the Union frame, claims against EEC decisions on antimonopoly cases are filed to the Union Court without a preliminary stage of pre-court dispute resolution.

If the Union Court agrees to commence proceedings on a claim against an EEC decision on an antimonopoly case, the EEC decision is suspended until the date of the ruling of the Union Court coming into force.

To consider disputes on the cases on violating the general competition rules by the Union Court, a specialized panel of judges is formed.

An important area of the work of the antimonopoly bodies of the three countries and EEC in 2014 was drafting an Agreement on the procedure for confidential information protection and liability for its disclosure in the course of EEC exercising its powers to control compliance with the competition rules (further on referred to as the Agreement), signed on 12 November 2014 in Moscow.

The Agreement applies to relations associated with confidential information protection, involving EEC, the authorities of EAEU member-states, as well as legal and physical persons of the Union nations.

The Agreement coming into force is a necessary stage of establishing an efficient system of antimonopoly control in EAEU, one of the main objectives of which is protection and integrity of confidential information of legal and physical persons in EAEU nations that are obligated to submit such information to EEC in the course of antimonopoly investigations.

### *3.5. System-wide measures and competition advocacy*

#### *Public consultations*

For the purposes of publicly discussing the issues of antimonopoly regulation in various spheres of activity and supporting objectivity and transparency of decision-making, FAS undertakes robust efforts to develop a system of public advisory councils (PAC) and Expert Councils on the main markets.

FAS Councils comprise over 730 representatives from various non-government organizations and associations: the Public Chamber of the Russian Federation, regional Public Chambers, OPORA Russia, Business Russia, the Russian Chamber of Commerce and Industry, the Russian Union of Industrialists and Entrepreneurs, and other organizations. 118 meetings took place in 2014.



83 regional FAS Offices also formed PACs. 41 regional Expert Councils analyze on different markets.

*An international event – Competition Day in Russia*

In September 2014 St Petersburg hosted already the V International event of that kind – Competition Day in Russia (further on referred to as the Competition Day).

Attendees included representatives of competition authorities from the far-abroad countries, the CIS nations, several international organizations and integration associations (BRICS, the Eurasian Economic Commission, and the CIS Executive Committee).

The programme of 2014 Competition Day was quite intensive, with several Round Tables, workshops, meetings on the themes of interests for both FAS and foreign competition authorities (roaming, pharmaceuticals, oil and petrochemicals, etc.)

Competition Days in Russia have already become a tradition, the venues taking place in the principal cities of the constituent territories of the Russian Federation. Earlier Competition Day were organized in Suzdal, Rostov-on-Don, Kazan and Irkutsk.

2015 Competition Day will be in Moscow.

The objective of Competition Days is competition advocacy in Russia in general and in Russian regions, attracting attention to competition development problems, developing approaches to resolving them in line with the best world practices and intensifying integration of the Russian Federation in the global economic community.

*“Russian Competition Law and Economics” electronic research-to-practice journal<sup>8</sup>*

“Russian Competition Law and Economics” electronic research-to-practice journal is published on FAS electronic resources.

The main objective of the electronic publication is to support competition development in Russia and across the entire space of the Eurasian Economic Union, Russia, Belarus, Kazakhstan and Armenia. Thanks to the journal, readers get first-hand news about the antimonopoly law and enforcement practice, the most difficult and interesting antimonopoly cases heard by Courts.

The journal is intended for the staff of the antimonopoly bodies, representatives of the business community, specialists, consultants and members of general public.

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<sup>8</sup> <http://fas.gov.ru/eljournal/>

In September 2013 FAS started publishing the journal digest in English<sup>9</sup>. In 2014 there were 4 issues.

### **3.6. External audit: ISO 9001:2008**

In 2014, an inspection audit confirmed compliance of FAS Central Office with ISO 9001-2008 international standard of the quality management system.

## **4. Resources of the Competition Authority**

### **4.1. General resources (current figures and changes in the past year)**

#### **4.1.1 Annual budget (in Russian Rubles and US currency)**

Expenses for the Central FAS Office and its regional Offices are funded from the federal budget.

In 2014 FAS budget was 2,450,934,500 RUB (US\$ 63,472,691). It increased in comparison with 2013 by around 3.6 % in RUB; in the dollar equivalent there was 13.8% reduction due to exchange rate fluctuations.

#### **4.1.2. Number of employees (man-years)**

FAS structure comprises: the Central FAS Office and 85 regional Offices operating in 85 constituent territories of the Russian Federation. The overall number of FAS employees (the Central Office and its regional offices) reached 3038, including:

##### **- Economists**

467 (the figure is tentative since some FAS officers exercise the functions of both economists and lawyers).

44 staff members have post-graduate degrees in economics.

##### **- Lawyers**

1017 (the figure is tentative since some FAS officers exercise the functions of both economists and lawyers).

23 staff members have post-graduate degrees in law.

##### **- Other professions**

293 (employees with technical or other education as well incomplete university education)

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<sup>9</sup> <http://en.fas.gov.ru/e-journal/>

**- Supporting staff**  
1261 employees.

As of 31.12.2014, Central Office had 602 staff members, FAS regional Offices – 2436. The overall number of FAS staff (the Central Office and regional Offices) was 3038.

**4.2. Staff (man-years) involved in:**

- Enforcement against anticompetitive practices (excluding unfair or misleading practices, covered by consumer protection provisions where they exist)**
- Mergers consideration and enforcement**
- Advocacy.**

The total number of employees involved in enforcement practice is 2145. FAS does not gather statistics with breakdowns by different types of practices and enforcement areas, because staff members are distributed predominantly by sectors of the economy rather than the fields of application.

The organizational structure of FAS Central Office is built on the sectoral principle, so it is difficult to give the exact number of staff members involved in enforcement on a particular area of antimonopoly regulation. For instance, there is the Department for Control over Electric Power, the Department for Control over Fuel-and-Energy Complex, the Department for Control over Social Sphere and Trade, and others.

At the same time, FAS structure also has a special Anti-Cartel Department that focuses on exposing especially important and precedent cartels at the federal and inter-regional levels. In 2014 the Anti-Cartel Department comprised 24 officers. The functions of the Department include cooperation with the law enforcement bodies on collecting evidence in cartel investigations.

At the same time, other structural units of the Central Office and FAS regional Offices suppress all types of violations of the antimonopoly law, including cartels, and control economic concentration. Therefore, the workforce involved in cartel investigations considerably exceeds the workforce of the Anti-Cartel Department.

Also, competition advocacy falls under the competence of FAS Department of Public Relations and the Department for International Economic Cooperation, and in the part of interaction with other bodies and organizations – under the competence of all structural units.

### 4.3. *The period covering the above information*

The above information covers the period from 1 January to 31 December 2014.

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