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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS  
IN THE RUSSIAN FEDERATION**

-- 2005 --

*This report is submitted by the Delegation of the Russian Federation to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 18-19 October 2006.*

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## **Introduction**

1. At present the RF competition policy is based on the analysis of the practice accumulated during the previous years, taking into account national and sectoral priorities and production pattern that has developed in the country. The proposed measures should be connected with more effective activity of the whole system of public authorities, management within the frames of development of competition in the Russian markets and increase of competitiveness of home producers in the external markets.

2. Positive progress trends of economy contribute to development of the Russian home markets and help to overcome their regional restraint. In particular, in 2005 there was a considerable per cent of property transactions of intersectoral character especially in construction complex, light industry, trade and catering, in the real estate market, agriculture and food industry. The real estate market is a developing market. Considerable investment process is registered in the sphere of transport services.

3. Implementation of the functions and tasks of antimonopoly control and supervision are called to ensure creation of conditions for development of competition by means of prevention and restriction of anticompetitive actions on the part of economic entities and authorities as well as to ensure equal access to commodities (services) produced by the subjects of natural monopolies and development of competition in their potentially competitive types of activity. The Federal law of 21.07.2005 № 94-FZ “On placement of orders for goods, works and services for state and municipal needs” was adopted within the frames of administrative reform. Implementation of control in the sphere of placement of orders, except control over the sphere of state defence orders, is delegated to the FAS Russia by the RF Government Regulation of 20.02.2006 № 94.

4. The report contains review of the main changes in the Russian current legislation on competition, information about the scope of the practice of implementation of the antimonopoly legislation, examples of the cases of the most typical and prevailing violations of the antimonopoly legislation which were investigated by the antimonopoly bodies.

### **1. Changes in the competition legislation and policy: proposed and adopted**

#### ***1.1 Review of the new legal provisions of the competition legislation and legal and normative acts connected with it***

5. The Federal law № 13-FZ “On introduction of amendments in articles 17 and 18 of the RSFSR law “On competition and restriction of the monopolistic activity in the commodity markets” had been elaborated by FAS Russia and was adopted on 07.03.2005. According to this law the level of aggregate asset value increases (the sum which is lower than volume of 30 million minimum wages established by the state) for the cases when the transaction preliminary approved by the antimonopoly authority and for the cases when the antimonopoly body should be notified about the transaction (up to the volume of 2 million minimum wages established by the state).

6. The RF President signed the Federal law “On protection of competition” on July 26, 2006. The law was published in Rossijskaya gazeta on 27.07.2006. It will come into force in 90 days since the date of its publication. The draft law was the subject of wide discussion in public authorities, business community, business associations, public and academic circles. The Federal law “On protection of competition” provides for clarifying of legal basis of the state competition policy. It renews the legal instruments for restriction and prevention of the monopolistic activity as well as provides for unification of the legal regulation of protection of competition in commodity and financial markets.

7. The RF Ministry of Economic Development together with the FAS Russia prepared amendments to the legislation on delivery of goods for state needs which were implemented in the Federal law of 21.07.2005 № 94-FZ “On placement of orders for goods, works and services for state and municipal needs”. Chapter 7 of the law establishes that placement of orders for exchange commodities for state and municipal needs exceeding 5 million rubles can be fulfilled in the commodity exchange.

8. Obligation of the regulatory agency to review tariffs by order of the antimonopoly authority was secured by the new drafting of the Federal law N210-FZ of December 26, 2005 “On the basis of the tariffs regulation of organizations of municipal complex”.

9. In 2005 the FAS Russia took active part in elaboration of the federal law “On introduction of amendments in the federal law “On advertising” and in article 14.3 of the RF Code of Administrative Infringements” of 21.07.2005 № 113-FZ. This law came into force on 27.01.2006 and introduced restrictions of advertising of activity on organisation and conducting of gambling games and (or) bets. It also considerably increased responsibility for violation of the legislation on advertising: 10 times more for legal persons.

10. In the sphere of real estate, local monopolies and housing and communal facilities the draft Regulation of the RF Government “On approval of the Procedure of holding open tender for selection of management organisation for apartment houses’ management by the body of local self-government” of 06.02.2006 N75 was elaborated with active participation of FAS Russia. Preliminary qualification selection was excluded from the Regulation and short closed list of conditions for access to the tender of management organisations was established as well as objective quantitative criteria for defining the tender’s winner were clearly formulated at the suggestion of FAS Russia. The established Procedure of holding open tenders for selection of management organisation for apartment houses’ administration will secure equal access to the market of apartment houses’ administration services for all interested economic entities and that will lead to development of competition and de-monopolisation in the sphere of housing and communal facilities.

11. In the sphere of control and supervision over observance of conditions of competition in the fuel and energy industry the FAS Russia took part in the preparation of the draft Regulation of the RF Government on introduction of amendments in the RF Government Regulation “On approval of the Rules of efficient-dispatch administration in power industry” of 27.12.2004 № 854. The regulation determines a list of subjects of efficient-dispatch administration in power industry, their structure and zones of dispatcher’s responsibility. The RF Government Regulation N273 was signed on 06.05.2006.

12. The FAS Russia participated in elaboration of the RF Government Regulation “On approval of the Rules of holding tenders for getting license for providing communication services in the territory with limited network resources and with the use of radio-frequency spectrum” of 23.01.2006 № 8.

13. The FAS Russia participated in preparation of the RF Government Regulation “On the Rules of contiguity to the railway lines of general use of constructing, new or reconstructed railway lines of general use and non-general use and closure of railway lines of general use, including low-intensity lines and sections and railway stations” of 18.04.2005 № 233. Elaboration of this rules was implemented in accordance with the federal law “On railway transport”. The Regulation provides for compulsory coordination with the FAS Russia the closure of low-intensity lines and thus ensures stopping of closure of these sections of railway lines by one-sided action and stops the process of decrease of providing with transport the Russian territory.

14. Taking into consideration adoption of the federal law “On licensing of some types of activities” of 31.12.2005, the FAS Russia participated in preparation of the RF Government Regulation “On licensing

of some types of activities in the railway transport” of 15.03.2006 № 134. As a result the licensing procedure was simplified and licensing of the infrastructure services was excluded from the list of types of activities subjected to obligatory licensing thus extending the possibility of development of competition in the railway transport.

15. In accordance with the Plan of preparation of statutory acts which are necessary for implementation of the provisions of the federal law “On accumulative and mortgage system of providing with housing habitation of military men” of 20.08.2004 № 117-FZ , the FAS Russia took part in preparation of the RF Government Regulation “On approval of the procedure of organisation and holding tenders for selection of special-purpose depository for concluding a contract of services with it and for selection of management companies for concluding with them contacts of trust management of savings for providing with housing habitation of military men” of 17.09.2005 № 572. Antimonopoly requirements to the procedure of holding tenders, aimed at excluding the possibility of establishment of requirements aimed at creation of groundless benefits to separate financial organisations by the tenders’ organisers, were included in the Regulation at the suggestion of the FAS Russia.

16. In the sphere of control and supervision over observance of competition in industrial sector the FAS Russia took part in elaboration of the draft order on foundation of united aircraft building corporation on the grounds of key research organisations and manufactures of civil and defence aeronautical engineering. The RF President Decree N140 “On open joint-stock company “United Aircraft Building Corporation” was adopted on 20.02.2006.

17. In accordance with the federal target programme “Reorganisation and development of defence industry complex (2001-2006)”, the FAS Russia took part in elaboration of the basis of creating large integrated structures (“TsSKB Progress”, “NPTs AP named after Piljugin”, FGUP “Krilovskiy state scientific center”, open joint-stock company “United Aircraft Building Corporation”)as well as in elaboration of draft Decrees of the RF President and draft Regulations of the RF Government on creation of integrated structures in the defence industry complex.

18. The FAS Russia took part in elaboration of the draft Decree of the RF President “On measures for development of competition in the communication services market”. The draft Decree is mostly devoted to privatisation issues of the open joint-stock company “Svyazinvest”. Privatisation of this holding which unites the largest operators of wire communication will hamper the support of the “traditional” operators by administration and thus allow creating equal conditions in the communications market for all participants.

19. During coordination of the draft federal law “On general principles of organisation of automobile and urban electric passenger transport service of the citizens on the Russian routes of regular service” the FAS Russia amendments let to decrease the draft law corruption and to reserve competition in the urban routes. And this let to support minimum tariffs without subsidy from the federal and local budgets.

## **1.2 Other relevant measures, including new methodological recommendations**

20. The FAS Russia elaborated the following normative legal acts with the aim of perfection of the organisational securing of the RSFSR law “On competition and restriction of monopolistic activity in the commodity markets”:

- The FAS Russia order of 02.02.2005 № 12 on approval of detailed Rules of examination of cases of violation of the antimonopoly legislation instead of pre-existing;

- The FAS Russia order of 23.08.2005 № 197 on approval of the regulation on preparation and case administration of the cases of violation of the antimonopoly law and the law on natural monopolies, as well as the cases of administrative infringements and legal cases in the RF FAS Headquarters.
- The FAS Russia order of 20.05.2005 № 96 on approval of the list of information submitted to the antimonopoly authorities together with application by economic entity (or its representative) intending to conclude agreement or implement concerted actions.
- The FAS Russia order of 25.04.2006 № 108 on approval of the new Procedure of analysis and assessment of condition of the competition environment in the commodity market which was registered by the RF Ministry of Justice on 27.07.2006 № 8121.
- The Rules of examination of applications disputing the refusal to provide information, which is provided for by the standards of information disclosure by the subjects of wholesale and retail markets of electrical energy (adopted on 29.09.2005 №224) were introduced with the aim of increasing of efficiency of the law enforcement in the markets of infrastructural industries.
- At present the FAS Russia is elaborating a new Procedure for defining dominant position in commodity and financial markets which is connected with adoption of the federal law “On protection of competition” of 26.07.2006 № 135-FZ.
- In 2005 the FAS Russia elaborated and registered in the RF Ministry of Justice the following normative legal acts on protection of competition in the financial services market:
- The FAS Russia order of 10.03.2005 № 36 “On approval of the procedure of defining dominant position of the participants of insurance services market”;
- The FAS Russia order of 10.03.2005 № 37 “On approval of the form of notification about agreements or concerted practices of financial organisations”;
- The FAS Russia order of 10.03.2005 № 38 “On approval of the procedure of the antimonopoly body’s decision-making on exercising additional examination of notifications about agreements or concerted practices of financial organisations restricting competition in the financial services market»;
- The FAS Russia order of 23.09.2005 № 212 “On approval of the procedure of defining dominant position of a financial organisation operating securities;
- The FAS Russia order of 23.09.2005 № 213 “On approval of the procedure of defining dominant position of a leasing organisation in the leasing services market»;
- The FAS Russia order of 25.10.2005 № 247 “On approval of the procedure of defining dominant position of a financial organisation in the banking services market».
- In 2006 the FAS Russia elaborated and registered in the RF Ministry of Justice the following normative legal acts on protection of competition in the financial services market:
- The FAS Russia order of 17.01.2006 № 8 “On introduction of amendments in the RF FAS order of 15.10.2004 № 140 “On approval of the Rules of examination of cases of violation

of the antimonopoly legislation and other normative and legal acts on protection of competition in the financial services market by financial organisations”;

- The FAS Russia order of 17.01.2006 № 9 “On approval of the Rules of examination by the antimonopoly authority of cases of violation of the antimonopoly legislation and other normative and legal acts on protection of competition in the financial services market”.

21. At present the FAS Russia order of 17.05.2006 №129 “On approval of the procedure of defining dominant position of non-government pension funds” is in the process of being registered by the RF Ministry of Justice.

22. Besides, in connection with adoption of the federal law “On protection of competition” of 26.07.2006 № 135-FZ the FAS Russia intends to elaborate the following legal acts:

23. Regulations of the RF Government:

- on conditions of the antimonopoly control in the financial services market;
- on conditions of recognising dominant the position of a financial organisation and approval of the procedure of defining dominant position of a financial organisation;
- on conditions of recognising dominant of the position of a credit organisation and approval of the procedure of defining dominant position of a credit organisation;
- Order of the FAS Russia “On approval of the form of notification about agreements of financial organisations”.

### ***1.3 Proposals of the Government on adoption of new legislative acts***

24. The FAS Russia together with the interested federal bodies of executive authority elaborated draft federal law “On introduction of amendments in the RF Code of Administrative Infringements” and on July 7, 2006 it was introduced to the State Duma of the Federal Assembly of the Russian Federation by the RF Government.

25. At the suggestion of the FAS Russia the RF Government included the draft of the federal law “On introduction amendments in the RF Criminal Code”, which provides for rise of criminal responsibility for violation of the antimonopoly legislation, to the plan of lawmaking activity of the RF Government in 2006.

The FAS Russia took part in elaboration of the draft federal law “On introduction to the RF legislative acts of amendments and additions concerning participation of foreign investors in the capital of the Russian strategic organisations”. Analysis and assessment of competition environment in the markets of defence industry complex and neighbouring markets of constructional materials and power engineering made by FAS Russia during examination of applications for getting consent for acquisition of assets of the open joint stock companies “SMZ” and “BKMPO” by subsidiaries of the American transnational company “Alcoa Inc.” (December of 2004) and acquisition of assets the open joint-stock company “Siloviye mashini – ZTL, LMZ, Electrosila, Energomashexport” by the German company “PM 2447 Fermengensfervaltungs GmbH (100% subsidiary of “Simens AG” corporation) (2005) initiated the RF Government decision to elaborate as soon as possible the federal law aimed at

establishment of transparent rules for participation of foreign investors in the capital of the RF strategic enterprises and control over such transactions.

26. In 2005 the FAS Russia took part in preparation of the draft Regulations of the RF Government “On approval of Rules of functioning of retail markets of electrical energy during the transition period of the reform in power industry” and “On the rules of concluding and executing of the public contracts in wholesale and retail markets of electrical energy and on exemplary contract for electrical energy delivery to a customer” aimed at formation of the system of relations between subjects of the power industry and consumers in the retail markets of the electrical energy. These Regulations are expected to be approved in 2006.

27. According to the Plan of measures for reforming of power industry, the FAS Russia elaborated draft of the Rules for implementation of the antimonopoly control in wholesale and retail markets of electrical energy (capacity). They include the procedure and criteria for establishment of cases of abuse of dominant position by producers and suppliers of the electrical energy and for the case of emergency when the governmental control is introduced. These Rules are going to be approved in 2006.

28. In 2005 the FAS Russia took active part in elaboration of the draft Regulation of the RF Government “On peculiarities of functioning of the objects of electrical network of the railway transport”. The draft was elaborated in connection with adoption of the federal law “On electrical energy”. The FAS Russia submitted proposals preventing transition of the activity on supply of the railway lines with electrical energy from “Russian Railways” to Russian Joint-Stock Company “United Energy Systems”. At present the draft is completing.

## **2. Application of competition laws and implementation of competition policy**

29. In 2005 the FAS Russia exercised 42002 controlling and supervisory actions aimed at prevention and restriction of anticompetition practice. 9086 cases of violation of the antimonopoly legislation were revealed and 7701 cases were initiated.

### **2.1 Actions against anticompetition activity, including abuse of dominant position and concerted practices**

#### *2.1.1 Description of activity of antimonopoly authorities and courts*

30. In 2005 the FAS Russia exercised 5122 controlling and supervisory actions aimed at prevention and restriction of monopolistic activity (abuse of dominant position and anticompetitive agreements) in commodity and financial markets. 1410 cases of violation on the basis of monopolistic activity were revealed and 1123 cases were initiated.

#### Restraint of abuse of dominant position

31. 3587 applications, connected with abuse of dominant position, were submitted to the antimonopoly bodies in 2005. The most common type of abuse is obstruction of disadvantage agreements (about one third of applications). The proceedings were initiated in 1026 cases but in 418 cases the proceedings were terminated as the infringements had been eliminated (61%) or the fact of the infringement had not been confirmed (39%). 608 decisions confirming violation of the legislation were taken and 509 injunctions were issued. 165 decisions (27%) were appealed against in court. 18 decisions were declared invalid by court and 1 decision was declared partially invalid.

32. Twenty eight applications on abuse of dominant position in banking and insurance services markets as well as in stock market were submitted to the antimonopoly bodies in 2005. The proceedings

were initiated in 3 cases. In 1 case the proceeding was terminated as the infringements had been eliminated and in 2 cases directions were issued. One direction was fulfilled and the other was not.

Description of the most significant cases including the cases that had consequences at the international level

33. **Services of the sea ports** “Transit-Sever-Vostok” Ltd. had won the tender for delivery of power station coal for the needs of housing and communal facilities in Magadan and Kamchatskaya region. But open joint-stock company “Vostochniy port” occupying dominant position in coal reloading services market in the Far East refused to conclude agreement for coal reloading from railways to sea ships with “Transit-Sever-Vostok” Ltd. The refusal was motivated by lack of capacity. At the same time, however, the company “Vostochniy port” concluded the similar agreement with the affiliated company “Kuzbassrazrezugol”.

34. The FAS Russia Commission admitted the violation of item 1 of the article 5 of the RSFSR law “On competition and restriction of monopolistic activity in the commodity market” by open joint-stock company “Vostochniy port” and issued a direction which obliged open joint-stock company “Vostochniy port” to conclude agreements with the suppliers-winners of the tenders in Magadan and Kamchatskaya region and to observe the schedule and amount of the deliveries determined by the tender Commissions.

35. The FAS Russia direction was recognised lawful by all levels of jurisdiction. The direction had social and economic significance as it prevented the threat of the seasonal heating breakdown in Magadan and Kamchatskaya region.

36. **Cement.** In May of 2005 the open joint-stock company “EUROCEMENT group” increased selling prices at 65% on average and the same time changed conditions of agreements with consumers demanding 100% prepayment. By the end of April the company got control over 43% of the RF production capacity and starting from May of 2005 its share in the cement market of the European part of Russia and Ural was 50-55% exceeding 7-8 times the share of the nearest competitor. It let the company to have decisive influence on the cement market and resulted in price increase and influenced negatively on price movement in the construction market as well as on the inflation rate in the country in the whole.

37. That was the reason for the FAS Russia to initiate proceedings on the case of violation of the antimonopoly legislation against the open joint-stock company “EUROCEMENT group”. It was admitted that the open joint-stock company “EUROCEMENT group” infringed item 1 of the article 5 of the RSFSR law “On competition and restriction of monopolistic activity in the commodity market” in the part concerning establishment of monopolistically high price. Decision to eliminate the infringement was issued to the open joint-stock company “EUROCEMENT group”. The decision included the following directions: to decrease the selling price to the fair competitive level (about 15% down in comparison with the current level) from November 1, 2005 and to transfer the profit gained as the result of violation of the legislation (about \$68 million) to the federal budget. “EUROCEMENT group” appealed to court against the FAS Russia decision and injunction. On 10.01.2006 the Moscow Arbitration Court decided to remain in force the FAS Russia decision and directions. But on 07.04.2006 the 9<sup>th</sup> Arbitration Court of Appeal recognised invalid the mentioned above FAS Russia decision and directions. At present the court approved the amicable agreement between the FAS Russia and “EUROCEMENT group”. The amicable agreement provides for admission by the company of the following facts: violation of the legislation, existence of dominant position, obligation to transfer the illegal profit (\$10 million) to the federal budget. It also includes the obligation to notify the FAS Russia preliminary about the planning price increase if it exceeds 5% in a quarter.



38. ***Hydrate of sodium, liquid chlorine*** The FAS Russia examined the cases of infringements of item 1 of the article 5 of the RSFSR law “On competition and restriction of monopolistic activity in the commodity market” in hydrate sodium market and market of liquid chlorine in containers by open joint-stock company “ETK” (Moscow) and open joint-stock company “Kaustik” (Volgograd). Basing on the results of examination the FAS Russia took decision aimed at reestablishment of competitive environment in these markets. In each case the FAS Russia decision was appealed against in court. In the course of court examination the economic entities submitted to the FAS applications on conclusion of amicable agreements. The FAS Russia found it possible to conclude amicable agreements with open joint-stock company “ETK” and open joint-stock company “Kaustik” on the conditions that the companies admit the fact of violation of the antimonopoly legislation and take the obligation to restore competition in the relevant markets and to prevent restriction of competition in future. Besides the companies take an obligation to transfer to the federal budget the profit gained as the result of violation of the law. The amicable agreements between the FAS Russia and open joint-stock company “ETK” and open joint-stock company “Kaustik” were signed on the basis of the mentioned above conditions and were approved by the relevant degree of jurisdiction.

39. ***Banking services market*** The FAS Russia initiated a case of violation of articles 5 and 15 of the law “On protection of competition in the financial services market” against Tverskoy regional department of the RF Sberbank. The violation was the following: while crediting the department included in the crediting agreement the condition which provided for getting preliminary written consent from the bank in case the debtor would like to use credit resources of another credit organisation. The actions like this complicated access to the banking services market in Tverskaya region to other credit organisations and were aimed at getting benefits which could cause losses to the competing credit organisations. At the FAS Russia Commission meeting the RF Sberbank produced documents proving that the infringements were voluntary eliminated and that was the reason for the FAS Russia to stop the proceedings.

#### Restraint of anticompetitive agreements of economic entities

40. In 2005 the FAS Russia received 75 applications concerning violation of article 6 of the RSFSR law “On competition and restriction of monopolistic activity in the commodity markets”. Most of the applications were connected with establishment (keeping) of prices (tariffs), discounts, additional payments and extra charges as well as limitation of market access. 64 cases were initiated. 21 cases were closed as the infringements were eliminated in the course of the case examination and in 11 cases the fact of the law violation was not confirmed. 32 decisions admitting the fact of infringement were adopted and 42 directions were issued. 7 decisions were appealed against in court and 2 of them were admitted invalid by court.

41. Sixty nine applications connected with violation of article 6 of the federal law “On competition protection in the financial services market” were applied. 41 cases were initiated and 31 of them were initiated on the FAS Russia initiative. 5 cases were closed as the infringements were eliminated in the course of the case examination and in 9 cases the fact of the law violation was not confirmed. 27 decisions admitting the fact of infringement were adopted and 16 directions were issued. 5 decisions were appealed against in court and 1 of them was admitted invalid by court and 1 was admitted partially invalid.

#### Description of the most significant cases including the cases that had consequences at the international level

42. ***Vertical agreement in the market of the services for removal of hard domestic waste.*** Orlovskoye regional department of the FAS Russia initiated a case of violation of item 3 of article 6 of the RSFSR law “On competition and restriction of monopolistic activity in the commodity markets” against “Ecostroyservis” Ltd. and MUP “Mtsenszkhilcomhoz”. The infringement consisted in conclusion of

agreement between economic entities which were not competitors and as the result of this agreement there was restriction of competition. "Ecostroyservis" Ltd. stores and utilises hard domestic waste in a special field in Mtsensk in accordance with the agreement of 24.06.2003 №1 on exploitation of the field for storage and utilisation of hard domestic waste. The agreement was concluded between Mtsensk administration, MUP "Mtsenskhilcomhoz" and "Ecostroyservis" Ltd. which is the only one economic entity rendering this type of services in Mtsensk. For the moment of the case examination "Ecostroyservis" Ltd. had concluded agreements for the waste storage and utilisation with 19 economic entities. On 14.03.2005 an additional agreement to the agreement N1 was concluded, according to which only the municipal organisation "Mtsenskhilcomhoz" got the right to pass the waste to "Ecostroyservis" Ltd. on free basis. Having examined the case the FAS Commission admitted the fact of violation of the antimonopoly law by MUP "Mtsenskhilcomhoz" and "Ecostroyservis" Ltd. and issued direction to bring the mentioned above agreements into line with the RSFSR law "On competition and restriction of monopolistic activity in the commodity markets". The direction was fulfilled.

43. ***Agreement on restriction of access to the banking services market.*** On February 2, 2005 commission of Mordovskiy department of the FAS Russia admitted that the branch of "Import-Export bank "IMPEXBANK" "Saranskyi" violated article 6 of the federal law "On protection of competition in the financial services market". The case was examined by commission of Mordovskiy department of the FAS Russia together with the National Bank of Mordovia Republic. It was established that the bank concluded agreement on cooperation in the activities connected with purchasing by natural persons auto transport in credit with open joint-stock company "Saransk-Lada", "AvtoRado" Ltd, "Continent" Ltd and "Avtocomplex Zubovo-Polyana" Ltd. The agreement determined that for getting credit the auto transport should be insured only by the insurance agency selected by the bank. Thus the bank restricted competition and access to the financial services market for the other insurance agencies. In the course of examination of the case the representatives of the bank declared that they had eliminated the infringement voluntarily and introduced documents, proving that the mentioned condition had been excluded from the agreement. The proceedings were stopped.

44. The similar case was initiated against the open joint-stock company AKB "ROSBANK" which implemented crediting of consumers on the territory of Republic of Mordovia.

45. ***Anticompetitive agreement in insurance services market.*** In July 2005, Magadan Department of Federal Antimonopoly Service learned that the Main Directorate of the Russian Extraordinary Situations Ministry (MChS) forwarded a letter to enterprises, running dangerous production projects, with a suggestion to strike property insurance contracts with OJSC Chrezvychnaya Strakhovaya Kompaniya, an insurance company (CSK). An examination of the above letter identified its author, notably, head of Magadan affiliate of Chrezvychnaya Strakhovaya Kompaniya, OJSC. Also, it was found that the official letterhead, business card of the affiliate head carry the postal address and telephone numbers of the Magadan Department of MChS, though the affiliate neither owns nor rents premises at the aforementioned address. Legal proceedings were instituted against CSK and Magadan Department of MChS on violation of article 6 of *Protection of Competition in Financial Services Market* Federal Law concerned with agreement on and performance of concerted actions in the services market relative to insurance of dangerous production projects, as well as in the property insurance market aimed at restricting competition and pressing other insurance institutions out of it. A decision was made to issue an order to Chrezvychnaya Strakhovaya Kompaniya, OJSC. The order was executed.

## 2.2 **Government control of economic concentration**

### 2.2.1 *Statistics on the quantity, scope and type of mergers which were notified and/or subject to control pursuant to competition laws*

46. Government control and prevention of an excessive concentration of market power in the hands of individual agents of commodity market (groups of entities), resulting in the less effective self-regulation, is a prerequisite of an effective operation of market economy. Some 242 applications and 2,673 notifications concerning establishment, reorganisation, liquidation of commercial and non-for-profit organisations in commodity markets (art. 17 of *Competition and Restriction of Monopolistic Activities in Commodity Markets* RSFSR Law) were investigated, of which over 98% were satisfied (taken notice of); with respect to 9 applications and 20 notifications of the total, orders were issued for taking measures towards ensuring competition. Concerning acquisition of shares of (stakes in) authorised capital stock and in other cases (art. 18) 6,265 applications and 6,787 notifications were examined, and positive decisions were made in relation to 99% of these. With respect to 336 applications and 5 notifications, orders were issued for taking measures towards ensuring competition.

47. Fewer applications and notifications relative to property transactions were submitted in 2005 as *Amendments to Articles 17 and 18 of RSFSR Law 'On Competition and Restriction of Monopolistic Activities in Commodity Markets'* No. 13-FZ as of 7th March 2005 entered into force on 22nd March 2005. It established new and higher threshold book values of assets making them subject to antimonopoly control. Thus, the number of reviewed applications relative to art. 17 dropped by 59% and of notifications by 24% compared to 2004; relative to art. 18, the number of considered applications declined by 48% and of notifications by 12%. The quantitative ratio between applications and notifications varied too. While in 2004, the number of applications was above the number of notifications by 12%, then in 2005 notifications exceeded applications by 45%, which resulted from a fewer number of transactions approved by antimonopoly authorities.

48. In 2005, some 615 applications concerning financial services transactions were investigated, and 611 of these were approved, including 15 in relation to which orders for ensuring competition were issued. Of the total number of applications, 78% are related to banking and insurance services markets. The overwhelming majority of submitted applications (83%) concerned acquisition of over 20% of shares of (stakes in) authorised capital stock of financial institutions. The number of notifications relative to financial services market deals amounted to 2,191. Of these, notice was taken of 2,000 including 54 subject to antimonopoly requirements. On the whole, competition in financial services markets is still inadequate, especially at regional level. In particular, infrastructure is poorly developed and market concentration is high.

49. **Specific government control of natural monopolies.** In 2005, government control of natural monopolies, exercised by antimonopoly authorities, was hardly adequate: all in all, a mere 72 applications and 16 notifications were reviewed. 75% of territorial units of FAS Russia ascertained the lack of applications and notifications pursuant to art. 7 of *Natural Monopolies* Federal Law. In power engineering sector, this is due to the current transformation and affiliation of power enterprises, providing services at regional and local levels, with a network of companies running at the level of federal areas, i.e. in interregional markets.

50. As regards government control of economic concentration, antimonopoly authorities frequently issue orders on taking actions with a view to ensuring competition. Economic concentration control by FAS Russia points to reasonability of setting behavioural requirements even in cases when the transaction does not result in a higher concentration in the commodity market, but implies acquisition of shareholdings

of an issuer, included in the Register of business entities, having a certain commodity market share on top of 35%, and whose product is socially significant.

#### Description of most significant cases

51. ***Consent to acquisition along with an issue of order.*** The decision of FAS Russia Department for the Republic of Altai is an example of the use of right to issue orders. In September 2005, FAS Russia Department for the Republic of Altai reviewed an application of Gorno-Altai Gas Company Ltd. on its intention to buy a block of 1,463 (62.3083%) voting shares of Gorno-Altai Gas, plc (based in Gorno-Altai, core business – liquefied gas sales). Gorno-Altai Gas, plc is in the regional section of Register of business entities having a 35% and bigger share of bottled gas market. Keeping in mind that meeting the application may lead to restriction of competition in the considered market in the Republic of Altai, including that as a result of a stronger domination position of a group of individuals from Gorno-Altai Gas Company Ltd. and Gorno-Altai Gas, plc, the Department has given a provisional agreement for the given transaction, and ordered actions towards ensuring competition, including:

- Informing FAS Russia Department for the Republic of Altai about changes in the pattern of ownership and structure of equity capital of Gorno-Altai Gas Company Ltd. and Gorno-Altai Gas, plc
- Informing FAS Russia Department for the Republic of Altai about intentions linked to changes in supply and sales policy; about each revision of Gorno-Altai Gas, plc, gas prices along with provision of relevant justification of changes; of agreements reached by a group of persons from Gorno-Altai Gas Company Ltd. and Gorno-Altai Gas, plc, with other business entities acting in the bottled gas market
- Preliminary coordination with FAS Russia Department for the Republic of Altai of standard forms of liquefied gas sales contracts to be used by Gorno-Altai Gas Company Ltd. and Gorno-Altai Gas, plc, for entering into contracts with business entities – final gas consumers

52. ***Consent to merger along with an issue of order for taking steps towards ensuring competition and preventing negative implications for defensive capacity of the Russian Federation.*** In 2004-2005, pursuant to item 1, art. 17 of Competition and Restriction of Monopoly Activities in Commodity Markets RSFSR Law, FAS Russia examined an application of Korporatsiya VSMPO-AVISMA, plc, concerning affiliation to it of “AVISMA – titanium-magnesium integrated works”, plc. The Korporatsiya VSMPO-AVISMA largely turns out semi-products and articles made of titanium and its alloys; they account for over 80% of the company’s total sales. The company is among the world biggest integrated producers of titanium products for aerospace sector, and is a big titanium exporter, delivering around 70% of its output to overseas consumers. In considering this merger, FAS Russia took into account the statements of RF ministry of economic development and trade (MEDT) and ministry of defence on the situation relative to titanium product supplies for the manufacture of arms and defence technology. In June 2005, Korporatsiya VSMPO-AVISMA, plc, application for AVISMA, plc affiliation to it was satisfied along with an issue of order for taking steps towards securing competition and preventing negative effects for defence capacity of the Russian Federation.

53. ***Consent to acquisition with regard to terms of global competition.*** In 2005-2006, pursuant to item 1, art. 18 of Competition and Restriction of Monopoly Activities in Commodity Markets RSFSR Law, FAS Russia reviewed an application of Novolipetsky Metallurgical Integrated Works, plc (NLMK, plc) for the purchase of a 100% share of authorised capital stock of VIZ-Stal, Ltd. This transaction constituted a horizontal integration for subject to acquisition was a business turning out, in terms of product range, similar products, and led to restriction of competition in transformer and dynamo rolled metal markets

characterised by a high degree of concentration. In considering this transaction, FAS Russia took into account the opinions of the key transformer rolled metal consumers in the Russian Federation relative to the deal impact on consumers' business activities. Also, account was taken of the fact that the acquisition of the a 100% share of authorised capital stock of VIZ-Stal, Ltd is consistent with the world-wide trend in concentration on ferrous metallurgy markets; the emergence of groups such as Arcelor, Corus, Mittal Steel, Posco, US Steel is an example of the trend. FAS Russia held protracted and complicated talks with NLMK, plc management, which helped resolve numerous legal and competition-related issues, and make a decision on potential approval of the above deal by FAS Russia, provided NLMK, plc meets, in line with FAS Russia order, several behavioural requirements aimed at securing competition.

54. ***Application of structural requirements in case of the approval of transaction.*** Within the frameworks of electric power industry reform in the Russian Federation new companies are forming according to the kinds of its activities on a base of regional vertical integrated companies. The key element of the reform is forming of a free market of electric power, participants of which will be independent from each other generating companies. FAS Russia plays an active role in the electric power industry reforming and companies restructuring processes that are held to form competitive and transparent electric power market.

55. Under participation in this activity and realisation of FAS Russia powers on economic concentration transaction approval, FAS Russia proposed structural requirements for one of the reforming regional companies OJSC "Kuzbassenergo". "Kuzbassenergo" is one of the largest energy systems in the Russian Federation; its stations produce more than 14% of electric power in the Siberia energetic area.

56. According to the reorganisation scheme of "Kuzbassenergo", it was planned to concentrate the most powerful electric stations of the company in one territorial generating company. According to the calculations of FAS Russia the concentration of such generating assets would lead to the excessive economic concentration that would be created by such generating company on a new electric power market. Such concentration would lead to a significant influence in the certain periods of time on the prices in the Siberia part of the electric power market.

57. On the assumption of calculations that are based on the simulation of behaviour of the generating companies on the wholesale market of electric power, FAS Russia set up structural requirements to the shareholders of OJSC "Kuzbassenergo", as a condition for transaction approval to company reorganisation. FAS Russia set up the condition to sell 2 electric power stations of OJSC "Kuzbassenergo" (West-North heat-electric station and South-Kuzbass State district electric power station), with total installed capacity of 1154 MW (24% of whole installed capacity of the energy system), on the open auction to the investors, that are independent from present shareholders of OJSC "Kuzbassenergo". Auctions for the sale of electric power stations should be held till the middle of next year.

58. ***Rejection of acquisition application.*** Irkutsk Department of FAS Russia reviewed an application filed by Irkutsknefteproduct JSC for a provisional consent to a deal, involving acquisition of a 100% share of Irkwest Company Ltd. authorised capital stock, for expansion of its network of petrol stations in the city of Bratsk, and decided to deny approval for the following reasons.

59. Irkutsknefteproduct CEC, made up of a group of entities (NK YUKOS, plc, Irkutsknefteproduct CEC, Bratsknefteproduct, plc, Irkutsk-Terminal, Ltd.) is in the Register of business entities having over 35% share of the relevant commodity market for the whole of Irkutsk oblast. The above group's market share of retail petroleum products in Bratsk amounted to 33.33%; the Irkwest Company Ltd. share of retail motor petrol market in Bratsk stood at 8,89% (4 PSs); maximum shares of competitors: Bratsky Benzin Alfa Company Ltd. and Bratskie Electroseti Company 6.67% each; Sibirskaya Nehnicheskaya Rompaniya, Ltd., Firma Oka-Les Company Ltd. and Bratskie Torgovye Seti Compaby 4.44% each.

60. The petroleum product retail market analysis prior to and after the deal showed presence of the market power of the above group of entities, reduction, as a result of the transaction, of the number of independent market agents, and its transition from a moderately concentrated to concentrated one (HHI = 1,407.1 prior to the deal and HHI = 2,000 after the deal; CR (4) = 55.26% prior to the deal and CR(4) = 60% after the deal). As a result of Irkwest affiliation with the group of entities, with regard to the advantages produced by vertical and horizontal integration of the group members, the deal may lead to competition restriction including the one arising from a potential domination of the group of entities in retail petroleum product market within the boundaries of Bratsk.

61. **Consent to acquisition.** In 2005, FAS Russia investigated Bunge Cyprus Company Limited application for acquisition of a 100% share of authorised capital stock of Zernovaya Kompaniya 'DARA' Company Ltd. (grain company). Bunge Cyprus Company Limited is a member of Bunge Group, an integrated international, agricultural and food industry group of companies embracing the processes from farm to final user, and capable of selling and distributing products all over the world. The Group has 400 divisions in 30 countries of the world. Bunge Group is the world leader in processing oil seeds, the biggest producer and supplier of fertilisers in South America, world leader in selling bottled vegetable oil.

62. The application review found that Bunge Group's share of refined bottled vegetable oil market amounted to about 20% in 2004, and around 22% in 2005. Bunge Cyprus Company Limited is planning to build a sunflower seed processing integrated works at the site owned by 'DARA' Company Ltd. The factory construction aims at giving up RF imports of Bunge Group's bottled vegetable oil, and launching the product manufacture in the Russian Federation. Given implementation of the above project, the Bunge Group's share of refined bottled vegetable oil market (given other equal conditions and renunciation by Bunge Group of the above product imports to Russian Federation) will stand at about 28%-30%. It is planned to build the factory in Voronezh oblast and bring it to designed production capacity by 2008.

63. FAS Russia conducted a thorough investigation of product and territorial boundaries of the market, explored substitutability of the product as well as commodity market segmentation. The review of Bunge Group's position prior to and after the deal involving acquisition of a share of DARA's authorised capital stock led to a conclusion that the transaction will not result in competition restriction in the respective commodity market, and may be authorised.

64. **Turning down an application for acquisition in insurance services market.** FAS Russia turned down an application by Ingosstrakh – M Limited, an insurance company, for purchasing a 75% stake in Novosibirsk – Meditsina, CEC, and a 51.67% share of authorised capital stock of Intex-Med Ltd, an insurance company, which are registered and provide insurance services in Novosibirsk oblast. The insurance companies, whose shares (stakes) Ingosstrakh – M was going to purchase, enjoy a dominant position in compulsory medical insurance market in Novosibirsk oblast. As a result of the above deal, Novosibirsk – Meditsina and Intex-Med would have formed a group of entities, and the aggregate share thereof in the regional compulsory medical insurance market would have gone up to 67.98%. Thus, performance of the above deals could reinforce domination of the group of Novosibirsk – Meditsina and Intex-Med companies and restriction of competition in the respective market. Pursuant to art. 18 of *Protection of Competition in Financial Services Market* Federal Law, FAS Russia turned down Ingosstrakh – M's application.

65. **Setting requirements aimed at securing competition.** In 2005, FAS Russia investigated Vneshtorgbank, plc application for purchasing a 74.9% stake in Promyshlenno-Stroitelny bank, plc which, in combination with the stake already at the disposal of the buyer, would have produced a 100% share of that publicly held company. The Promyshlenno-Stroitelny bank and lending institutions owned by a group of persons Vneshtorgbank, plc, run business in 12 subjects of the Russian Federation. Given a successful deal, the aggregate share of these institutions in the market of deposits and other debts of enterprises and

organisations in Smolensk oblast would have risen to 37.36%, which could result in a domination position of these organisations and restriction of competition in the above market.

66. Pursuant to art. 18 of *Protection of Competition in Financial Services Market* Federal Law, FAS Russia honoured the submitted application, concurrently setting requirements called to secure competition in the market of deposits and other debts of enterprises and organisations in Smolensk oblast as regards unilateral commitments on terminating the activities of Smolensky branch of Promyshlenno-Stroitelny bank. Vneshtorgbank, plc made a decision on terminating the activities of Smolensky branch.

### **2.3 Public control of competition restricting regulations and actions of executive authorities and local governments**

67. The rules of antimonopoly control of regulations and actions, agreements (concerted actions) of government bodies, other bodies or organisations delegated functions or authorities of government bodies for preventing the emergence of and dismantling the administrative barriers, are stipulated in articles 7, 8, 9 of *Competition and Restriction of Monopoly Activities in Commodity Markets* RSFSR Law, and articles 12, 13, 14 of *Protection of Competition in Financial Services Market* Federal Law.

68. In 2005, consideration was given to 2,829 applications concerning anticompetitive actions of government bodies in commodity and financial markets, which accounts for 38% of all applications filed with antimonopoly agencies. Altogether, 11,876 inspections and supervisory measures were undertaken, and 2,742 violations identified.

69. Just as in 2004, the quantity of identified violations of antimonopoly laws by public authorities is 1.5 times the number of discovered facts of monopoly activities and unfair competition on the part of business entities and financial institutions, which confirms the urgency and necessity, under the current Russian circumstances, of antimonopoly control of regulations and actions, agreements and concerted actions with government body participation, linked to development of markets and competition.

70. In 2005, consideration was given to 2,341 applications concerned with government bodies' regulations and actions directed at restricting competition in commodity markets (art. 7 of *Competition and Restriction of Monopoly Activities in Commodity Markets* RSFSR Law), or 33% of the total number of law infringement applications filed with antimonopoly authorities. The number of applications on unjustified prevention of business entity activities has risen substantially, accounting for nearly one half of applications with reference to this article; nearly 26% of applications are linked to the provision of benefits, preferences and other violations creating discriminatory conditions for business activities. Some 1,001 proceedings were instituted both on the basis of applications and unsolicited. With respect to 343 cases, proceedings were terminated thanks to remedying the violations in the course of investigation (236) and because no violation was confirmed (107). With respect to the continued proceedings, 658 infringements were recognised, and 609 orders issued. 102 decisions were appealed against. The court ruled 24 decisions as being invalid and 2 as partially invalid.

71. With a view to preventing and identifying violations of article 7 of *Competition and Restriction of Monopoly Activities in Commodity Markets* RSFSR Law, some 3,458 draft regulations issued by public authorities and local governments were investigated in terms of compliance with antimonopoly laws, including 732 draft regulations concerned with the issues of preferences and advantages. Also, as pursuant to *Competition and Restriction of Monopoly Activities in Commodity Markets* RSFSR Law, draft regulations concerned only with issues of preferences and advantages must be submitted to antimonopoly bodies for approval, the antimonopoly bodies review adopted and effective regulations on markets and competition for identifying rules inconsistent with antimonopoly laws. In 2005, antimonopoly bodies

reviewed 98,597 regulations (decisions) and identified 1,766 regulations running counter to antimonopoly laws, with respect to which the relevant actions were undertaken.

72. In 2005, some 91 applications on anticompetitive agreements (concerted actions) involving government bodies (art. 8 of *Competition and Restriction of Monopoly Activities in Commodity Markets* RSFSR Law) were filed. Around one half of the applications concerned restriction of access to markets. 96 proceedings were instituted, of which 48 were initiated by antimonopoly bodies. With respect to 36 cases, proceedings were terminated thanks to remedying the violations in the course of investigation (23) and because no violation was confirmed (13). With respect to the continued proceedings, 60 infringements were recognised, and 56 orders issued. 13 decisions were appealed against; the court ruled 3 decisions as being invalid and 1 as partially invalid.

73. Some 265 applications concerning violation of antimonopoly requirements to tenders (art. 9 of *Competition and Restriction of Monopoly Activities in Commodity Markets* RSFSR Law) were filed. Most application concerned unjustified restriction of access to a tender, as well as illegitimate creation of preferential tender terms. 71 proceedings were instituted, of which 23 were initiated by antimonopoly bodies. With respect to 19 cases, proceedings were terminated thanks to remedying the violations in the course of investigation (8 cases) and because no violation was confirmed (11 cases). With respect to the continued proceedings, 52 infringements were recognised, and 33 orders issued. Four decisions were appealed against; the court recognised one of these invalid.

74. In 2005, 132 applications concerned with illegitimate regulations and actions of government bodies and Central bank of the Russian Federation (articles 12, 13, 14 of *Protection of Competition in Financial Services Market* Law) were reviewed, of which 72% concerned violations in insurance services market. 766 proceedings were instituted, of which 741 cases (nearly 97%) were initiated by antimonopoly bodies. With respect to 86 cases, proceedings were terminated thanks to remedying the violations in the course of investigation (56 cases) and because no violation was confirmed (30 cases). With respect to the continued proceedings, 680 infringements were recognised, and 593 orders issued. Twenty four decisions were appealed against. The court recognised no invalid decisions.

### 2.3.1 Description of most significant cases

75. **Combination of functions.** FAS Russia brought an action against FSD Ob-Irtysh State Basin Department of Waterways and Navigation based on infringement of art. 7 of *Competition* RSFSR Law manifesting itself in the combination of functions of public executive authority (approval of production amounts of stream sand and non-metallic building materials) and of business entity (extraction and sales of stream sand and non-metallic building materials).

76. By benefiting from its powers, Ob-Irtysh State Basin Department of Waterways and Navigation limited competition in sand market: Gidrotransservis Company Ltd. submitted documents on sand extraction from Irtysh river for approval but received no response. As a result it was forced from the market and is on the brink of bankruptcy. On appeal of yet another business entity (Priboi Company Limited), office of public prosecutor conducted an investigation, and ordered Ob-Irtysh State Basin Department of Waterways and Navigation to remove law infringements, involving an illegal abolition of coordination of dredging for extraction of non-metallic building materials.

77. As the reviewed violations relate not only to this specific but also to all river basin departments under the jurisdiction of Federal Agency of Maritime and River Transport, FAS Russia issued, on 30<sup>th</sup> November 2005, an order to the Federal Agency of Maritime and River Transport to stop violations of antimonopoly laws by way of removing the provisions from the Charters of its subordinate institutions, i.e. inland water transport basin government bodies, illegally permitting them to engage in business activities



connected with extraction and sales of sand and non-metallic building materials. The order was appealed to courts.

78. ***Unjustified prevention of activities.*** FAS Russia brought an action against Saint-Petersburg sea commercial port master, who had regularly impeded activities of “Saint-Petersburg Society of Naval Pilots”, an autonomous non-for-profit organisation, by issuing orders, oral instructions, by conducting special examinations so as to illegally provide preferences to Federal State Unitary Enterprise ‘Rosmorport’, a public pilot service, which has in its turn violated antimonopoly laws by delivering to ship owners, who had entered into contracts with the Saint-Petersburg Society of Naval Pilots, letters carrying false information denigrating its competitor so as to press it from sea craft pilotage market.

79. FAS Russia issued orders to:

- Saint-Petersburg sea commercial port master, urging him to stop violation of art. 7 of *Competition* Law manifesting itself in unreasonable prevention of activities of Saint-Petersburg Society of Naval Pilots in the pilot services market, infringement upon its interests, unjustified provision of preferences to Rosmorport, thereby giving it a competitive edge in relation to the autonomous non-for-profit organisation, as well as to revise the Decisions binding for Saint-Petersburg sea commercial port and the respective instruction regulating the procedure of reception of pilot service applications securing equal terms of competition for public and non-government pilot organisations;
- FSUE ‘Rosmorport’, urging it to stop violation of item 1, art. 10 of *Competition* Law by withdrawing the letters, mailed to Maersk Sealand (Denmark) and Koninklijke Behermaatschapij Burger B.V. (the Netherlands) Companies, Bm H. Muller, plc, Maersk, CEC, Aster Plus Company and other ship owners and agents, denigrating Saint-Petersburg Society of Naval Pilots”, an autonomous non-for-profit organisation

80. The commenced proceedings are very important for international shipping companies, shipping Russian export/import freight, for, according to Maersk Sealand, competition between pilot organisations, exercising compulsory pilotage of ships, permits shipping companies to chose an organisation, most advanced technologically, and skilled pilots, as well as to keep prices low.

81. ***Agreement on restricting access to market.*** Buryat Department of FAS Russia investigated a case of violation by Ulan-Ude Administration of art. 8 of *Competition and Restriction of Monopoly Activities in Commodity Markets* RSFSR Law involving conclusion of an agreement as of 8<sup>th</sup> February 2005 on the procedure of interaction between government of Buryat Republic, Ulan-Ude city Administration and TGK-14, plc in the area of heat supply to the city of Ulan-Ude. Under the agreement, Ulan-Ude city Administration would transfer all municipal heat networks and municipal boiler-houses to TGK-14 without holding tenders for renting the municipal properties, which could result in elimination of competition and infringement of interests of business entities running in heat supply market. Arrangement of the relevant tenders is stipulated by Ulan-Ude Administration resolution No. 365 as of 11<sup>th</sup> July 2003. The Department’s commission decided to recognise violation of *Competition and Restriction of Monopoly Activities in Commodity Markets* RSFSR Law and ordered Ulan-Ude city Administration to drop the items restricting access of other business entities to heat supply market from the agreement. The order was executed.

82. ***Market sharing agreement.*** FAS Russia Kamchatka Department instituted proceedings, based on violations of art. 8 of *Competition and Restriction of Monopoly Activities in Commodity Markets* RSFSR Law, against Kamchatka oblast Administration and Veteran-Avia, Ltd., which had entered into agreement on “Interaction concerning air transportation issues” between Committee on fuel and energy complex,

transport, communication and housing sector and Veteran-Avia Company Limited. Under this agreement, the Committee appointed Veteran-Avia regional carrier in Kamchatka oblast, which was certified by a permanent certificate. The agreement resulted in market sharing by a range of service providers and customers, provision of unambiguous advantages to an individual business entity, restriction of competition among business entities in this area of activities. Prior to a ruling with respect to this case, Kamchatka oblast Administration furnished evidence of voluntary elimination of antimonopoly law infringement to Antimonopoly Department Commission, hence, the proceedings were terminated.

83. **Provision of exclusive rights.** FAS Russia Krasnoyarsk Department instituted proceedings against Administration of Taimyr (Dolgano-Nenetsk) Autonomous Area and PH Taimyrsky Company Limited on the basis of violations of article 8 of *Competition and Restriction of Monopoly Activities in Commodity Markets* RSFSR Law. The infringement took form of an agreement No. 06-38 as of 21st June 2005, struck by the above entities, which provided the Company with exclusive rights for purchasing farm and fishing products by way of establishing a centralised procurement system in the Area; for running this system; setting up a network of purchasing centers and exercising processing, sales and procurement of products of various national economic sectors at uniform purchasing prices advised by the Area Administration. The latter, on its turn, committed itself to providing financial support to the Company with a view to exercising manufacture and sales of relevant products. The case was terminated due to the voluntary elimination of the infringement, and the above agreement was dissolved.

84. **Disregard of tender antimonopoly requirements.** FAS Russia Ulianovsk Department brought an action, on the basis of violation of item 1 of art. 9 of *Competition and Restriction of Monopoly Activities in Commodity Markets* Law, against OGU Ulianovskoblstroizakazchik, which invited bids to an open tender for design and survey work relative to a variety of projects in Bogdashkino village, Cherdaklinsky district, Ulianovsk oblast. Section 1 of tender documents invited all legal entities to bidding. Section 5 of tender documents reads that, given fair competition of bidders, the customer reserves the right to give preference to local organisations, which has unreasonably limited access to the tender for non-legal entities, and provided advantages to local organisations. OGU Ulianovskoblstroizakazchik was ordered to put an end to law abuses. The order was executed.

85. **Regulations and actions of government bodies aimed at restricting competition in financial services market.** FAS Russia Karelia Department brought an action against Petrozavodsk city Administration based on violation of article 12 of Protection of Competition in Financial Services Market Federal Law. The Provisions envisaged in municipal property lease contract, approved by Petrozavodsk Administration Head resolution No. 1596 as of 22nd April 1998 “On endorsement of new wording of a model municipal property lease contract in the city of Petrozavodsk” and Administration Head resolution No. 888 as of 6<sup>th</sup> April 2004 “On approval of the list of measures for insuring municipal real estate projects” limit lessees’ independence in terms of selection of insurance company for insuring the leased municipal premises at the expense of own funds, and do not institute restrictions in case of choosing an insurance company for insuring similar premises at the expense of public funds. Hence, unreasonably favourable business conditions created for insurance institutions selected through tenders, and infringement of interests of the insurers, which failed to bid at the tenders.

86. FAS Russia Karelia Department Commission ordered Petrozavodsk Administration to eliminate violations of article 12, which was duly executed by way of:

- Recognising Petrozavodsk Head decision No. 1596 as of 22<sup>nd</sup> April 1998 as invalid, or eliminating the following provision from the agreement: “insure the leased premises, on the instruction of the lessor, in one of the most reliable insurance companies pursuant to Annex 2”, which prevents the lessee, insuring the leased municipal property at its own expense,

from choosing an insurer, having a permit for the relevant type of business and providing the given type of insurance services, on its own

- Inserting in item 2 of Petrozavodsk Head decision No.888 as of 6<sup>th</sup> April 2004 an addition on that insurance of municipal real estate projects by municipal institutions shall be exercised at the expense of municipal budget.

## **2.4 Actions towards prevention of unfair competition**

### *2.4.1 Brief description of activities*

87. In 2005, antimonopoly bodies stepped up their efforts further in terms of preventing unfair competition in commodity and financial markets. Altogether, 1,091 facts were subject to investigation proceedings. 416 violations were identified, 365 proceedings were instituted

88. 599 applications concerned with unfair competition in commodity markets (article 10 of *Competition and Restriction of Monopoly Activities in Commodity Markets* RSFSR Law) were reviewed. The biggest number of applications (41%) concerned sales, exchange and other turnover of goods along with an illegal use of intellectual property and means of individualisation of the legal entity, products, performance of work, provision of services equated to them. The quantity of applications concerning dissemination of false information increased too. 302 proceedings were instituted, of which 52 were initiated by antimonopoly bodies. Proceedings with respect to 113 cases were terminated thanks to infringement elimination in the course of the relevant issue investigation (68) and because the infringement was not confirmed (45). As for the continued proceedings, 189 decisions recognised the violations and 152 orders were issued. Twenty four decisions were appealed against. The court found two decisions invalid.

89. The practical prevention of unfair competition in financial services market (article 15 of *Protection of Competition in Financial Services Market* Federal Law) is markedly inferior to that in commodity markets. Put to investigation were 74 applications. Most applications (70%) concerned unfair competition in insurance services market. 63 proceedings were instituted, of which 32 were initiated by antimonopoly bodies. Proceedings with respect to 31 cases were terminated thanks to infringement elimination in the course of the relevant issue investigation (25) and because the infringement was not confirmed (6). As for the continued proceedings, 32 rulings recognised the violations and 19 orders were issued, which have been or are being executed.

### *2.4.2 Description of most significant cases*

90. ***Illegitimate acquisition and use of exclusive rights.*** Since 3<sup>rd</sup> January 2002 Rust Incorporated, CEC, has been selling Russki Standard PLATINUM vodka. GB Holding Vin, CEC, filed an application for a trademark ПЛАТИНИУМ / PLATINUM on 28<sup>th</sup> May 2002 and received certificate No. 238,373 on 13<sup>th</sup> February 2003 including that with respect to the 33<sup>rd</sup> class of MKTU: vodka. Guided by articles 25 and 26 of *Trademarks, Service Marks and Names of Places of Product Origination* RF Law No. 3520-1 as of 23<sup>rd</sup> September 1992, GB Holding Vin suggested, in its letter as of 11<sup>th</sup> May 2004, to consider an issue of concession of the above trademark or enter into agreement on the use of the given trademark at a rate of \$0.25, with regard to VAT, per one litre of liquor. Proceeding from item 1 of art. 4 of Trademark Law (trademark owner shall have an exclusive right to use and dispose of trademark and prohibit its use by other entities) GB Holding Vin filed, in May 2004, a writ with Arbitration Tribunal of the city of Moscow on Rust Incorporated infringement of the exclusive right to ПЛАТИНИУМ / PLATINUM trademark owned by GB Holding Vin in line with certificate No.238373. In its writ, filed with Moscow Arbitration, GB Holding Vin estimated its losses at R17,532,763. Rust Incorporated appealed to FAS Russia against illegitimate actions of GB Holding Vin. FAS Russia Commission issued a ruling recognising GB Holding

Vin actions as violating item 2, art. 10 of *Competition and Restriction of Monopoly Activities in Commodity Markets* RSFSR Law. Federal Arbitration Tribunal of Moscow area confirmed, with its decision as of 2<sup>nd</sup> December 2005, lawfulness of FAS Russia decision.

91. ***Dissemination of inaccurate information.*** In 2005, FAS Russia brought an action against Sberbank Russia based on violations of article 15 of *Protection of Competition in Financial Services Market* Federal Law. The violation involved spreading of inaccurate information, potentially damaging to other financial institutions, relative to the necessity for military pensioners to open a deposit account with or have a plastic card of Sberbank Russia for receiving their pension allowances. FAS Russia Commission made a decision to order Sberbank Russia to put an end to the above violation of antimonopoly law and remove its consequences.

92. Sberbank Russia appealed against FAS Russia decision and order to court. On 17<sup>th</sup> July 2006, Court of Appeal of the Arbitration Tribunal confirmed lawfulness and reasonability of FAS Russia decision and order. Now, according to the antimonopoly body order, Sberbank Russia has to send letters to military pensioners, to whom it transferred the pension amounts allocated from federal budget to deposit accounts opened with other lending institutions, informing them of no need for opening accounts with or having plastic cards of Sberbank Russia for receiving their pension allowances, and of the possibility of transferring pension amounts allocated from federal budget to deposit accounts opened with other lending institutions upon request of military pensioners.

## 2.5 Statistics

93. The following data describe the 2005 activities involved with identification and prevention of *Competition and Restriction of Monopoly Activities in Commodity Markets* RSFSR Law violations:

| Name of articles of Competition and Restriction of Monopoly Activities in Commodity Markets RSFSR Law   | Investigated facts of law violations * | Q-ty of instituted legal proceedings | Q-ty of violations identified through case investigations |
|---|--|--------------------------------------|---|
| Total   | 9 410                                  | 3 287                                | 2 902   |
| Including:  |  |                                      |   |
| Art. 5 (domination abuse)   | 3 761                                  | 1 026                                | 864   |
| Art. 6 (agreements and concerted actions restricting competition)   | 117                                    | 64                                   | 53  |
| Articles 7, 8, 9 (regulations, actions, agreements and concerted actions of executive authorities, local governments restricting competition) | 3 922                                  | 1 168                                | 1 037   |
| Art. 10 (unfair competition)  | 711                                    | 302                                  | 257   |
| Articles 17, 18 (control of economic concentration in commodity markets)  | 389                                    | 224                                  | 207   |

The following data describe the 2005 activities involved with identification and prevention of *Protection of Competition in Financial Services Markets* Federal Law violations:

| Name of articles of Protection of Competition in Financial Services Markets Federal Law  | Investigated facts of law violations * | Q-ty of instituted legal proceedings | Q-ty of violations identified through case investigations |
|--|--|--------------------------------------|---|
| Total  | 1 543                                  | 1 168                                | 1 121   |
| Including:   |  |                                      |   |
| Art. 5 (domination abuse)  | 30                                     | 3                                    | 3   |
| Art. 6 (agreements and concerted actions of financial institutions restricting competition)  | 102                                    | 41                                   | 32  |
| Articles 12, 13, 14 (regulations, actions, agreements and concerted actions of Central bank, executive authorities, local governments restricting competition) | 982                                    | 766                                  | 736   |
| Art. 15 (unfair competition)   | 113                                    | 63                                   | 57  |
| Articles 8, 11, 17, 19 (control of economic concentration in financial services markets)   | 236                                    | 215                                  | 214   |

### **3. Role of competition agencies in formulating and implementing other policies**

#### **3.1 Priority national projects**

##### *3.1.1 Public housing area*

94. FAS Russia exercises, along the lines of a priority national project “Affordable and Comfortable Housing to Russia’s Citizens”, antimonopoly control of the procedure of land site provision for housing construction out of the stock of land in public or municipal ownership. The purpose of this control is to secure realisation of articles 30.1, 30.2, 38.1, 38.2 of Land Code of the Russian Federation, put in force on 1<sup>st</sup> October 2005, which set forth that land sites for housing construction shall be auctioned off only, which will promote transparency and secure an equal access of business entities to land sites for housing construction.

95. Collection of information on the provision of land sites for housing construction in the 4<sup>th</sup> quarter of 2005 and 1<sup>st</sup> quarter of 2006 has been completed, just as elicitation of data and review of laws in subjects of the Russian Federation and municipality acts regulating provision of land sites for housing construction.

96. The investigation revealed that executive authorities in subjects of the Russian Federation and local governments provided in the 4<sup>th</sup> quarter of 2005 184 construction sites without holding auctions and with violations of antimonopoly and land laws. Twenty violations were remedied by government bodies prior to institution of proceedings, and 96 proceedings were instituted. In 28 cases, antimonopoly law infringements were eliminated prior to issuing orders, and with respect to the remainder 17 orders were issued, 8 of which were executed and the rest are not yet mature. The materials in relation to 3,405 cases of land site provision with violation of RF laws have been passed over to offices of public prosecutor, of these 3,386 cases are related to individual housing construction. Also, the investigation discovered 74 cases of inconsistency between antimonopoly laws and local legal framework regulating provision of construction sites. Of these, 22 violations have been remedied voluntarily prior to institution of proceedings, and with

respect to 25 cases proceedings were instituted, of which 8 violations were eliminated with no need for issuing an order, in 14 cases orders were issued, of which 8 were executed.

### *3.1.2 Health and education sectors*

97. A decision was made to set up, under FAS Russia, advisory panels on the development of competitive environments in health and education sectors. Several sectors supported the FAS Russia decision. Provisions on the above advisory panels and suggestions on the panel composition are being drafted now.

### *3.2 Administrative reform*

98. RF government decision No. 681-r as of 21<sup>st</sup> May 2004 incorporated Artemiev I.Yu., Head of Federal Antimonopoly Service, in the Government Administrative Reform Commission. In 2005, Federal Antimonopoly Service (FAS Russia), represented by its head and the relevant professionals, was closely involved with administrative reform in the Russian Federation. Most essential contribution was made to drafting Administrative Reform Concept and administrative reform Action Plan for 2006-2008, which were endorsed by RF government decision No. 1789-r as of 25<sup>th</sup> October 2005. The action plan deals with issues of results-based management, standardisation and regulation, optimisation of executive authority functions, and prevention of corruption, more effective interaction of executive authorities and society, modernisation of information support of executive authorities and administrative reform.

### *3.3 Investigation of compliance with Placement of Orders for Delivery of Goods, Execution of Works and Provision of Services for Public and Municipal Needs Federal Law No. 94-FZ as of 21<sup>st</sup> June 2005*

99. In implementing its antimonopoly control authorities relative to order placement, FAS Russia forwarded letters to state and municipal customers informing them of the necessity of observing order placement law and eliminating the infringements made while placing orders, starting from January 2006

100. FAS Russia compiled and mailed the corresponding letters to Representatives Plenipotentiary of the President of the Russian Federation in Federal Areas and heads of subjects of the Russian Federation, as well as to federal executive authorities and territorial bodies of FAS Russia. The latter's order No. 45 as of 1<sup>st</sup> March 2006 established order placement supervisory commissions with RF MEDT representation

101. FAS Russia along with RF MEDT is closely involved in drafting guidelines of procurement for state needs – drafting the subsequent resolutions of government of the Russian Federation:

- on approval of the lists of goods, works, services, placement of orders for the supply, execution and provision of which is exercised through auctions;
- on goods, works, services and limit prices thereof (lot price) when placing orders with small business entities;
- on approval of Procedure of keeping abusive supplier register, requirements to hard- and software, means of linguistic, legal and organisational support of keeping abusive supplier register.

102. To perform its control functions, FAS Russia set up and launched an Order Placement Supervisory Commission, charged with handling grievances against open order placement procedures, venting opportunities for order placement with a single supplier (actor, contractor), and a Closed Bidding

Commission responsible for holding negotiated bidding and dealing with grievances of the respective bidders

103. Since FAS Russia was charged with the function of order placement control it handled 266 complaints on action (inaction) of the customer, authorised body, special organisation, tender, auction and price commission.

### **3.4 *Input to foreign trade regulation***

104. In 2005, FAS Russia continued its involvement in the activities of Interdepartmental Commission on protective measures in foreign trade and customs policy charged with protection of national producers and adjustment of tariff and non-tariff regulation measures applied to foreign economic policy.

105. FAS Russia conducted reviews for assessing consequences of the above measures application from the standpoint of retaining and maintaining an adequate competitive environment in Russia's domestic market, promoting competitiveness of Russian goods, along with prevention of unreasonable protectionism and safeguarding consumer interests.

106. In 2005, FAS Russia kept counselling on issues of abolishing import duties on the types of manufacturing equipment having no national analogues (for furniture, light, textile, electrical engineering and other industries), on raw materials for the manufacture of industrial goods not produced in the Russian Federation (raw materials containing germanium, natural and depleted uranium), on agricultural raw materials not produced and growing in the Russian Federation (tea, hide and nuts), etc.

## **4. Competition agency resources**

### **4.1 *Annual budget***

107. In 2005, competition agency (FAS Russia) annual budget amounted to R481,866,200, i.e. 14,172,500 Euros (of which central office accounted for R165,983,900, i.e. 4,881,880 Euros and territorial bodies for R315,882,300, i.e. 9,290,660 Euros including cash allowance to management personnel and office maintenance costs

### **4.2 *Human resources***

108. FAS Russia actual payroll as of 1<sup>st</sup> January 2006 stood at 1,761 staffs (340 employees at central office and 1,421 employees in territorial bodies)

109. Some 92.65% of central office employees have higher educational background; of these, 49.41% have economic and legal diplomas, 42 employees hold two and more higher education diplomas, and 27 employees hold academic degrees

110. As for territorial bodies, 91.4% of their employees have higher educational background, of which 70% have economic and legal diplomas; 208 employees hold two and more higher education diplomas, 56 employees hold academic degrees. FAS Russia central office is staffed for 96.57%, and territorial bodies for 96.3%.

111. FAS Russia' website – [www.fas.gov.ru](http://www.fas.gov.ru)

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- Project “Guidelines for public control by antimonopoly bodies of compliance with antimonopoly laws, including identification of competition restricting agreements and concerted actions, in transport sector” Contract No. 8 as of 5<sup>th</sup> July 2005, National Association of Transport Workers
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