

**REPORT ON COMPETITION POLICY  
IN THE RUSSIAN FEDERATION IN 2015**

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## **1. Changes in the competition law and policy, proposed and adopted**

### ***1.1. New provisions in the competition law and other relevant laws and regulations***

#### **The “forth antimonopoly package”**

On October 5, 2015 some essential amendments to No. 135-FZ Federal Law “On Protection of Competition” of 26.07.2006 (further on referred to as the Competition Law) were issued – the so-called “forth antimonopoly package” that came into effect on January 5, 2016.

It is expected that these changes, which are the outcome of large-scale, continuous efforts, shall make the Law enforcement more transparent and objective.

The amendments to the procedures of opening and investigating cases, preventing violations are designed to protect the rights and legitimate interests of economic entities.

#### **Abusing dominance**

##### **(Article 10 of the Competition Law)**

A list of conditions for recognizing the dominant position of an economic entity with a relatively small market share is shortened significantly:

An economic entity with less than 35% market share generally cannot be recognized dominant.

The dominant position of an economic entity with less than 35% market share can be recognized dominant only in the cases directly specified in federal sectoral laws (for instance, the Law on Telecommunications, the Law on Electric Power Industry), and for “collective dominance” of several economic entities as defined in the Competition Law.

Due to the above changes, FAS is no longer responsible for keeping the Register of economic entities with over 35% share on the markets of particular goods or that have the dominant position on the market of particular goods (further on referred to as the Register).

The Register fell short of its target and therefore is abolished (following OECD Recommendations).

It reduces administrative burden upon companies that being included in the Register were obligated to report to FAS and obtain transaction approvals under the frame of economic concentration control regardless of their asset value and revenues.

Now dominance of economic entities must be established on a case-by-case basis, when the dominant position determines the need to comply with the antimonopoly standards and prohibitions.

The previous version of the Competition Law defined abuse of dominance rather

broadly as competition-restricting actions and also as actions that can lead to infringing the interests of other persons.

Now only infringements of other persons' interests that take place in the business area or concern consumers at large can be recognized as abusing dominance. Therefore, actions that concern the interests of individual consumers cannot be recognized as abusing dominance.

### **Unfair competition**

#### **(Article 14.1 - 14.8 of the Competition Law)**

As a result of generalizing the antimonopoly enforcement practice, the Chapter prohibiting unfair competition has changed completely. It details previously listed forms of unfair competition:

- Defamation: disseminating false, incorrect or distorted information that may inflict damage upon an economic entity and (or) damage its business reputation;
- Misleading with regard to the qualities, characteristics, place of origin, sales conditions and availability of goods for purchasing;
- Incorrect comparison of an economic entity and (or) its goods with a competitor and (or) its goods;
- Acquiring and using exclusive rights for the means of individualization of a legal entity, the means of individualization of goods, works, services;
- An economic entity selling, exchanging or otherwise introducing goods into circulation when the results of intellectual activity were used unlawfully, except the means of individualization that belong to a competitor;
- An economic entity exercising actions (omissions) that can lead to confusion with competitor's operations or the goods and services put into civil circulation in the Russian Federation by a competitor;
- Unlawfully obtaining, using or disclosing information that constitutes commercial or other secrets protected by law.

The above list remains open: other actions also can be recognized as acts of unfair competition.

### **The concept of cartel is expanded (Article 11 of the Competition Law)**

Now cartel agreements are prohibited not only for agreements between sellers – competitors but also between companies that buy on the same markets for the purposes of operations that generate income for such buyers (“buyers’ cartels”).

### **Vertical agreements: when can be allowed (Article 12 of the Competition Law)**

The detail that an agency agreement is not a “vertical agreement” is now removed from the “vertical” agreement definition in Clause 19 Article 4 of the Competition Law.

A civil law contract can be classified as a “vertical” agreement on the basis of its content.

Agency agreements by nature are a type of intermediary contracts. If an agent

enters into a goods supply contract on behalf of the principal, a “vertical agreement” is the goods supply contract rather than the agency agreement.

At the same time the allowability criteria for “vertical” agreements in Part 2 Article 12 of the Competition Law are clarified. Earlier “vertical” agreements between economic entities (except “vertical” agreements between financial organizations) were allowed if the share of each of them on any market did not exceed 20%.

There is now a clear definition of the market required to allow a “vertical” agreement: it is the market of only those goods that are the subject of the agreement and the shares of the parties to the agreement are to be determined on this particular market.

This change will now enable companies to apply the exception on allowed agreements without accounting shares on a particular market as required under the previous version of the Law.

### **The antimonopoly body pre-approves agreements between competitors on joint operations (Article 27, Article 33 of the Competition Law)**

Clause 8 Part 1 Article 27 of the Competition Law introduces the procedure for pre- approval of agreements on joint operation between competitors by FAS in accordance with the economic concentration rules (if their consolidated asset value or consolidated revenue exceeds the threshold values) as defined in the Competition Law.

Article 33 of the Competition Law, with added Part 9.1, introduces the institution of supplying information to the antimonopoly body about expected transactions or other actions in advance, prior to filing a petition or notification that the transaction (action) comply to the antimonopoly law. In this case the antimonopoly authority makes a decision whether an agreement comply with the antimonopoly law based on Article 13 of the Competition Law.

In this context, a provision is added to Article 11 of the Competition Law that it does not apply to agreements on joint operations concluded upon an advanced approval by the antimonopoly authority (Part 10 Article 11 of the Competition Law).

Preserving the current regulation of joint operation agreements, these additions bring certainty to the procedure of confirming whether agreements on joint operations comply with the antimonopoly law and make sure that joint operations agreements considered by the antimonopoly body cannot be recognized anticompetitive.

To streamline the process and make information more accessible, petitions and notifications can now be filed electronically. Under the amended procedure information about the filed petitions regarding particular transactions and other actions must be published on FAS official web-site (Russian version: <http://fas.gov.ru/>; English version: <http://en.fas.gov.ru/>).

This novelty enables interested persons to promptly inform the antimonopoly body about planned transactions (actions), and the antimonopoly body - to understand possible consequences of a particular transaction (action) prior to making a decision.

### **An extended list of cases for adopting the rules for non-discriminatory access**

to the goods of economic entities with the dominant position that are not natural monopolies (**Parts 5-7 Article 10 of the Competition Law**)

The Government of the Russian Federation is entitled to approve the rules for non-discriminatory access with regard to a person with over 70% market share, provided that abuse of dominance is ascertained by a decision of the antimonopoly body that has come into force.

Such rules establish the procedure for determining consumers subject to mandatory service, and the priority of providing them access to the goods if it is impossible to satisfy the needs of all interested persons to the full. Such rules can include a clause on mandatory sales of goods through competitive bidding.

### **Warnings and admonitions (Articles 25.7 and 39.1 of the Competition Law)**

The list of persons to whom can be issued admonitions against violations of the antimonopoly law as well as warnings to stop actions (omissions) that have elements of violating the antimonopoly law is extended.

Now such admonitions and warnings can be issued to not only executives of economic entities but also officials of the authorities / local self-government bodies / organizations rendering state or municipal services as well as state extra-budgetary funds.

Additional grounds are outlined for mandatory warnings before opening antimonopoly cases should elements of violating Article 10 (abusing dominance), 15 (actions (omissions) by the authorities (organizations rendering public services) Articles 14, 14.1, 14.3, 14.7 (unfair competition) of the Competition Law be revealed.

### **Procedural changes (Chapter 9 of the Competition Law)**

There are also changes and novelties with regard to the procedure of investigating antimonopoly cases.

For instance, the following are clarified:

The list and status of the parties to a case; the procedures for involving experts and translators; recusation against members of the case investigation Commission and experts; protecting confidential information, possibility of closed hearings.

Introduced:

Common mandatory requirements to the structure of decisions on antimonopoly cases, determinations ordering case examination.

A new procedural document is adopted: *Conclusion on the circumstances of the case*. To protect the interests of the persons, regarding whom the antimonopoly cases are investigated, before making a decision the Case Commission must issue conclusions containing the factual circumstances of the case and evidence on the basis of which the

antimonopoly body arrives to particular conclusions. The parties to the case must be given an opportunity to familiarize with these conclusions to file objections and explanations.

Therefore, prior to making a decision, the parties to a case can familiarize with a draft decision on the case.

*Determining evidence and substantiation* in an antimonopoly case. Earlier the Competition Law did not have clear definitions of these concepts which hampered case investigation and judicial protection of interests.

*Obligation to analyze the state of competition* in each particular case in the scope necessary to make a decision.

Such a scope is determined on the basis of the procedure for analyzing the state of competition on the market and has been adjusted in line with the above changes.

### **In-house appeal**

#### **(Parts 3-16 Article 23 of the Competition Law)**

There is a procedure of pre-judicial appeal of decisions and (or) determinations issued by regional antimonopoly bodies.

For a prejudicial review of decisions, FAS forms a collegial body – the Appeal Collegium. The grounds for abolishing or changing decisions of regional antimonopoly bodies are: breached uniformity of interpreting and applying the antimonopoly law by regional antimonopoly bodies.

This institution is aimed at establishing unified enforcement practice throughout the entire Russia, thus, optimizing FAS work.

Regulatory acts on administrative and procedural aspects of this institution are in progress (the Regulations on the Appeal Collegium, In-house Appeal Regulations).

### **Investigating complaints on procedures in construction**

#### **(Article 18.1 of the Competition Law)**

FAS is now also responsible for considering complaints under Clauses 2 and 3 Part 1 Article 18.1 of the Competition Law against acts and (or) actions (omissions) of federal executive bodies, the authorities of constituent territories of the Russian Federation, local self-government bodies or other bodies and organizations exercising the functions of the above bodies, organizations involved in rendering state or municipal services, officials of these bodies and organizations, actions (omissions) of regional grid companies providing electric power transmission services, cold water and (or) water drainage suppliers (water and sewage utilities), hot water suppliers, gas distributors, heat suppliers concerning legal entities and individual entrepreneurs that are subjects of town-planning relations, procedures, included in the lists of construction procedures, approved by the Government of the Russian Federation in accord with Part 2 Article 6 of the Urban Development Code of the Russian Federation.

If after considering a complaint under 18.1 of the Competition Law the antimonopoly body recognizes a violation, the Commission that investigated the complaint can issue a determination and the officials that committed a violation can be held administratively liable, including disqualification. The relevant amendments were made to the Code of the Russian Federation on Administrative Violations.

### **Administrative liability (the Code of the Russian Federation on Administrative Violations (CAV))**

On the 15<sup>th</sup> October, 2015 a number of amendments to the CAV was made related to the amendments of the Competition Law. They came into force on the 6<sup>th</sup> January, 2016.

The ongoing focus is on stimulating economic entities to voluntarily report anticompetitive agreements to the antimonopoly body. The established mechanism of relieving the first person, reported on concluding such an agreement, from liability is added the norm on the lowest fine upon the second and third persons who reported the agreement. At the same time, the “cartel” organizer cannot take advantage of this option to reduce liability.

The so-called “double liability” for violating the antimonopoly law is excluded.

Now a person who was a subject of a determination upon the outcome of a case investigation to transfer the income gained through monopolistic activity or unfair competition to the federal budget, cannot be held administratively liable if the determination was executed (Note 5 Article 14.31 of CAV)

The sanctions for restricting competition by the authorities and local self-government bodies are increased (Article 14.9 of CAV). In particular, repeated violations are punishable non-alternatively: disqualifying officials by up to three years (earlier fines can also apply for repeated violations).

Since the norm on recognizing dominance of a company with less than 35% market share is removed, Article 14.31.1 of CAV is no longer valid.

The maximum fine for bid-rigging and the procedure for calculating the initial costs of the tender subject for tenders with more than 1-year execution period are clarified. For instance, a bid-rigging fine is from 1/10 - 1/2 of the initial costs of the tender subject, but no more than 4% of the gross revenue of the violator in the year preceding the year of the violation and no less than 100,000 RUB. At the same time the initial costs of the tender subject for tenders with more than 1-year execution period are determined "pro rata to the costs of the tender subject per year".

A new Article 7.32.4 is adopted to introduce liability for breaching the procedures of mandatory competitive bidding as well as the requirements to sell state and municipal property. In particular, it establishes liability for violations committed with regard to publishing information on mandatory competitive bidding (failure to publish, publishing incorrect information, breaching the publication period), wrong choice of the form of competitive bidding, breaching the procedure for allowing to take part in competitive bidding, accepting bids, providing information on competitive bidding and giving



explanations with regard to such documentation, breaching the procedure for determining the winner and concluding a contract with the winner on the outcome of competitive bidding.

### **Criminal liability for violating the antimonopoly law**

On March 20, 2015, the amendments to Article 178 of the Criminal Code of the Russian Federation came into effect, reducing the number of violations of the antimonopoly law criminally punishable under Article 178.

For instance, the new edition provides criminal liability only for restricting competition through cartel agreements.

Criminal liability for repeated abusing dominance is excluded.

The threshold values for large scale and especially large-scale income and damages are increased tenfold.

Therefore, the risk of holding criminally liable is preserved for cartel agreements that results in gaining large-scale income (over 50 million RUB (around 650,000 EUR) or especially large-scale income (over 250 million RUB (around 3,247,000 EUR)) or inflicting large-scale damage (more than 10 million RUB (around 130,000 EUR) or especially large-scale damage (over 30 million RUB (around 390,000 EUR)).

## **1.2. Other regulatory measures, including new guidelines**

### **The electric power industry**

On June 11, 2015, No. 588 Decree of the Government of the Russian Federation was adopted that introduced from June 26, 2015 standard applications for technological connection of power-receiving devices.

The standard application forms are mandatory for all grid companies and applicants for technological connection to electric power networks.

On August 27, 2015, No. 893 Decree of the Government of the Russian Federation was adopted providing for a new model of the long-term capacity market in Russian electric power industry and designed to increase the level of competition between generating companies.

The proposed improvement of the model when capacity take-offs are for four rather than 1 year ahead, improves the investment climate in the sector, increases the level of forecasting trends for prices on electric power (capacity) for consumers, generating companies and tariff regulators.

On September 17, 2015, No. 987 Decree of the Government of the Russian Federation was adopted that made changes to the information disclosure procedure for territorial grid companies.

The grid companies are obligated to disclose estimated data on technological connection expenses in a single unified form.

On December 30, 2015, No. 450-FZ Federal Law came into effect establishing unified, standardized tariff rates for territorial grid companies.

## **Public procurement**

To enhance openness and transparency of procurement by particular types of legal persons and increase the number of procurement participants, develop competition, in view of the analysis of the best practices of enforcement of the Law on Procurement, *the Procurement Standard for particular types of legal entities* is devised (further on referred to as the Standard).

The Standard is voluntary; it comprises proposals on optimizing and unifying procurement by particular types of legal entities, and has a number of recommendations for procurement planning, regulating procurement procedures as well as the procedure for concluding contracts that can be used approving procurement regulations.

To further use in work, particularly, drafting and approving the Procurement Regulations, the Standard is forwarded to large customers and the Heads of the subjects of the Russian Federation.

Developing common procurement standards in the law on procurement shall ensure uniformity of enforcement, increase openness and transparency of procurement information, and push up the number of procurement participants, especially small and medium companies.

In 2015 FAS, together with Moscow State Institute of International Relations, at the Ministry of Interior, prepared scientific-and-practical commentaries to No. 44-FZ Federal Law “On the Contractual System in Procurement of Goods, Works, Services for State and Municipal Needs” of April 05, 2013.

The commentary accounts for the latest changes to the Law on the contractual system and by-laws and outlines the legal positions on the pressing practical issues.

The commentary is of special interest in light of active reforming of the law on contractual system and changing the enforcement practice.

## **In-house regulations:**

On July 09, 2015, FAS approved (No. 582/15 Order) the Regulations for intradepartmental control by the Federal Antimonopoly Service on procurement for the federal needs.

On July 23, 2015, FAS approved (No. 649/15 Order) the Regulations on the regional bodies of the Federal Antimonopoly Service due to expanding FAS powers.

On November 16, 2015, FAS approved (No. 1090/15 Order) the Regulations on preparing the agenda for the collegial body of the Federal Antimonopoly Service to make decisions on determining (setting) prices (tariffs) and (or) their maximum levels in the field of natural monopolies and other regulated organizations.

On November 17, 2015, FAS approved (No. 1095/15 Order) the Method for calculating the key performance indicators for FAS regional bodies, the Procedure for forwarding materials on the best (precedent) cases and achievements by FAS regional bodies for the selection procedure, the Method for calculating the key performance indicators for FAS regional bodies on the given themes in 2015 - 2016.

On December 28, 2015, FAS approved (No. 1318/15 Order) the Procedure for issuing admonitions on inadmissibility of actions, which can lead to violating the

antimonopoly law.

On December 31, 2015, FAS approved (No. 1381/15 Order) the Regulations on the Presidium of the Federal Antimonopoly Service, the Regulations on the Appeal Collegium of the Federal Antimonopoly Service.

### **1.3 Proposals on amendments to the law**

In 2015 FAS started working on legislative initiatives that in the mid-term future can form the basis for the “fifth antimonopoly package”, including:

- Determining the balance of intellectual property rights and antimonopoly regulation;
- Statutory definition of antimonopoly compliance and the consequences of its bona fide enforcement;
- Introducing parallel importing system;
- Establishing a system of class actions and damages compensation;
- Changing the tariff regulation strategy, abolishing the obsolete Law “On Natural Monopolies”.

At present initiatives on future amendments to Competition Law are discussed with representatives of business and scientists.

## **2. Enforcement of the competition law and antimonopoly policy**

One of the main objectives of Russian antimonopoly authority in the past several years, particularly, in view of OECD Recommendations, has been reducing the number of investigated cases and focusing on the violations that have a significant impact upon the state of competition on the markets.

Changes to the Competition Law in the recent years have been designed to achieve the above objective and the efforts have given some positive results, which are confirmed by statistical data.

In 2015, FAS received 51 546 complaints on violating the antimonopoly law. To prevent and suppress anticompetitive practice in 2015 FAS opened 9 092 cases, of which 2 504 cases upon the initiative of FAS and its regional bodies. 7 595 violations of the antimonopoly law were exposed. Overall, the imposed fines reached 6.55 billion RUB (around US\$ 81.9 million).

### **2.1. Remedies against anticompetitive practices, including agreements and abusing dominance**

#### **2.1.1 Statistical data on the work of the competition bodies and judicial bodies**

### *Suppressing abuses of dominance*

In 2015 the antimonopoly bodies received 37,014 complaints on abusing dominance by economic entities. 3059 cases were opened, of which 252 – upon the initiative of the antimonopoly bodies; on 580 cases the proceedings are terminated because the facts of violations were not confirmed. On the remaining cases, 2479 decisions were made on recognizing violations; 1 818 determinations were issued. 753 decisions were appealed at Courts. Judicial bodies pronounced 192 decisions fully legitimate, 14 decisions – fully invalid, and 2 - partly invalid, other appeals are in progress.

### *Suppressing anticompetitive agreements between economic entities*

In 2015 the antimonopoly bodies received 2 151 complaints on competition-restricting agreements (concerted actions) between economic entities. 375 cases were opened, decisions on recognizing violations were made on 304 cases and 547 determinations were issued. 89 decisions were appealed at Courts, of which 20 decisions were recognized fully legitimate, 3 decisions were found partly legitimate, the remaining appeals are in progress.

### *Practice of applying administrative leniency (the leniency program)*

In 2015 FAS received 46 leniency applications for cartel participation, of which 35 were filed by the first applicants.

## **2.1.2 Description of typical cases**

### **“Google” abusing dominance on the market of preinstalled application stores in “Android” OS**

On 14 September 2015, FAS found that “Google Inc.” and “Google Ireland” Ltd. (further on referred to as Google) violated Part 1 Article 10 of the Competition Law (abusing dominance).

On 20 February 2015, FAS opened a case against “Google Inc.”, “Google Ireland” Ltd. and “Google” Ltd. for elements of violating the antimonopoly law upon “Yandex” complain about anticompetitive actions.

Investigating the case, the FAS Commission established that “Google” violated the law by providing counteragents – producers of mobile devices to be preinstalled on the mobile devices for putting in circulation in the Russian Federation, and controlled by Android OS (mobile devices), the Google Play application store under the terms and conditions that include mandatory pre-installment of Google applications and search engine and mandatory placing the on the priority positions on the device home page.

“Google” actions also resulted in prohibiting pre-installment of other applications

by other vendors.

Having considered all circumstances of the case, FAS terminated the proceedings against “Google” Ltd., and terminated the case on “Google” violating Part 1 Article 14 of the Competition Law (unfair competition) due to absence of violations of the antimonopoly law in the actions investigated by the Commission.

Upon finalizing the case, FAS issued a determination to “Google” to eliminate the violation of the Competition Law by 18 November 2015 in the part of abusing dominance on the market of pre-installed application stores in Android OS. Particularly, “Google” must adjust contracts with mobile device vendors: remove anticompetitive requirements from the contracts that restrict installment of applications and services of other vendors.

As a result, application developers will be able to preinstall their software on mobile devices, and users of “Android” OS-controlled mobile devices in the Russian Federation will be informed about deactivating of the preinstalled Google applications, changing the search engine in Google Chrome browser, possibility of installing other search widgets and other applications similar to those included in GMS package, as well as changing the icon position on the device screen by a notification that must be displayed on a mobile device screen.

On 14 March 2016, Moscow Arbitration court pronounced legitimacy of the decision of the Federal Antimonopoly Service (FAS Russia) on the case of “Google” abusing dominance on the market of pre-installed application stores in Android operation system localized for the Russian Federation.

FAS also opened a case against “Google” on an administrative violation. As of date of drafting the Report, the decision on the case has not been made yet. The company is facing a fine from 1% to 15% of its turnover on the market of pre-installed application stores in 2014.

### **The case on international marine container carriage**

In 2015 FAS found that A.P. Moller-Maersk A/S (Denmark), CMA CGM SA (France), Hyundai Merchant Marine Co., Ltd (Korea), Orient Overseas Container Line Limited (Hong Kong), Evergreen Marine Corp. (Taiwan) violated Clause 1 Part 1 Article 11.1 of the Competition Law (No. KA/75528/15 FAS decision of 15.12.2015). The above economic entities – competitors violated the law by exercising prohibited concerted actions that resulted in fixing mark-ups (surcharges) to the freight rate on the market of liner container carriage on the Far East / Southeast Asia – the Russian Federation (St Petersburg, Ust’-Luga) route in 2012-2013.

The antimonopoly authority established that in that period the carriers had operated simultaneously and in a unified manner fixing surcharges to the freight rates (General Rate Increase, GRI). The information on surcharges was published on the website of one of the carriers, while other market participants fixed the same surcharges simultaneously and in a unified manner.

Such actions are prohibited if the consolidated market share of competitors is 20% (and the market share of each participant of concerted actions is no less than 8%).

## **The case on catching fish in the geographic zone of the Morocco kingdom**

In November 2015 FAS finalized No.1-11-60/00-22-15 case on anticompetitive agreements on the market of harvesting aquatic biological resources in the geographic zone of the Morocco Kingdom. Upon investigating the case, FAS found that several economic entities violated Clause 3 Part 1 Article 11 of the Competition Law. The “Association of Russian Fishery Managers” operating in the zones of the countries of the West coast of Africa violated Part 5 Article 11 of the Competition Law and “Natsrybresurs” State Unitary Enterprise violated Part 4 Article 11 of the Competition Law.

The Association gained a possibility to allocate quotas for catching aquatic biological resources in the geographic zone of Morocco due to unlawful actions of Rosrybolovstvo, regarding which FAS had earlier made a relevant decision on violating the antimonopoly law.

The consolidated income of cartel members from selling small pelagic fish species inhabiting the Atlantic fishing zone of the Morocco Kingdom reached:

- in 2012 — 328,779,400 RUB
- in 2013 — 2,757,190,610 RUB.

The case materials are forwarded to the Russian Ministry of Interior for consideration and making procedural decisions should elements of crimes be revealed.

### **2.2. State control over economic concentration**

***2.2.1 Statistical data on the number, scope and type of transactions, for which FAS received notifications and (or) exercised control in accord with the competition law.***

In 2015 FAS considered 1 793 pre-merger notifications and 165 post-merger notifications filed by economic entities. 1 703 pre-merger notifications were granted (noted) (of which 65 – with determinations) and 161 post-merger notifications; 46 pre-merger notifications and 4 post-merger notifications were refused.

FAS maintains a downward trend on the number of considered pre-merger notifications due to abolishing notifying merger control. In 2014, for instance, 1 928 pre-merger notifications and 318 post-merger notifications were considered, in 2007– 6 097 pre-merger notifications and 15 117 post-merger notifications.

#### **2.2.2. Description of typical cases**

##### ***Approving pre-merger notifications with determinations***

FAS approved transactions (issuing a mandatory determination), as a result of which generating and sales of the assets of “KES Holding” were consolidated and merged with “Volzhskaya TGK” OJSC.

The determinations were issued upon a non-executed determination on

transactions earlier approved by FAS, and a possibility of the “KES Holding” group of persons to affect pricing on the wholesale market of electric power (capacity).

FAS made a decision on limiting possibility of the “KES Holding” group of persons to affect pricing.

FAS issued conduct conditions for providers of last resort aimed to improve planning of their consumption under the frame of trading on the wholesale market of electric power (capacity).

FAS also issued conduct requirements to the generating companies of “KES Holding” group of persons, that filing price bids for competitive take-off on the day ahead market and the balancing market of the wholesale market of electric power (capacity), it is prohibited to undertake actions that lead (can lead) to a significant price increase on the wholesale market of electric power and capacity.

The conduct requirements ensure the balance of economic interests of suppliers and consumers of electric power, protection of consumers from an unreasonable increase of prices for electric power, and limit a unilateral impact of the “KES Holding” group of persons on the market conditions using power assets consolidated on the basis of “Volzhskaya TGK” OJSC.

On 23 November 2015, the Arbitration Court of the Moscow District confirmed legitimacy of FAS determinations issued to control economic concentration over the group of persons of “T Plus” PJSC (earlier - “KES Holding”).

### ***Rejecting pre-merger notifications***

FAS did not allow a large Russian retailer “Dixi” to purchase “Bristol”, a chain of alcohol stores.

FAS refused a pre-merger notification of “Dixi Yug” JSC on acquiring 67% of the authorized capital of “Albion-2002” Ltd., which is the managing company of the “Bristol” chain. The grounds for refusing: “Dixi” failed to submit the information requested by the regulator, in the absence of which FAS cannot make a decision whether there are any restrictions of competition.

FAS also refused a pre-merger notification of “Taimyr” Airlines (the NordStar brand) on acquiring 47.8% of the authorized capital of “Nordavia” air carrier. Both companies are in the “Norilsk Nickel” Group. The transactions can restrict competition and strengthen the dominant position of the buyer on the market, particularly, on the routes where both carriers operate: between Naryan-Mar, Archangelsk and Murmansk. Moreover, the “Norilsk Nickel” Group also owns Norilsk airport, which means the transactions will lead to combining airport services in the “field of natural monopolies” and a competitive sector of air transportation.

## **2.3. State control over competition-restricting acts, actions, agreements or concerted actions by the authorities of the Russian Federation**

### **2.3.1. Descriptions of the efforts of competition bodies and Courts**

In 2015 FAS considered 5 301 complaints against acts and actions by the authorities (Article 15 of the Competition Law). 1 959 of them were filed due to unreasonable prevention of operations of economic entities. FAS opened 2 885 cases. Violations were recognized in 2 542 cases; 1 958 determinations were issued. 430 decisions were appealed at Courts. Judicial bodies pronounced 126 FAS decisions fully valid; 6 - partly invalid; 15 - fully invalid; the remaining appeals are in progress.

In 2015 FAS received 371 petitions on anticompetitive agreements involving the authorities (Article 16 of the Competition Law). The antimonopoly body opened 224 cases, including 77 upon FAS initiative. Violations were recognized in 192 cases, and 162 determinations were issued. 44 decisions are appealed. Courts pronounced full legitimacy of 3 decisions, other appeals are in progress.

The number of cases against the authorities also goes down. In 2014 in total 3 418 cases were opened under Articles 15 and 16; and in 2013 – 4 014 cases.

### **2.3.2. Description of typical cases**

#### **Construction standards**

In 2014 FAS opened a case against the Ministry of Construction of the Russian Federation, the Ministry of Regional Development, Gosstroi [the Federal Agency for Construction and Housing & Utilities] and several economic entities upon elements of violating Article 16 of the Competition Law. The violators concluded an agreement to restrict entry to the markets of:

- Developing and selling software for creating construction design-and-estimate documentation
- Developing and selling construction design-and-estimate documentation.

The intellectual rights for state, territorial and sectoral calculation standards as databases belong to private organizations, which not only restricts competition on the relevant markets but also makes construction facilities unreasonably expensive and leads to budget overrun.

In August 2015, FAS found that the Ministry of Construction and some economic entities violated Article 16 of the Competition Law. The copies of the decision were forwarded to the General Prosecutor's Office of the Russian Federation, the Investigation Committee of Russia and the Audit Chamber of the Russian Federation. A criminal case is opened upon elements of a crime under Article 285 of the Criminal Code of the Russian Federation (currently under investigation).

## **2.4. Actions undertaken to suppress unfair competition**

### **2.4.1. Description of the work of competition authorities and judicial bodies**

The total number of claims considered to prevent and suppress unfair competition



(Article 14 of the Competition Law “Prohibition of unfair competition”) in 2015 reached 3 439. 1 113 cases were opened. Violations were recognized in 841 cases; 512 determinations were issued.

Overall, 147 decisions made by FAS in 2014 were appealed at Courts. Judicial bodies pronounced full legitimacy of 40 decisions, 3 decisions were found partly invalid and 8 – fully invalid, other appeals are in progress.

## **2.4.2. Typical cases**

### **Cases on attracting monetary resources of physical persons as bank deposits**

In 2015 FAS considered more than 300 complaints from individuals regarding unfair competition by banks attracting monetary resources of physical persons as bank deposits and further servicing the accounts.

As established in the course of the investigation, at the end of 2014 to maintain the current customers and generate additional demand for the services of depositing monetary resources banks significantly increased the interest rates, assuring that it would be possible to top-up the deposits at such higher rates during the entire period of their validity.

However, after the average market interest rates on deposits decreased in 2015, some banks undertook measures that worsened consumer qualities of the earlier opened deposits, thus, decreasing bank obligations on them.

By worsening consumer qualities, the banks, apart from gaining advantages, inflicted damages to their competitors in the form of loss of expected profit because according to numerous claimants they would not have concluded deposit agreements with the banks in question if they had known about the banks exercising such actions and would have approached their competitors to enter into agreements.

For instance, in 2015 and 2016 FAS considered three cases upon elements of unfair competition 2016: against “Tinkoff Bank” JSC, that decreased the interests calculated on deposit top-ups; “Gagarinsky” Commercial Bank that introduced a fee to top-up deposits; and “Trasportny” Commercial Bank that fixed a small maximum sum to top-up deposits within a calendar month.

The case against “Tinkoff Bank” JSC was completed at the end of 2015 when FAS made a decision that the Bank’s actions violated Part 1 Article 14 of the Competition Law and issued a determination to stop unfair competition. A lawsuit is filed challenging the decision and determination.

Similar decisions were made on the cases against other two banks at the beginning of 2016. FAS did not issue determinations to stop the violations because in the course of the investigations the banks terminated banking activities when the Bank of Russia withdrew their licenses.

## **3. The role of competition authorities in developing and implementing other**

## **policies**

### ***3.1. Transferring tariff-regulation powers to FAS***

In July 2015 the President of the Russian Federation abolished the Federal Tariff Services (FTS Russia) (No. 373 Decree of July 21, 2015). All functions of the abolished body were transferred to FAS, including:

- State control (supervision) over setting and (or) applying state-regulated prices (tariffs, mark-ups, fess, rates) as well as observing the information disclosure standards
- Compiling and keeping the informational Register of providers of last resort and the zones of their operation and
- Compiling and keeping the Register of the holders of natural monopolies subject to state regulation and control.

From the date of enactment of the Presidential Decree, FAS apart from its ongoing functions is involved in tariff regulation in the following sectors:

- Heat supply
- Transporting oil and petrochemicals via major pipelines
- Transporting gas via gas pipelines
- Railway carriage
- Services in transport terminals, ports and airports
- Publically-accessible telecommunications and postal services
- Electric power transmission services
- Operational dispatch management in the electric power industry
- Heat transfer services
- Services for using inland waterways infrastructure
- Radioactive waste disposal
- Water supply and drainage.

Making tariff decisions, FAS is guided by several principles, of which top priority is given to the general pro-competitive approach: deregulating particular sectors and some segments of natural monopolies and their gradual transition to market relations, and the priority of consumer interests rather than natural monopolies. Other principles applied by FAS are cost reduction in exchange for tariff indexation, and the “costs minus” principle. In the FAS opinion, every natural monopoly has inner resources that will enable to cut down the operational costs and increase efficiency. FAS also employs the “comparable markets” method instead of the costs method or the method of setting the tariffs earlier used in tariff regulation. Therefore, all tariff decisions are based on market analysis.

FAS priority objectives as the tariff regulator are restoring the rights of consumers rather than only natural monopolies, particularly, through involving consumers in tariff decision-making procedures and Consumer Councils.

On 4 September 2015, No. 941 Decree of the Government of the Russian Federation approved the Rules for FAS making decisions on tariff-setting and the maximum tariff level in the field of natural monopolies and other regulated

organizations.

To make decisions in this area, the Federal Antimonopoly Service formed a collegial body comprising 12 persons – FAS Board. The Board members are also representatives of the Ministry of Economic Development of the Russian Federation, the Ministry of Transport, the Ministry of Communications and the Ministry of Energy at the level of Deputy Ministers.

Tariff decisions are made by majority vote by members of the collegial body present at a meeting.

On 13 October 2015, FAS formed a Methodological Council on tariff regulation. The goals of the Methodological Council is to consider instructions from the Presidium of FAS Collegium and FAS Collegium on determining (setting) prices (tariffs) and (or) their maximum levels in the field of natural monopolies and other regulated organizations as well as drafting proposals on the main areas of the national price (tariff) policy on the regulated sectoral markets.

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

Under a Government Decree, FAS is responsible for coordinating actions of responsible executors and co-executors of the Action Plan (“Road Map”) for “Developing Competition and Improving the Antimonopoly Policy” (further on referred to as the “Road Map”). The “Road Map” was adopted by No. 1613-r Decree of the Government of the Russian Federation of September 06, 2012.

At the end of 2015, 87 out of 92 (95%) measures of the “Road Map” were fulfilled.

In 2016, the II stage of the “Road Map” started in the part of analyzing enforcement of the legal acts passed under the frame of the “Road Map” and monitoring their execution.

In accord with the Government Decree FAS is responsible for coordinating and monitoring enforcement of the legal acts adopted to execute the “Road Map” for “Developing Competition and Improving the Antimonopoly Policy”.

The monitoring findings shall be considered by the Government Commission on economic development and integration.

### **3.3. Developing competition in various industries**

#### ***Oil and gas***

In 2015 a sustainable trend remained to increase independent companies in the field of supplying natural gas to the domestic market (in 2008 - 2014 the increase from 22.4% до 43.2%). The share of independent companies is going up, which means creating preconditions for deregulating wholesale prices on the gas market. This sector is moving towards the conditions similar to those on the petrochemicals market.

Exchange trading with gas stated in October 2014. Already in 2015 the volume of exchange trading exceeded 8 billion m<sup>3</sup> of gas and indicators have emerged characterizing the price level that can form on a competitive market. Trading outcome,

particularly, shows that the prices, at which gas is currently traded at the exchange, are 3% - 10% lower than the regulated gas tariff.

In view of the changed market conditions, deregulating wholesale gas prices becomes possible. It can be done only after creating relevant commercial market infrastructure.

The Exchange Committee has been meeting on a regular (weekly) basis since January 2015; representatives of FAS, the Federal Tax Service, the Bank of Russia, large oil companies, independent players on the market of petrochemicals, infrastructure organizations' (exchange sites) and expert organizations are directly involved in its work.

The Exchange Committee analyses the current situation on the market of oil and petrochemicals, all possible measures to develop and improve exchange trading with oil and petrochemicals, and gives recommendations to market participants designed to prevent violations of the antimonopoly law. In 2015, FAS was a platform for 35 meetings of the Exchange Committee.

As for the development of oil market, the effective exchange oil and oil products trading system was introduced in the Russian Federation and the commercial market infrastructure was created. These developments allowed to significantly reduced a number of cases investigated on this market.

### ***Telecommunications***

In April 2015 FAS formed a Working Group on implementing network neutrality principles in the Russian Federation. Representatives of the Ministry of Communications, Roskomnadzor [the Federal Service for Supervision of Communications, Information technologies and Mass Media], Open Government experts and independent experts, representatives of the telecommunications industry and information-and-communication community took part in its activities. The "Core document on network neutrality" was devised.

The Core document is drafted to enable end users to have access to information and disseminate information or work with applications and services at their option, give opportunities for non-discriminatory access and conditions for functioning on the market of content and service providers, as well as provide conditions for advancing telecommunications, developing competition and efficient cooperation between market participants, facilitating investments and innovations.

In 2015 FAS also undertook large-scale efforts to study the market of telephony services.

The study objective was to evaluate the state of the market as natural monopoly.

The findings of market analysis showed that in 175,417 settlements where 97.32% of the population of the Russian Federation reside, there is a possibility to obtain services of both landline and cellular communications, at the same time landline operators do not have the dominant position.

A poll of telephony service consumers showed that they have comparable attitudes towards services of landline and cellular telephony.

Based on the analysis of the telephony services market, FAS forwarded proposals to the Government of the Russian Federation on removing the services of long-distance telephony from the list of regulated natural monopolies.

Regarding local and intrazonal telephony, FAS proposes an approach when decisions on introducing, changing or terminating regulation of operations of natural monopolies are based on the findings of telephony market analysis, factoring in that landline telephony services can be replaced with cellular services in consumption provided that cellular services are available.

At the same time, FAS suggests that monitoring should be the form of control over landline operators -holders of natural monopolies.

In FAS opinion, the proposed measures will ensure efficient state regulation to the extent that such regulation is necessary to achieve the balance of interests between natural monopolies and consumers.

### *Financial services*

In 2015 FAS initiated and was actively undertaking various measures to solve the problem of imposing additional services by insurance organizations on voluntary types of insurance in OSAGO [mandatory third-party liability motor vehicle insurance] agreements. The issue has remained pressing for several years.

In March 2013 - 2015 the antimonopoly bodies received more than 10,000 complaints from individuals about imposing additional insurance services. After the Bank of Russia increased the OSAGO tariffs in April 2015, the number of such complaints fell down dramatically. At the same time, in spite of a considerable increase of OSAGO tariffs, FAS continues receiving complaints about imposing additional services.

It must be noted that apart from FAS, actions by insurance organizations associated with imposing additional insurance policies are considered by Rospotrebnadzor [the Federal Agency for Surveillance on Consumer Rights protection and Human Well-Being] and the Bank of Russia within their competences.

At the same time, in some cases supervisory bodies experience difficulties proving the facts of imposing insurance services because to obtain a required insurance service, individuals frequently had to sign additional insurance agreements. Under such circumstances it was not always possible to delineate cross-sales and imposing additional insurance policies and promptly suppress violations of the antimonopoly law.

In FAS opinion, one of the ways to solve the issue can be including the “cooling period” in voluntary insurance agreements: the period during which an insurer returns the insurance premium to an insured if the insured refuses the voluntary insurance agreement.

In line of FAS proposals, comprising opinions of the insurance and banking communities, the Bank of Russia issued the relevant Directions (No. 3854-U Directions by the Bank of Russia “On the minimum (standard) requirements to the conditions and the procedure of some types of voluntary insurance” of 20.11.2015).

The Directions provide, in particular, for a mandatory conditions in some types of voluntary insurance to return the paid insurance premium to the insured if the insured refuses the voluntary insurance agreement within five working days after the date of concluding the agreement regardless of the date of paying the insurance premium, in the absence of the events in this period that have signs of an insurance case.

Observing the Directions of the Bank of Russia by the insurance companies will solve the issue of imposing additional insurance services when drawing up OSAGO agreements.

### **Antimonopoly regulation in public defense procurement**

In 2014 the functions of control over public defense procurement was transferred to the FAS Russia. On June 29, 2015 amendments to the Federal Law from December 29, 2012 No. 275-FZ “On state defense procurement” were adopted. These amendments came into force on the July 1, 2015.

In 2015 FAS jointly with the Ministry of Defence of the Russian Federation devised the relevant regulatory framework and established a system of strict control over public defence procurement across the entire cooperation chain and introduced the antimonopoly standards in this filed.

FAS started applying the comparable market methods (the so-called benchmarking) in public defence procurement, comparing prices in closed and open parts of trading. Frequently customer prices in their closed part are 15-20% higher than market prices.

One of the main FAS objectives for the near future is creating incentives for the enterprises in the defence-and-industrial complex to decrease costs, and endeavour saving and technical modernization. The single supplier status should be granted in exchange to company’s investments in infrastructure development.

FAS also plans to form a classified e-resource to transfer paper tenders in the electronic form. This electronic site will also accumulate data collected using the benchmarking method, in accord to which the initial contract prices shall be formed.

### ***3.4. Introducing the Competition Development Standard in the subjects of the Russian Federation***

In 2015 the Competition Development Standard, devised and approved by the Government in 2014, was launched in all subjects of the Russian Federation (further on referred to as the Standard).

Taking into account the experience of pilot implementation of the Standard in 2014, the “Strategic Initiatives Agency for Promoting New Projects” Autonomous Non-Profit Organization (further on referred to as the Strategic Initiatives Agency) devised and approved a new version of the Standard.

An important factor encouraging more effective and efficient implementation of the Standard was organizational and methodological support by the interested federal executive bodies – FAS, the Ministry of Economic Development of the Russian

Federation, the Ministry for Economic Development of the Far East, as well as the Analytical Centre at the Government of the Russian Federation and the Strategic Initiatives Agency.

The above federal bodies continued facilitating implementation of the Standard during 2015 in the following forms: workshops, Round Tables; forwarding recommendations, references, informational and methodological materials to the authorities of the subjects of the Russian Federation; staff of the above federal bodies took part in discussing projects, work of collegial bodies; etc.; consultations on the issues of Standard implementation as work proceeds.

Intermediary results of implementing the Standard in the subjects of the Russian Federation are as follows:

- In more than 70 % regions of Russia regional executive bodies already have special units to support competition development in their respective regions (the authorized bodies), directly responsible for implementing the Standard and organize the work of other regional bodies in this direction

- Collegial bodies to consider competition development support are established in more than 60% of the subjects of the Russian Federation

- Informational support for implementing the Standard is undertaken in 69% regions

- The list of priority and socially significant markets and regional “Road Maps” are approved in the quarter of Russian regions

- Monitoring took place in 13% subjects of the Russian Federation.

The efforts of some regions to extend the List of socially significant markets in view of the regional specifics should be noted.

The new version of the Standard puts emphasis on developing competition in the social sphere. FAS has also worked with NGOs representing the interests of entrepreneurs in the social sphere on the issues of developing competition in this field.

An important incentive for the regional authorities to implement the Standard efficiently and effectively was No. 705 Decree of the President of the Russian Federation of 04.11.2014, according to which a new item was added to the list of the areas for evaluating performance of the Heads of the constituent territories of the Russian Federation towards creating favourable business environment: “Supporting competition development in the subjects of the Russian Federation”. No. 190-r Decree of the Government of the Russian Federation of 10.02.2015 added Section X “Supporting competition development on the basis of the Competition Development Standard in the subjects of the Russian Federation” to the list of indicators for evaluating performance of top officials (the Heads of supreme executive bodies) in the subjects of the Russian Federation towards creating favourable business environment (till 2018).

### ***3.5. Developing international cooperation***

Exercising the powers of Russian antimonopoly authority in the field of international cooperation is among the most important areas of FAS work, enabling to reach the strategic objective of raising the efficiency level of competition policy.

This goal is achieved, particularly, through improving the antimonopoly law and enforcement practice, and enhancing the institutional framework of competition policy, which to a large extent are encouraged by international cooperation.

Throughout the entire history of Russian antimonopoly body improvements to the competition law were based on the best international practices in this field.

International cooperation plays a very special role in enhancing FAS enforcement practice. Traditionally **bilateral cooperation** with foreign competition authorities is essential here. In 2015 this area of international cooperation also gained further advancement: FAS signed bilateral documents on cooperation with the antimonopoly bodies of China, Korea and Finland. Development of bilateral cooperation also continued under the frame of executing the earlier arrangements. Currently the FAS Russia signed 56 bilateral documents with Competition Authorities of different countries.

An important factor in this context is cooperation with the leading international organizations specializing in competition protection and development, such as the Organization for Economic Cooperation and Development (OECD), UN Conference of Trade and Development (UNCTAD), the International Competition Network (ICN).

Last year the Antimonopoly Service actively collaborated with these international organizations, FAS representatives took part in the key events such as sessions of OECD Competition Committee, ICN annual conference and workshops, UNCTAD meetings, etc.

**OECD Practices and Recommendations** play significant role in the development of Competition policy, legislation and enforcement in the Russian Federation. In 2015 the FAS Russia continues process of implementation of OECD Recommendations into Russian competition law and enforcement system. Representatives of the FAS Russia actively participated in the meetings of the OECD Competition Committee and its Working Groups as well as in Global Forum on Competition.

FAS pays special attention to advancing qualification of its personnel, where international cooperation plays a crucial part. Within the scope of various directions of international cooperation, in 2015 FAS staff members underwent trainings with foreign competition authorities, took part in a number of workshops held by OECD Regional Competition Center (further on referred to as RCC) in Hungary. It is noteworthy that the past year demonstrated strengthened collaboration between FAS and RCC; one of RCC workshops traditionally took place in Russia (Veliky Novgorod). The arrangements were reached to organize an RCC workshop in Russia in 2016. It shows that FAS is recognized as a reliable partner capable to not only be responsible for the technical aspects of the events, but ensure a high-quality professional level of participating Russian experts.

In 2015 **UNCTAD** organized the VII UN Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. It is one of the top events in the field of competition policy that takes place every five years. The Conference considered the tools and methods of improving advocacy and enforcement, advantages for consumers from



developing competition in the pharmaceutical sector, international cooperation in merger investigations, and some other issues.

Work within **ICN** is an essential area of FAS international cooperation due to the influence of this international organization and the fact that since 2006 FAS has been a member of ICN Steering Committee – ICN governing body, and has been actively involved in its activities. Moreover, the FAS Russia is a co-chair of the Working Group on Operational Framework, Subgroup No. 2 of the Cartel Working Group.

In 2015 ICN events focused on unilateral conduct, combating international cartels, anticompetitive practices in public procurement, agency efficiency, and so on.

Transferring tariff regulatory powers to FAS is important in terms of changes in the institutional system for implementing competition policy. Experience of some foreign countries facilitated understanding of the relevance of combining the powers of antimonopoly and tariff regulation.

Assigning tariff-regulation powers to FAS also opened new horizons of international cooperation, both bilateral and multilateral under the frame of various international organizations (the Energy Regulators Regional Association (ERRA), OECD International Energy Agency, the Council of European Energy Regulators (CEER), etc.).

In terms of FAS authority, an important event organized by the Antimonopoly Service in 2015 was a workshop on the pressing issues of competition policy named The 2nd APEC Regional Seminar of ANSSR Initiatives Against Anti-Competitive Practices for Ensuring Functioning of Open, Transparent and Competitive Markets. After a complex conciliation procedure with APEC governing bodies, FAS Centre for Education and Methodics in Kazan was selected as the site for the event.

Special emphasis should be given to **BRICS** cooperation. 2015 was a year of robust efforts in this area, particularly, due to Russia's BRICS chairmanship. Declaration of the Highest-level BRICS Summit, which took place in Ufa (the Russian Federation), outlines necessity of enhancing competition policy and strengthening international cooperation in this sphere. It means that attention to competition issues is paid on the highest political level. The FAS Russia conducts a lot of work on that matter: we discuss problems and possible joint activity on violations of antimonopoly legislation on socially important markets and consider possibility of creation of anti-cartel international legal and institutional instruments.

In recent years, developing cooperation between BRICS countries on a wide range of economic issues, including competition policy, has transformed BRICS from an informal group into a fully-fledged association with efficient collaboration mechanism on the key aspects of the world economy.

In practical terms, a major decision on further collaboration format between the antimonopoly authorities of BRICS countries in 2015 was formation of BRICS Working Group on studying competition issues in the socially-important sectors of the economy (further on referred to as the Working Group). The initiative on the new cooperation format was put forward by FAS and was supported by all antimonopoly bodies of BRICS states. To further advance the initiative, FAS proposed an Action Concept for the

Working Group, which was also approved by the antimonopoly authorities of BRICS countries.

One of the most important areas of the Working Group efforts is devising consistent approaches to unfair practices of large transnational corporations that adhere to common strategies of anticompetitive conduct across BRICS socially-important markets.

Therefore, already in 2015 the antimonopoly authorities of BRICS countries selected several projects to be implemented in 2016 in the context of the proposed work format, particularly, on food safety, creating common platform to exchange market information, introducing the institution of self-regulation on the socially-important markets in BRICS, etc. These issues were discussed at BRICS Conference in Durban (South Africa) in November 12-13, 2015.

In the past ten years FAS has accumulated a considerable experience in competition advocacy, which to a large extent was facilitated by international cooperation. The concept has come into common use by Russian antimonopoly body, and advocacy measures are now included in the system of in-house evaluation of the work of FAS Central Office and regional Offices.

In 2015 FAS competition advocacy efforts were commended at the international level. FAS took part in a competition advocacy contest organized annually by the World Bank and won in the nomination on promoting pro-competitive reforms that help economic development and enhance well-being. FAS presented a project “Recommendations to support non-discriminatory access to potassium chloride”.

In view of global economic integration, involving Russia, our national competition policy has already become part of the national policies of the relevant integration associations. First of all, it means the Eurasian Economic Union (EAEU), launched on 1 January 2015.

Last year FAS paid considerable attention to establishing the system of antimonopoly regulation in EAEU. The efforts related to changes in the Russian law as well as shaping the necessary contractual-legal framework. The relevant amendments, delineating powers between FAS and the Eurasian Economic Commission (EEC) to control compliance with the general competition rules on the cross-border markets were made to the Competition Law.

In 2015 the work was completed to enact an essential document – the Agreement on the procedure for protecting confidential information and liability for disclosing it in the course of the Eurasian Economic Commission exercising the powers to control compliance with the common competition rules of 12.11.2014 (the Agreement).

The Agreement coming into force was a major stage in transferring the powers to control compliance with the common competition rules on the cross-border markets to EEC. The Agreement came into effect on 12.05.2015 after EAEU member-states finalized the statutory intra-national procedures.

In 2015 traditional cooperation between antimonopoly authorities of CIS member-states continued; the main platforms for it are the Interstate Council on Antimonopoly Policy (ICAP) and ICAP Headquarters for joint investigations of violations of the antimonopoly law in CIS member-states (the Headquarters).

An important event in 2015 was completing the Report “On the state of competition on the markets of medicinal products in the CIS member-states” by the Headquarters. The Report was approved by the Council of the Heads of CIS Governments. Implementing the measures outlined in the Report will be an important stage in competition development on the pharmaceutical markets of the CIS member-states and satisfying the needs of the population in affordable medicines.

The 25-year experience and credibility of Russian antimonopoly body enables FAS to play the leading role under various international formats, contribute to the discussions agenda. In 2015 FAS pays considerable attention to pro-competitive development of markets and industries, establishing the institution of “self-regulation”. The issue was also in the centre of discussions at the international level.

In recent years Russia has put into effect the Fair Practices Code for relations between retail chains and suppliers of consumer goods, and the Code of Conduct for car manufacturers and distributors on the markets of selling new cars and spare parts to them. During 2015 FAS and the Association of European Business had been drafting the Code of Fair Practices in the pharmaceutical sector.

Strengthening Eurasian integration, developing collaboration between the CIS member-states, and deepening BRICS cooperation (Brazil, Russia, India, China, and South Africa) predetermined discussions of Russian experience in establishing the institution of “self-regulation” under the above formats and proposals on implementing it in those countries. It should be noted that this initiative was positively taken by the partner antimonopoly bodies.

Another area of international cooperation actively pursued by FAS in 2015 is exceptionally important for antimonopoly bodies from a practical standpoint: International Working Groups on developing competition on socially-important markets that are co-chaired by FAS. Such a format allows competition authorities to discuss practical aspects of competition policy and enforcement and jointly blueprint the ways to solve problems.

Currently there are two Working Groups to study competition development in the pharmaceutical industry and the market of roaming communications services. The International Working Group on competition issues in the pharmaceutical sector focused on the issues of patent protection and intellectual rights for medicinal drugs, suppressing unfair competition, interaction between pharmaceutical companies and their counteragents, pricing in the pharmaceutical industry.

The efforts of the International Working Group on developing competition on the roaming communications services helped achieving a considerable reduction of the rates of Russian providers for roaming services.

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

#### *Public consultations*

FAS is actively developing its system of Expert Councils on the main markets for the purposes of public discussion of antimonopoly regulation in various areas of work and objectivity and transparency of decision-making.

27 FAS Expert Councils comprise more than 730 representatives of various public interest organizations and associations: the Public Chamber of Russia, regional public chambers, OPORA Russia, Business Russia, the Chamber of Commerce and Industry of the Russian Federation, the Russian Union of Industrialists and Entrepreneurs and other organizations. In 2015 there were more than 120 meetings of Expert Councils.

FAS also has a Public Advisory Council formed by representatives of the most influential non-profit associations and business-associations. The Council monitors FAS activities, devises recommendations on improving the antimonopoly law and practice of suppressing antimonopoly violations.

85 regional FAS bodies also formed Public-Advisory Councils.

### *Russian printed sources on competition policy*

FAS publishes a quarterly electronic research-to-practice journal “Russian Competition Law and Economics” that can be found on FAS electronic resources.

The main objective of the electronic publications is to support competition in Russia and across the Eurasian Economic Union of Russia, Belarus, Kazakhstan, Kyrgyzstan and Armenia. Through the journal readers get first-hand news about the antimonopoly law and enforcement practice, about the most complex and interesting antimonopoly cases heard at Courts.

The target audience of the journal is staff of the antimonopoly bodies, representatives of the business community, specialists, consultants, and public at large.

The English version of the journal digest has been published since 2013. In 2015 there were four issues of the journal.

In the Russian Federation there are also some other specialized publications on competition policy such as “Competition and Law”, “Competition and Market”. These journals publish on a regular basis papers, interviews and opinions of FAS top-officials and experts, as well as materials from the leading lawyers and economists specializing in antimonopoly policy.

### *Russian Competition Week – Participation of the President*

The most large-scale Russian event in the field of competition policy in 2015 was an international “Russian Competition Week” (further on referred to as the Competition Week). The Competition Week – an annual international event attended by the Heads and representatives of Russian and foreign competition authorities, international organizations and integration associations, CIS member-states, as well as representatives of the law enforcement and judicial bodies, business and academic communities, and civil circles started in 2009. 2015 Competition Week was very special due to the 25<sup>th</sup> Anniversary of antimonopoly regulation in the Russian Federation. The event took place in Moscow on 21 - 24 September 2015.

The programme included sessions of the International Working Groups on Pharmaceuticals and Roaming, ICAP, as well as the international Round Table on “Economic Analysis in Investigating Cartel Cases”, organized jointly by FAS and Non-Profit Partnership for Competition Support in the CIS.

The key event of the Competition Week was the Jubilee session of FAS Collegium – an international conference (further on referred to as the Jubilee session); participants included the President of the Russian Federation Mr. Vladimir Putin, First Deputy Chairman of the Government of the Russian Federation Mr. Igor Shuvalov, the Chairman of the Executive Committee – CIS Executive Secretary, Mr. Sergey Lebedev, representatives of federal and regional executive bodies, business community, the Heads and high-level representatives of foreign competition authorities and international organizations.

Speaking at the Anniversary Plenary Session, the President of the Russian Federation Mr. Vladimir Putin pointed out: “FAS is if the same age with the deep transformations associated with building up market relations and freedom of entrepreneurship in Russia. In a quarter of a century you have done a lot to develop the legislative framework, to implement the modern mechanisms of competition support. I expect that FAS will continue playing an important, comprehensive role in implementing economic policy, shaping favourable business, investment and entrepreneurial climate in general”.

#### *Other international events*

Every year the “Vedomosti” newspaper (Russia) organizes a conference on antimonopoly policy, where FAS top officials and experts take part. The 2015 Conference agenda included efforts of the antimonopoly body to achieve efficient market performance; preventing, restricting and suppressing monopolistic activity and unfair competition; as well as discussing the main events in 2015 in the field of antimonopoly regulation that had significant impact upon competition.

FAS organized several sessions at St Petersburg International Legal Forum (26-29 May 2015, St Petersburg) on applying the antimonopoly law in the modern economic conditions. regulating public procurement and procurement by state-run companies.

FAS also actively participates in St Petersburg International Economic Forum (18-20 June 2015, St Petersburg).

## **4. Resources of the competition authority**

### ***4.1. General resources (current numbers and changes in the previous year)***

#### **4.1.1 Annual budget (in the local currency and US currency)**

The expenses for the Central Office of the Federal Antimonopoly Service and its regional offices are financed from the federal budget.

In 2015 FAS budget was US\$ 67.43 million (3,639,947,100 RUB).

In comparison with 2014 the budget increased by 48.5 % due to transferring the powers of two abolished bodies (Rosoboronzakaz and the Federal Tariff Service) to FAS.

#### **4.1.2. Staff numbers (persons-years)**

FAS structure comprises: the Central Office and 85 regional bodies that operate in 85 subjects of the Russian Federation. The Central FAS Office has 865 employees, regional FAS bodies - 2395 employees. Of whom:

##### **- Economists**

660 (the figure is conventional since some FAS staff members perform the functions of both lawyers and economists).

29 employees have post-graduate degrees in economics.

##### **- Lawyers**

1116 (the figure is conventional since some FAS staff members perform the functions of both lawyers and economists, having relevant education).

23 employees have post-graduate degrees in law.

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

619 employees.

#### **4.2. Employees (persons-years) involved in:**

**- Enforcement with regard to anticompetitive practices (excluding unfair or misleading practices that fall under the consumer protection provisions, where exist)**

**- Consideration of mergers and enforcement**

**- Competition advocacy.**

The total staff members involved in enforcement practice - 2553. FAS does not keep statistical data with breakdown by different types of practices and enforcement areas because FAS staff is distributed predominantly by sectors of the economy rather than enforcement.

The organizational structure of the Central FAS Office is built up in accord with the mixed principle: there are sectoral Departments (for example, the Department for Control over Electric Power Industry, the Department for Control over Fuel-and-Energy Complex, the Department for Control over Social Sphere and Trade) and functional Departments (for example, the Legal Department, Public Relations Department, etc.) Therefore, it is difficult to specify the exact number of staff involved in enforcement on particular areas of antimonopoly regulation.

At the same time, FAS has a separate Anti-Cartel Department aimed at exposing cartels of special importance that make precedents at the federal and inter-regional levels as well as a separate Department for Control over Advertising and Unfair Competition.

Sectoral units of the Central FAS Office and regional FAS bodies deal with all types of violations of the antimonopoly law, including cartels, and exercise control over economic concentration. At the same time, staff of FAS Legal Department took an active part in considering mergers.

Competition advocacy falls under the competence of the Public Relations Department and the Department for International Economic Cooperation, and in the part of cooperation with other authorities and organizations – under the competence of all structural units.

#### ***4.3. The period covered by the above information***

The above information covers the period from 1 January to 31 December 2015.

### **5. References to new reports and works on competition policy**

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