Development of competition legislation and enforcement in the Russian Federation

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Goals:

• Creation of the effective mechanisms of cartel activity suppression;
• Strengthening of the antimonopoly control over public authorities’ activity;
• Lowering of administrative burden on fair market participants;
• Securing of openness of public procurement procedures and allocation of public property and natural resources.
• Strengthening of responsibility measures for violations of antimonopoly legislation (turnover fines, criminal liability).
Improvement of the legislation

- **Law on competition** (1991)

- **“First antimonopoly package”**, (2006):
  Law on protection of competition + amendments to the Code of Administrative Violations (CoAV).

- **“Second antimonopoly package”**, (2009):
  Amendments to the Law on protection of competition, CoAV, Criminal Code and other legal acts.

- **“Third antimonopoly package”**
  On July 7th, 2011 submitted by the Government of the Russian Federation to the State Duma (Parliament) :
  Amendments to the Law on protection of competition, CoAV, Criminal Code and other legal acts.
Influence of the cartel activity on the effectiveness of Russian economy ➔ creation of the anti-cartel system (2006-2009).

- “Per se” prohibition of horizontal agreements that lead to the consequences, directly envisaged by the Law on protection of competition;
- Strengthening of sanctions for anti-competitive agreements (direct effect, “turnover fine”);
- “Leniency program”;
- Criminal liability for anti-competitive agreements;
- Expansion of the FAS Russia’ inspection powers aimed at collection of testimonies as well as establishment of the relevant specialized division;
- Positive practice of High Arbitrage Court.
2010 – first criminal cases of the federal level, pursuant to the Article 178 of the Russian Criminal Code, were initiated.

For the first time in the FAS Russia’ practice, the investigation of a case and confirmation of the fact of cartel collusion between the participants of the energy coal market (OJSC “SUEK”, OJSC “Russkiy Ugol” and “Stroyservice” LLC) was conducted conjointly with the Ministry for Internal Affairs with the use of documents and information received in the frameworks of investigative and search operations.
The provision, that envisages the possibility of collective dominance, is introduced. This provision established the legal basis for antimonopoly measures against abuses in the oligopoly markets.

This enables the FAS Russia to react to anti-competitive actions of economic entities, having in aggregate the significant share in the market and striving for common economic interests.
OJSC “LukOil”, OJSC “GazpromNeft”, OJSC “TNK-BP Holding” and OJSC “NK “RosNeft” were fined by the FAS Russia for the violation of the antimonopoly legislation.

In 3rd and 4th quarters of 2008 these companies abused their dominant position by setting monopolistically high prices for oil products.

On May 25th, 2010 and February 15th, 2011 the High Arbitration Court took a decision in favor of the FAS Russia on the cases against oil companies that will pay aggregate 16 bln. rubles fine (approximately 550 mln. US dollars).
Large number of violations of the antimonopoly legislation by public authorities → Strengthening of the control over their activity

2006 - 2009 rr. – the system of the antimonopoly control over granting of state and municipal preferences was established:
• list of permissible preferences;
• the order of preferences’ granting;
• the FAS Russia’ right to appeal in courts the acts of legislative bodies of the subjects of the Russian Federation that envisage unreasonable granting of preferences;
• the possibility to issue instructions on returning of unreasonably provided property.
The administrative liability of state and municipal officials for violation of the antimonopoly legislation is increased:

Disqualification is introduced as a liability measure (up to three years!).

Example:

The Minister of Transportation of the Perm Region has been repeatedly fined by the FAS Russia’ Regional Office for the violation of the antimonopoly.

At present, the documents on his disqualification are submitted to court.
Control over economic concentration

High level of control ➔ excessive administrative burden on businesses

This prevented the FAS Russia from accumulation of the efforts on the transactions that really influence competition.

**Changes in 2006 - 2009:**

- increase of economic concentration thresholds;
- introduction of two-phase control scheme;
- introduction of the requirement to disclose information about transaction’ final beneficiaries;
- introduction of the notification order of transactions within the group of persons united on the “structural” basis.

The result – decrease in the number of transactions and actions that are the subject of antimonopoly control.
Cases on violations of the antimonopoly legislation

Cases initiated (total)

1 пг 2009 г. 1 пг 2010 г. 1 пг 2011 г.

(% to the previous period)
Increase of public procurement effectiveness

2006-2011 – amendments to the Law on public procurements

• All information on public procurements – placed on the single all-Russian portal;
• Economic pre-qualification instead of administrative one (financial guarantee of proper realization of the contract instead of officials’ arbitrary requirements);
• Electronic auction (a customer receives a commodity of the requested quality for minimal price);
• Restrictions for the opportunity to change the contract conditions arbitrary;
• Short appeal procedure against customer’ actions (within 5 days!).
Savings of the budget in bln. rubles.*
(difference btw starting price and the price of the concluded contracts)

Aggregate savings of the budget for 5 years are (2006-2010) **more than 38 bln. US Dollars**
— new options for buying basic goods and construction of infrastructure

* The Rosstat data
Common economic space for public procurement placement of the Russian Federation – Official Web-Site

Operators of electronic trading platform

Vjcrdf
Sberbank
Tatarstan
MICEX
RTS

Independent registrar
General mechanism for implementation of the law is a protection by the companies of their rights within 5 (five) working days!

More than 50% complaints were considered as justified.

95% cases on public procurements won in Arbitration courts in 2009.

(Central Office of the FAS Russia)
Increase of transparency of allocation of public property and natural resources

All - Russian site  torgi.gov.ru

Since January 1\textsuperscript{st}, 2011

– tenders for the right for ownership and use of state and municipal property;

Since January 1\textsuperscript{st}, 2012

– tenders for the provision of plots of land, forest land, subsoil as well as for the right to conclude hunting contracts.
System of public tenders

- zakupki.gov.ru
  - Общероссийский сайт государственных и муниципальных закупок
- torgi.gov.ru
  - Общероссийский сайт торгов по государственным и муниципальным продажам
Improvement of sectoral legislation

2010 – special antimonopoly regulation of retail trading activities was introduced

- Federal Law “On the Basic Principles of State Regulation of Trading Activities in the Russian Federation” was adopted;
- The FAS Russia was granted the controlling powers.

The FAS Russia has initiated first cases on the violation of the Law on trading activities.
Increase of openness

- Public reception office (1\textsuperscript{st} half of 2011 – more than 8 thousand addresses);
- Regulation on information policy expended the list of disclosed information;
- Official site www.fas.gov.ru - publishing of the decisions within 2 days; live news and documents;
- The FAS Russia is represented in blogs and social networks (Facebook, Twitter, Livejournal) – more than 10 thousand readers;
- The FAS Russia’ annual reports;
- 26 Expert Councils.
Integration of the Russian Federation into the international economic system is not possible without competition legislation that correlates with the best world practices

- The FAS Russia – is a member of the International Competition Network’ Steering Group;
- New level agreements on cooperation with the foreign competition authorities (mechanisms of interaction at consideration of specific violations of the antimonopoly legislation of trans-border character – EU, Mexico, Hungary, Austria);
- The FAS Russia is in the process of preparation to the second round of consideration of the Report on the state of competition in Russia in the frameworks of the accession of the Russian Federation into the Organisation for Economic Co-operation and Development.
Interstate Council for Antimonopoly Policy (ICAP) – basic platform for cooperation of the CIS national competition authorities

Major tasks of the ICAP:
- further harmonization of the CIS countries’ national competition legislation;
- elaboration of coordinated approaches to various issues of competition regulation;
- development of cooperation of the CIS national competition authorities in consideration of transboundary violations.
The Headquarters established in 2006 by the Decision of the ICAP members

Establishment purposes:
Joint inquiries (investigations of violations of the antimonopoly legislation) in socially important and infrastructural markets, which successful functioning directly affects welfare of the CIS citizens and promotes integration of the CIS members.
Work results:

Report on the state of competition in the international telecommunications market of the CIS countries which provides for:

-- international experience in the antimonopoly regulation of the telecommunication market, inter alia the experience of the European Commission in roaming regulation in the EU member-states;

-- analysis of legal and regulatory framework of the CIS countries on the telecommunications issue;

-- analysis of international telecommunication market of the CIS countries by segments of the telecommunication market (fixed-line telephony, cellular transmission, IP-telephony);

-- recommendations on competition development on the markets.
During the inquiry signs of violations of the antimonopoly legislation while formation of tariffs on the communication services in roaming were found. Competition authorities of Russian and Kazakhstan conducted investigations within national legal frameworks and initiated cases against dominant operators which were terminated in October 2010. Tariffs on the communication services in roaming for Russian consumers in the CIS territory were reduced by 150-400%. A start was given to reduction of prices on interoperators’ cooperation of the CIS communication operators.
The tariffs set forth by the “Big three” mobile operators were 1,2-6 times higher than the ones, set forth by the EU mobile operators and Russian mobile operators that render similar services with the use of other technologies.

<table>
<thead>
<tr>
<th>Direction</th>
<th>EU mobile operators</th>
<th>Russian mobile operators (other technologies)</th>
<th>“Big three” operators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Russia</td>
<td>1,09 – 1,39</td>
<td>0,32</td>
<td>0,71 -1,44</td>
</tr>
<tr>
<td>Ukraine</td>
<td>1,09</td>
<td>0,43</td>
<td>1,20 – 1,44</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>1,39</td>
<td>0,43</td>
<td>1,20 – 1,44</td>
</tr>
<tr>
<td>EU-countries</td>
<td>0,38</td>
<td>0,43</td>
<td>1,68 – 2,10</td>
</tr>
<tr>
<td>USA</td>
<td>1,09 – 1,39</td>
<td>1,58</td>
<td>3,15 – 3,80</td>
</tr>
</tbody>
</table>

All the aspects of prices setting on roaming were considered while holding investigations.
On October 22, 2010 FAS Russia made a decision on abuse of dominance, concerning:

- Setting and maintaining of monopolistically high prices on the communication services in roaming in the territory of the Russian Federation and CIS countries;
- imposition of unfavorable conditions due to non-informing the consumer on potential change of the way of payment set forth in the contract.

During the case consideration Russian mobile operators proposed reducing the tariffs.

The “Big three” received the instruction to:
- set tariffs on roaming services on the proposed level;
- provide consumers with SMS - information;
- amend public offers.

The fines imposed were more than 38 mln. Rubles (1,2 mln US dollars) in total.
The Instruction in part of changing the tariffs was fully carried out till December 25, 2010.

The date for fulfilment of the Instruction on sms-informing expires on March 31, 2011.

The proposal to set 10 seconds-tariffication of mobile services, including in roaming, was submitted to the Ministry of Communications of the Russian Federation (regulator).
On November 18-19, 2010 the Report was considered and approved by the Economic Council and Council of Heads of CIS Governments in Saint-Petersburg.

Heads of CIS Governments in their decision, inter alia:
- recognized a significant work of competition authorities on reduction of tariffs on roaming services;
- recommended to competition authorities to complete investigations already initiated in the market;
- recommended to the ICAP to continue joint work of competition authorities in socially important markets and markets contributing to strengthening economic cooperation in the CIS countries.
Thank you!

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