

Annual Report on Competition Policy Developments in the Russian Federation

21-23 June 2017

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1. Changes to competition laws and policies, proposed or adopted

1.1. Summary of new legal provisions of competition law and related legislation

1.1.1. Antimonopoly law

1. On January 5, 2016, the Federal Law No. 275-FZ of 05.10.2015 "On Amendments to the Federal Law "On Protection of Competition" and certain legislative acts of the Russian Federation" (the "fourth antimonopoly package") entered into force. This law provides for a set of measures aimed at liberalising and improving the antimonopoly legislation of the Russian Federation in accordance with the best international practices and OECD Recommendations.

2. First, the law establishes measures aimed at improving the quality of economic analysis used and conducted by the competition authority, as the "fourth antimonopoly package" introduced the provision according to which the antimonopoly authority can analyse the state of competition in the market only within a volume necessary for making a decision on the presence or absence of a violation. In addition, the law clarified the procedure for assessing dominance, as it abolished the possibility to recognise the position of an economic entity as dominant if its market share is less than 35 percent (with the exception of cases of collective dominance).

3. The "fourth antimonopoly package" also modified the rules of review of economic concentration's transactions by removing the notification control for transactions of natural monopoly entities. In addition, the register of economic entities with a market share of over 35 percent kept by the FAS Russia was abolished.

4. The adoption of the "fourth antimonopoly package" liberalised the Russian antimonopoly legislation also by expanding the scope of application of the warning mechanism, by introducing the possibility to apply it to the actions of authorities, cases of abusing dominant positions through setting different prices and creating discriminatory conditions, as well as to unfair competition.

5. In addition, the "fourth antimonopoly package" envisaged a number of additions and clarifications, in particular:

- possibility of sending a warning by the antimonopoly body in relation to officials of various levels of government;
- possibility to recognise agreements concluded between economic entities - buyers in a commodity market as cartels;
- introduction of a preliminary consent of the antimonopoly authority in cases of agreements on joint activities between economic entities;
- introduction of the institute of preliminary conclusion on circumstances of the commission of the antimonopoly authority;
- provision of the right to establish rules for non-discriminatory access to goods in highly concentrated markets by the Government of the Russian Federation in case of antimonopoly violations.

6. In July 2016 the Federal Law No. 264-FZ dated 03.07.2016 "On Amendments to the Federal Law "On Protection of Competition" and certain legislative acts of the Russian Federation", developed by the FAS Russia, entered into force. The law

introduced immunities for recognising the position of economic entities as dominant, if their earnings received due to selling goods during the past year do not exceed 400 million rubles (6.5 million euros). In addition, for such economic entities, immunities were provided in the application of the provisions of the Federal Law No. 381-FZ of December 28, 2009, “On Basics of State Regulation of Trade Activities in the Russian Federation”, in the part relating to the antimonopoly rules (creation of discriminatory conditions, imposition of contract terms) and acquisition and lease of additional retail space.

7. The adoption of the mentioned laws resulted in a significant reduction in the number of cases brought by the antimonopoly body annually (this indicator decreased almost twofold, from 9 755 and 9 092 cases initiated in 2014 and 2015 respectively, to just 4 040 cases in 2016). In addition, the frequency of using the antimonopoly law instrument allowing to eliminate violations prior to commencement of cases — a warning — has more than doubled (from 1 928 and 2 362 warnings applied in 2014 and 2015 respectively, to as much as 5 486 in 2016). In sum, this allowed to reduce the burden not only on the Russian antimonopoly authority in order to focus its activity on the most significant violations for market competition, but also on the companies that conduct their activities in Russia.

1.1.2. Legislation in the electricity sector

8. On December 24, 2016, the Government of the Russian Federation adopted Resolution No. 1476, which establishes unified standardised tariff rates for technological connection for all territorial grid organisations.

9. On December 28, 2016 Federal Law No. 508-FZ “On Amendments to the Federal Law “On Electric Power Industry” was adopted, aimed at a gradual reduction in prices in the Far Eastern Federal District to the average Russian level.

1.1.3. Legislation in trade

10. On July 15, 2016 the Federal Law of 03.07.2016 No. 273-FZ entered into force, amending the Law on Trade. The amendments limited the maximum amount of payments made by food suppliers to trade networks at the level of 5% of the purchase prices (previously this limit constituted 10%). In addition, the law also reduced the maximum allowable time for payment of food products by retail chains. The main idea of amendments to the law on trade is to protect the interests of suppliers and producers, prohibit discriminatory practices and establish fair relations between trade networks and producers.

1.1.4. Legislation in the food trade

11. Based on the fact that markets for the sale of baby food products are competitive, in 2016 the FAS Russia analysed the issue of price regulation (trade markups) for baby food products. Guided by the results of the analysis, on January 25, 2017, the Government of the Russian Federation adopted resolution No. 71, which abolished the right of executive authorities of the subjects of the Russian Federation to regulate prices for baby food.

1.1.5. Legislation in health care

12. In 2016, with the participation of the Federal Antimonopoly Service of the Russian Federation, the Federal Law No. 112-FZ of 26 April 2016 and No. 286-FZ of July 3, 2016 made amendments to the Federal Law “On Fundamentals of Health Care of Citizens in the Russian Federation”, aimed at centralising the procurement of essential medicines. In particular, the possibility to delegate the powers of the Russian Federation to the regional authorities to provide people with medicines for the treatment of a number of diseases, including malignant tumors, HIV infections, and drugs that the government included in the list of vital and essential drugs, was abolished.

1.2. Other relevant measures, including new guidelines

1.2.1. Methodological recommendations by the FAS Russia

13. In 2016, the Presidium of the FAS Russia issued the following methodological recommendations:

- “Definition of monopolistically high and monopolistically low commodity prices”¹;
- “Vertical agreements, including dealer agreements”²;
- “Proving prohibited agreements (including cartels) and concerted actions on commodity markets, including at bids”³;
- “Agreements in innovation and high-technology spheres”⁴;
- “Assessment of acceptability of ways of conducting business by entities with a dominant market position”⁵;
- “Proving and calculating damages caused by violation of the antimonopoly legislation”⁶;
- “Procedure of applying the Law on Protection of Competition with consideration of Rules of Technological Connection, Rules of Non-discriminatory Access, Rules of Connection and legislation on heat supply”⁷.

14. The purpose of the methodological recommendations issued by the Presidium of the FAS Russia is to unify law enforcement practices, including between the central office and territorial bodies, and to increase transparency of the activities of the FAS Russia.

1.2.2. Code of Good Practice in Pharmaceutical Industry

15. The Code of Good Practice in the Pharmaceutical Industry was developed by pharmaceutical companies and the Association of European Businesses with the

¹ <http://fas.gov.ru/documents/documentdetails.html?id=14264>

² <http://fas.gov.ru/documents/documentdetails.html?id=14265>

³ <http://fas.gov.ru/documents/documentdetails.html?id=14266>

⁴ <http://fas.gov.ru/documents/documentdetails.html?id=14267>

⁵ <http://fas.gov.ru/documents/documentdetails.html?id=14268>

⁶ <http://fas.gov.ru/documents/documentdetails.html?id=14664>

⁷ <http://fas.gov.ru/documents/documentdetails.html?id=14935>

participation of the FAS Russia. The main goal of the Code is to organise self-regulation of pharmaceutical business in Russia on the basis of fair and bona fide rules of competitive interaction. The Code also clarifies the Russian antimonopoly legislation. At the moment, 13 large foreign pharmaceutical companies have joined the document.

1.3. Government proposals for new legislation

16. In 2016, the FAS Russia drafted a decree of the President of the Russian Federation “On main directions of state policy on developing competition” approving the **National Competition Development Plan** for 2017-2018. The Plan presents a single program document allowing the issuance of comprehensive systemic assignments in the field of competition to Russian authorities at all levels.

17. The document defines the following objectives of the state policy on competition development:

- improvement of consumer welfare;
- increase of economic efficiency and competitiveness of economic entities, stimulation of innovative activity;
- development of a multi-structural economy, reduction of social tensions, and maintenance of national security.

18. According to the document, it is expected that active promotion of competition will be a priority in the activities of the President, the Government and other authorities of the Russian Federation; it will be considered unacceptable to introduce or maintain restrictions creating discriminatory conditions for certain types of economic activities. Coordination of the implementation of the Plan will be entrusted to the Government of the Russian Federation.

19. In addition, in accordance with the Plan, the Government will implement of a number of measures, including:

- approving “roadmaps” for the development of competition in 2017-2018 in certain industries⁸ with the introduction of KPI (this assignment was given by the Prime Minister Dmitry Medvedev to 10 key Ministries (in agreement with the Ministry of Economic Development and the Federal Antimonopoly Service)⁹;
- approving the “road map” for the transition of natural monopolies into a competitive market;
- taking measures to increase the effectiveness of antimonopoly bodies;
- adopting normative acts for the creation of a unified procedure for implementing investment programs of natural monopolies and other regulated organisations.

20. The Plan also envisages the development of federal laws affecting the sale of property; public procurement and procurement by legal entities, including transfer of procurement activities to the electronic form; reduction in the number of state unitary

⁸ These industries include transport (including by land, air and sea); chemical industry; communication and information technologies; road construction; defense industry; utilities; oil and gas industry; electricity; agro-industrial complex; fisheries; health care; education; foreign trade.

⁹ Including the Ministry of Industry and Trade, Ministry of Transport, Ministry of Communications, Ministry of Construction, Ministry of Energy, Ministry of Agriculture, Ministry of Natural Resources, Ministry of Labor, Ministry of Education and Science, Ministry of Health.

enterprises; regulation of natural monopolies; antimonopoly compliance; basis of state regulation of tariffs and prices.

21. In 2015, due to the abolition of the Federal Tariff Service by the President of the Russian Federation, the FAS Russia obtained tariff regulation functions. The previously created normative acts regulating this industry were characterised by the absence of unified principles of tariff regulation and system for normalising costs of natural monopolies. In addition, the existing legal regulation maintained the possibility of price discrimination and application of the principle "tariffs from costs", verification of which is difficult to implement.

22. Based on the need to address these problems, the FAS Russia is currently preparing a **draft Law on State Regulation of Prices (Tariffs)**, which includes the following:

- exhaustive list of regulated industries and activities;
- provision of stable and non-discriminatory conditions for business;
- establishment of tariffs based on their economic feasibility;
- long-term period for setting tariffs;
- conditions and criteria for abandoning state regulation of prices / tariffs;
- openness of activities of regulated entities and regulatory bodies, etc.

2. Enforcement of competition law and policy

23. In 2016, the FAS Russia received 44 587 complaints on violation of the Law on Protection of Competition, of which 31 325 concerned monopolistic activities (29 935 - abuses of dominant position and 1 390 - agreements or concerted actions, 3 623 - unfair competition), 6 217 - restriction of competition by public authorities.

24. In 2016, the FAS Russia initiated 4 040 cases, which, compared to 9 092 cases brought in 2015, shows a decrease of more than 55%. The number of cases brought under the provisions on dominance in 2016 amounted to 1 340 against 3 059 cases initiated in 2015, which marks a decrease of more than 56%. Under the provisions on unfair competition, the FAS Russia initiated 453 cases in 2016, while in 2015 – 1 113 (a reduction of about 60%). The most significant decrease concerns the number of cases of violations by public authorities: in 2016, the FAS Russia initiated 736 cases, in 2015 – 3 109 cases (a reduction of more than 76%).

25. These data reflect a change in the focus of the FAS Russia' activities: resources' concentration on the most serious violations of the antimonopoly legislation, including by transnational corporations, and commitment to preventing violations.

2.1. Actions against agreements and concerted actions

2.1.1. Summary of activities of competition authorities and courts

26. In 2016, the antimonopoly authorities received 1 390 complaints concerning anticompetitive agreements (concerted actions) of economic entities that restrict competition. 360 cases were initiated, in 284 cases decisions recognising violations were made, and 378 determinations were issued. 64 decisions were appealed at courts, 8 of them were recognised as fully lawful, one decision was declared partially invalid; the rest remained under consideration.

27. In accordance with the leniency program, in 2016 the FAS Russia received 167 applications on participation in cartels; as a result, 89 persons were released from liability.

2.1.2. Description of significant cases

Cartel of bread producers

28. In 2016, the Kursk Regional Office of the FAS Russia recognised collectively dominant Kurskhhleb JSC, Fresh Bread Project JSC and Zheleznogorsky Hlebzavod CJSC as guilty of implementing the agreement to impede access to the Kursk Oblast market by the Belgorod Holding United Bakery, whose products compete with the Kursk bread producers. Three bakeries in one day without any objective reasons collectively stopped the delivery of bread to the trade chain "Line" (the second largest trade chain in the region).

29. Production of these bakeries constitutes more than 90% of bread sold by the chain. Such actions of bakeries became a "reaction" to the start of supplies to the «Line» shops by the Belgorod bread producer. In all other trade chains, bread was delivered on schedule. Deliveries of bread to "Line" were restarted only after coordinated actions undertaken by the antimonopoly body and the administration of the Kursk region.

Coordination of economic activities by Ford Sollers

30. According to the results of the FAS Russia's investigation, Ford Sollers coordinated economic activities of official dealers in the territory of the Russian Federation by sending newsletters on the price of services for maintaining cars. These activities of the company, prohibited under Part 5 Article 11 of the Law on Protection of Competition («prohibition of coordination of economic activities of economic entities»), led to setting and maintaining prices. As a result, "Ford Sollers Holding" Ltd. was fined 2.5 million rubles (about 40 300 euros).

31. During the consideration of the case, the company voluntarily eliminated the violation, in particular, by posting information about the possibility of dealers to determine prices for the cars' maintenance independently.

Collusion between Pharm SKD Ltd and Novopharm JSC at public bids

32. On December 12, 2016, the FAS Russia revealed a cartel between Pharm SKD Ltd and Novopharm JSC at state bids for the supply of medicines, medical products, disinfection products and therapeutic food for the purpose of maintaining prices, which violates Part 1 Article 11 of the Law on Protection of Competition. These companies are

among the largest suppliers of drugs for treatment of HIV, infectious hepatitis B and C and cancer.

33. The reason for initiating the case was the application filed by the Fund for Monitoring Public Procurement and Property Auction “For Fair Procurement”. To disclose the collusion, the FAS Russia carried out an investigation and a dawn raid of Pharm SKD Ltd.

34. The FAS Russia established that the collusion was implemented at more than 400 open electronic auctions, amounting in total for more than 400 million rubles (6.5 million euros). The case’s materials were transferred to the Ministry of Internal Affairs, in order to consider the initiation of a criminal case under Article 178 of the Criminal Code.

Collusion between suppliers of clothing for Ministry of Internal Affairs, Federal Security Service and Federal Customs Service of the Russian Federation

35. In November 2016, the FAS Russia issued a decision on the case of violation of Part 1 Article 11 of the Law on Protection of Competition at bids for the supply of clothing for the Ministry of Internal Affairs, Federal Security Service and Federal Customs Service. The cartel has become the most massive in the history of the Russian competition law enforcement, with 90 companies found guilty.

36. The FAS Russia revealed that, under conditions of collusion, 18 open electronic auctions totaling for more than 3.5 billion rubles (56.5 million euros) were held. Acting as a cartel, the participants developed a special system of “quotas” calculated based on the initial price of contracts and proportionately to the number of participants. It was possible to receive, exchange or accumulate those “quotas”.

37. The decision and materials on the case were sent to the Ministry of Internal Affairs, in order to decide upon the initiation of a criminal case, in accordance with the Criminal Code of the Russian Federation.

Price coordination by Apple

38. In 2016, a case was brought against the group of companies Apple on the grounds of violation of Part 5 Article 11 (“coordination of the economic activity of entities”) of the Law on Protection of Competition. The case was initiated due to a citizen’s complaint filed in October 2015 on setting the same prices for new Apple iPhone 6s and iPhone 6s Plus smartphones by 16 resellers.

39. The investigation conducted by the FAS Russia in 2016 with the use of information obtained from resellers showed that the majority of resellers fixed and maintained the same prices for Apple iPhone 5s, iPhone 5c, iPhone 6, iPhone 6 Plus, iPhone 6s and iPhone 6s Plus smartphones for about 3 months. At the same time, the prices coincided with those from press releases and price lists published and distributed by Apple Rus from e-mail addresses with the domain name apple.com.

2.2. Actions against abuses of dominant positions

2.2.1. Summary of activities of competition authorities and courts

40. In 2016, the Russian antimonopoly authority received 29,935 applications related to the abuse of a dominant position by economic entities. 1 340 cases were initiated, of which 627 were terminated as violations were not confirmed. For the remaining cases,

713 decisions recognising violations were made, and 490 determinations were issued. 316 decisions were appealed at court, where 99 decisions were declared lawful, 6 were completely invalidated, with the rest pending.

2.2.2. Description of significant cases

Establishment of a monopolistically high price by Chimprom

41. In March 2016, the FAS Russia recognized that Chimprom PJSC violated Part 1 Article 10 of the Law on Protection of Competition by establishing and maintaining a monopolistically high price for ETS-40¹⁰.

42. The notification of KAMAZ PJSC on price increase served as grounds for initiating the case. The market analysis revealed the dominant position of Chimprom in the market of ETS-40 in Russia with the share of more than 50%. Chimprom tried to prove that its accounting policy complied with the local industry rules for calculating production costs, but the FAS Russia found that the actual costs of the company exceeded the calculated ones by 77% and 14% depending on areas, which proved the unjustified increase in prices.

43. The FAS Russia imposed an administrative fine of more than 7 million rubles on Chimprom and issued the Determination requiring to cease the violation and calculate the company's expenses in accordance with the approved regulations.

Establishment of monopolistically high prices by Primorsky Commercial Port

44. In November 2016, the FAS Russia established that Primorsk Commercial Port Ltd. violated Part 1 Article 10 of the Law on Protection of Competition by setting and maintaining a monopolistically high price for oil transshipment services.

45. The FAS Russia issued the Determination to the company in order to cancel the company's decision of 2015 fixing an unjustified tariff increase and to install tariffs at the level of 2014 taking into account the inflation rate, as well as to inform all counterparties about it. The FAS Russia also ordered the Port to issue an internal local act, according to which the tariff for oil transshipment services is denominated in Russian rubles only and, in addition, to inform the FAS about plans to increase the tariff for transshipment of oil 45 days before the planned increase.

46. As a result of the investigation, a decision was made to transfer the illegally obtained income to the federal budget.

Establishment of monopolistically high prices by Aeroflot

47. In April 2016, after receiving a number of complaints from consumers, the Tatarstan Regional Office of the FAS Russia found Aeroflot guilty of violating Part 1 Article 10 of the Law on Protection of Competition by establishing and maintaining a monopolistically high price for regular passenger transportation by air on the routes Kazan-Moscow and Moscow-Kazan. During the case review, the company voluntarily

¹⁰ ETS-40 is an indispensable element used as a binder in the foundry industry and metallurgy, as an impregnating compound for filter fabrics in the textile industry, as well as in construction, in the glass, ceramic and paint and varnish industry.

eliminated the violation, including by reducing tariffs in economic class and by opening cheaper sub-classes for tickets.

48. For committing the violation, an administrative fine of 300 000 rubles (about 4 840 euros) was imposed on the airline in May 2016.

Creation of discriminatory conditions by Golden Meadows JCS

49. In May 2016, the Tyumen territorial division of the FAS Russia found guilty Golden Meadows JCS, which is one of the largest dairy producers in the Urals and Western Siberia. The company violated the antimonopoly legislation in the market of raw milk in the Tyumen region by creating discriminatory conditions for individual suppliers.

50. While holding a dominant position in the oligopsony market of raw milk as a buyer, Golden Meadows JCS created discriminatory rules for the purchase of raw milk for suppliers.

51. The FAS Russia issued the Determination obliging the company to develop and approve the procedure for the formation of purchase prices on non-discriminatory terms, by establishing a single base price for 1 kg of raw milk and adjustment factors that may objectively affect the price of milk purchases. The FAS Russia also required to publish the procedure on the company's official website.

2.3. Mergers and acquisitions

2.3.1. Summary of activities

52. In 2016, the FAS Russia reviewed 1 379 pre-merger notifications and 83 post-merger notifications, out of which 1 441 were considered or satisfied (including with remedies for 39 notifications). The antimonopoly body prohibited 21 transactions. For 100 notifications, review in Phase II was initiated.

2.3.2. Description of significant cases

Acquisition of Bashneft by Rosneft

53. In 2016, the Government of Russia approved the acquisition of NK Rosneft PJSC by another large Russian oil company, ANK Bashneft PJSC. The FAS Russia reviewed the notification of Rosneft and decided to satisfy the transaction with the simultaneous issuance of the Determination to Rosneft with structural and behavioral remedies, including divestiture of refueling stations within two years in those regions where the total share of Rosneft and Bashneft in the retail markets for motor fuel will exceed 50%.

54. In addition, the FAS Russia ordered Rosneft to regularly and uniformly sell its petroleum products on the Saint-Petersburg International Mercantile Exchange, as well as develop and submit for approval amendments to its trade policy for the development of wholesale trade in petroleum products to the FAS Russia, taking into account the criteria of transparency and goods' availability for buyers. According to the Determination, it is necessary to ensure the publicity and accessibility of information on the pricing procedure and respect the prohibition of economically and technologically unjustified refusals to entering into contracts with buyers in the company's trade policy.

Acquisition of Biosynthesis by Ranbaxy

55. In December 2016, the FAS approved the notification of Ranbaxy, a subsidiary of the Indian company Sun Pharmaceutical Industries, to acquire 100% of Biosynthesis OJSC, while imposing a number of conditions. According to the FAS Russia's Determination, Ranbaxy must fulfill all the contracts previously concluded by Biosynthesis with counterparties, and should not reduce the production and sale of medicines, unless this is an economically or technologically sound measure.

56. In addition, the company must develop and publish on its official website a document regulating the interaction of the company Ranbaxy (Netherlands) B.V. with counterparties in order to ensure transparency of such interaction's terms.

2.4. Actions against unfair competition

2.4.1. Summary of activities of competition authorities and courts

57. In 2016, 3 623 complaints were considered on preventing and combating unfair competition (in accordance with Article 14 of the Law on Protection of Competition). 453 cases were initiated. In 288 cases, violations were recognised; the FAS Russia issued 211 determinations.

58. In total, 51 decisions taken by FAS Russia in 2016 were appealed at court. The court found 13 decisions to be fully legal, 1 decision was declared completely invalid, with the rest of decisions pending.

2.4.2. Description of significant cases

"Tambov Wolf" trade mark

59. In May 2015, the Tambov Regional Office of the FAS Russia recognized that actions of an individual entrepreneur in the retail market of souvenirs should be considered as unfair competition. The entrepreneur selling souvenirs acquired the trademark "Tambov Wolf", which is itself a symbol of the Tambov region and thus is popular among tourists. The entrepreneur sent claims to its competitors in order to stop the sale of goods with this designation and brought suits in courts in order to drive competitors of the market.

60. The registered "Tambov Wolf" trademark allowed courts to require other entities to pay compensations to the entrepreneur for the trademark's illegal use.

61. The decision of the Regional Office of the FAS Russia was supported by the Arbitration Court of the Tambov Region and the Nineteenth Arbitration Court of Appeal.

Misleading of buyers by Auchan Ltd.

62. In 2016, the Leningrad Oblast Regional Office of the FAS Russia upheld its decision and Determination in relation to Auchan Ltd at arbitration courts of three instances. The trade chain Auchan violated the competition law by placing misleading information (images of flags and coats of arms) about products over the trays with vegetables to indicate the country of their origin. The vegetables, however, had been produced in other regions than those whose flags and coats of arms were demonstrated.

63. During the consideration of the case, the FAS Russia's division surveyed representatives of regional authorities, regional agricultural producers and food retail

chains and received the general public opinion via the Internet portal “47News”. The trade network complied with the conditions imposed by the FAS Russia’s Regional Office. The case established the practice of proving anticompetitive relations at the intersection of the Law on Protection of Consumer Rights and Law on Advertising.

2.5. Actions against public authorities’ anticompetitive conduct

2.5.1. Summary of activities of competition authorities and courts

64. In accordance with Articles 15 and 16, the FAS Russia is entitled to control the actions of authorities, including anti-competitive acts and actions, as well as competition-restricting agreements and concerted actions. The FAS Russia also has the right to impose sanctions on the authorities for violating the competition law.

65. In 2016, the FAS Russia reviewed 5 780 complaints regarding acts and actions of authorities (Article 15). 498 cases were initiated. The FAS Russia made decisions to recognize violations in 336 cases and issued 213 determinations. 94 decisions were appealed at court. Of these, 16 decision were declared as lawful in full, 3 as completely invalid, the rest were pending.

66. In 2016, the FAS Russia received 437 complaints regarding anti-competitive agreements involving authorities (Article 16) and initiated 238 cases. The FAS Russia made a decision to recognize violations in 196 cases and issued 130 determinations. 56 decisions were appealed at court. The court found 8 decisions to be fully legal, 2 decisions were declared completely invalid. The rest of decisions remained under judicial review.

2.5.2. Description of significant cases

Collusion with Regional Office of Federal Service for Accreditation (RosAccreditation)

67. Participation of the Rostov Regional Office of the FAS Russia in the consideration of the criminal case against the former head of the RosAccreditation’s division in 2016 allowed to issue a criminal verdict in relation to the offender. Due to the activities of the FAS Russia’s Office, it was established that the RosAccreditation’s division, in collusion with Gukovstroy Ltd and an individual entrepreneur, artificially overestimated the initial maximum price at auctions and ensured the conclusion of contracts with the entities affiliated with the head of the RosAccreditation’s division who was the key link and coordinator of anticompetitive agreements.

Prohibiting re-registration of prices by Ministry of Health

68. In February 2016, the FAS Russia issued a warning to the Ministry of Health of the Russian Federation demanding to stop imposing unjustified obstacles to the business entities’ activities.

69. The Ministry of Health of Russia violated the competition law by refusing to introduce changes in the register on state registration of maximum selling prices of medicinal products when requested by producers. At the same time, selling medicines included in the list of essential and essential medicines without registering a maximum selling price for them is not allowed.

70. In April 2016, the Ministry of Health informed the FAS Russia on its compliance with the warning.

Restriction of competition by Ministry of Defense

71. In early 2016, the FAS Russia issued a warning to the Ministry of Defense of the Russian Federation requiring terminating actions that violate the antimonopoly legislation. The Ministry of Defense infringed law by instructing suppliers of products to obtain certification exclusively with the System of voluntary certification “ElectronSert”.

72. The Ministry complied with the warning within the prescribed period, recognising the invalidity of its instructions on the selection of certain systems of voluntary certification for the suppliers.

73. Taking into account the materials of the case, the relevant Ministries including the Ministry of Industry and Trade started developing legal acts that would allow ensuring transparency of the market for provision of voluntary certification services.

2.6. Summary of courts’ action

2.6.1. Statistics on courts activities

74. In 2016, 668 decisions of the FAS Russia in the field of competition protection were appealed at courts, of which 475 at the end of 2016 were pending. The court supported the decisions of the antimonopoly authority in 174 cases; 5 decisions were declared partially invalid. The need for full cancellation of the FAS Russia's decisions was recognized in 14 cases.

Court proceedings on Google vs. Yandex case

75. In 2016, the group of companies Google undertook numerous attempts to challenge the FAS Russia's decision issued in September 2015, in which Google was found guilty of violating Part 1 Article 10 of the Law on Protection of Competition ("abuse of dominant position"). Google violated the law by providing manufacturers of mobile devices with the app store Google Play for pre-installation on Android-run mobile devices subject to certain conditions, which led to restricting competition in the mobile applications’ market. The company received the FAS Russia’s Determination prohibiting the continuation of illegal actions and aimed at restoring competition in the affected markets. In August 2016, the FAS Russia, in accordance with the Russian competition legislation, imposed a fine of 438 million rubles (approximately 7 million euros) on Google for committing the violation.

76. Google tried to challenge the decision, Determination and penalty (including the penalty imposed later for failure to comply with the Determination) at court. A total of 39 hearings took place, including at the Arbitration Court of the Moscow District, the Moscow Arbitration Court, the Ninth Arbitration Court of Appeal and at the Supreme Court. The latter, in response to the cassation instance's decision establishing that the case must be submitted to a specialized Court on Intellectual Property Rights, confirmed that the case has to be considered at arbitration courts.

77. In March 2017, Google and the FAS Russia reached a settlement agreement. Google pleaded guilty, agreed to restore competition on the affected markers and to pay the imposed fines in full.

3. Conducted market studies

78. In accordance with the amendments to the Russian competition law that came into force in 2016 with the adoption of the “fourth antimonopoly package”, market study (or “market analysis”, in accordance with the Russian legal notion) is carried out when all the cases of the antimonopoly law violation are considered.

79. In addition, the FAS Russia may conduct separate market analysis in order to assess competition in socially important markets.

3.1. Pharmaceutical market

80. The international comparative analysis of prices for medicines purchased publicly was carried out in 2016. The analysis was carried out by the FAS Russia following the order of the President of the Russian Federation and allowed achieving significant results.

81. The first stage of the analysis included an international comparative study on prices of expensive medicines included in the "7 Nosologies" program in 43 countries. The results detected 48 drugs, registered limiting prices for which in Russia were significantly higher than prices in several other countries, including referential. This phase was completed in late 2016.

82. In order to prevent a possible shortage of medicines in the country as a result of excessive prices' cancellation, the FAS Russia suggested that producers of medicinal products file applications for voluntary reduction of prices within a certain period of time.

83. As a result of measures taken by the FAS Russia, 112 previously registered prices have been reduced. The greatest decrease occurred for the medicine product "Revlimid" produced by Celgene (240 000 rubles, or 3 870 euros per package were saved). A significant reduction in prices within a short period of time should lead to the federal budget's annual savings of at least 5 billion rubles (about 80,6 million euros), which can be used for additional drugs provision.

3.2. Oil services market

84. In 2016, the FAS Russia conducted an analysis of competition in the markets for services for the oil and combustible gas production as of 2015¹¹.

85. The study revealed that competition in the Russian oil and gas service market as a whole is at a fairly high level, although some segments of the market are low-competitive.

86. Low level of concentration is present on the following segments: big and permanent repair, supervising, coiled tubing, perforation. A moderate level of concentration is observed in the following segments: exploration and exploratory drilling, production drilling, complex well construction, well logging market for drilling and sidetracking, the hydraulic fracturing market (FPD), well development, ground field Geophysics 2D and 3D seismic prospecting, oil recovery enhancement. A high level of concentration in accordance with the index and coefficient of market concentration is

¹¹ <http://fas.gov.ru/documents/documentdetails.html?id=15039>

observed in the segments: cement well, drilling mud services, MWD and LWD drilling support, service for downhole motors.

87. The analysis demonstrated that the company Schlumberger Logelco Inc is the largest oil and gas service company. It occupies a dominant position in 7 out of the 13 segments of the market of oil and gas services.

4. International cooperation

4.1. Interaction with international organisations

88. To identify the best practices and improve the enforcement of the competition law, the FAS Russia actively engages in cooperation with relevant international organisations, including the Organisation for Economic Co-operation and Development (OECD), International Competition Network (ICN), United Nations Conference on Trade and Development (UNCTAD), Asia-Pacific Economic Cooperation Forum (APEC).

89. In 2016, the FAS Russia took part in all meetings of the OECD Competition Committee, as well as meetings of the OECD Investment Committee and Network of Economic Regulators. Cooperation between the FAS Russia and the OECD Regional Competition Center in Hungary strengthened through joint events, including in Suzdal, Russia.

90. The FAS Russia also continued actively working with the ICN, as a member of its Steering Committee and a number of working bodies, being inter alia a co-chair of the second subgroup of the Cartel Working Group. In 2016, the FAS Russia negotiated on joint work with the competition authorities of France, Brazil, Mexico and Singapore on three projects named “New Tasks”, “Application of Antimonopoly Legislation”, “Cooperation with Regional Competitive Networks”.

91. In the framework of cooperation between the FAS Russia and UNCTAD in 2016, several meetings of top officials were held to strengthen international cooperation in investigations of transboundary violations and counteraction to TNC’s anti-competitive practices. In addition, the FAS Russia co-chaired and was the keynote speaker of the side event of the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy (IGE) on investigations of cross-border cases in IT and liner shipping markets. Following the FAS Russia’s initiative, the issue of tools and procedures of international cooperation in investigation of cross-border cases was included into the agenda of the 16th session of the IGE.

92. Cooperation between the FAS Russia and APEC allowed to present a report on changes in the Russian competition legislation and to participate in the work of the Working Group on Competition Policy of the APEC Economic Committee and the meeting of APEC Senior Officials in Lima (Peru), as well as in a number of APEC training seminars.

4.2. Bilateral and multilateral cooperation with competition authorities, including BRICS Memorandum of Cooperation

4.2.1. Agreements on bilateral and multilateral cooperation

93. Memorandum of Understanding on Cooperation in the Field of Competition Law and Policy signed in May 2016 by the heads of the antimonopoly authorities of the BRICS countries in St. Petersburg (Russia) implies the working groups format for investigating competition issues in socially vital sectors of the BRICS economies, in addition to traditional forms of interaction, such as consultations and exchange of non-confidential information. By now, the BRICS competition authorities have created working groups on the automotive industry, pharmaceuticals and food.

94. In addition, 8 bilateral international agreements and memorandums of understanding with foreign competition authorities (Austria, Belarus, Brazil, Italy, China, Macedonia, South Africa, South Korea) were signed in 2016 to develop cooperation of agencies.

4.2.2. Support of younger agencies

95. In 2016, the FAS Russia continued carrying out activities on technical assistance and capacity building of younger competition agencies in the CIS countries. In April 2016 the FAS Russia held a seminar on combating cartels for representatives of the Committee for Regulation of Natural Monopolies and Protection of Competition of the Ministry of National Economy of Kazakhstan. The event was particularly relevant due to changes in legislation and lack of enforcement practice in Kazakhstan regarding cartels and bid rigging, as well as in view of the possibility to conduct joint investigations of cartels in cross-border markets. In addition, after the creation of a new competition agency in Belarus (Ministry of Antimonopoly Regulation and Trade), the FAS Russia held a seminar on the analysis of commodity markets for its new colleagues.

4.2.3. International information exchange

96. In 2016, the FAS Russia took a number of measures to implement formal and informal exchanges of information with foreign competition agencies.

97. In spring 2016 the FAS Russia exchanged information with the Bundeskartellamt regarding the acquisition of Ahlstrom Glassfibre by European Owens Corning Fiberglas. It allowed discussing jointly the potential impact of the transaction on competition in a number of markets related to the production of fiberglass materials.

98. Besides, in 2016 representatives of the competition authorities of Austria, Bulgaria, India, Kazakhstan, Kyrgyzstan, the Czech Republic and ECE participated in an internship the FAS Russia organised in its Kazan Training Center. The agencies exchanged information and experience in the antimonopoly legislation enforcement in the industrial field.

99. At the end of 2016, pursuant to the agreements on the FAS Russia's cooperation with the BRICS and CIS competition agencies, exchanges of information took place regarding investigations in high-tech markets, namely the FAS Russia's case against Google.

4.3. Development of competition law and enforcement at regional level

4.3.1. EAEU

100. The FAS Russia in cooperation with the Eurasian Economic Commission (EAEC) and the antimonopoly authorities of the EAEU Member States participated in the work on improving the EAEC legal instruments of monitoring compliance with general competition rules. In particular, the Parties amended the Methodology for assessing competition, Methodology for determining monopolistically high and monopolistically low prices, Methodology for calculation and imposition of fines etc. and brought them in line with the Treaty on EAEU.

4.3.2. CIS

101. In 2016, two sessions of the Interstate Council for Antimonopoly Policy (ICAP)¹² were held. It allowed considering the competition policy's development in Armenia, introduction in the CIS countries of the Code of Good Practices for relationship between retail chains and consumer goods' suppliers, the role of IT in competition (including online taxi services), the FAS Russia's experience in the regulation of IT markets, etc.

4.4. Policy on information openness

102. The FAS Russia adopted a new information policy regarding the international community, which includes analysis of global competitive and regulatory systems through open data sources; presentation of information on the activities of the FAS Russia in major international journals; interaction with embassies and representations of the Russian Federation abroad and those of foreign countries in Russia, in order to increase the investment attractiveness of the Russian economy.

103. This policy is an important supplement to the previously implemented measures of ensuring access to the information on the FAS Russia's activities, including mandatory publication of the legislation, news and official documents, such as decisions, on the agency's website www.fas.gov.ru.

104. Another significant source of publicly available information and analytical articles on the topic of competition protection in the Russian Federation is the journal "Russian Competition Law and Economics"¹³. Its editorial board is composed of the FAS Russia's top officials, including head Igor Artemyev, as well as well-known Russian specialists in law and public policy.

105. Representatives of the FAS Russia are also members of the editorial board of the electronic and printed journal "Competition and Law" (www.cljournal.ru), which

¹² ICAP includes the antimonopoly bodies of members of the Commonwealth of Independent States.

¹³ See 2016 editions: No. 2 (6) http://www.dex.ru/upload/all_news_files/iblock/052/%D0%A4%D0%90%D0%A1_2_2016_%D0%BB%D0%B5%D0%B3%D0%BA%D0%B0%D1%8F.pdf; No. 3 (7) [http://www.dex.ru/upload/all_news_files/iblock/052/%D0%A4%D0%90%D0%A1_3\(7\)_2016_light.pdf](http://www.dex.ru/upload/all_news_files/iblock/052/%D0%A4%D0%90%D0%A1_3(7)_2016_light.pdf);

№4 (8) [http://www.dex.ru/upload/all_news_files/iblock/052/%D0%A4%D0%90%D0%A1_4\(8\)_2016_light.pdf](http://www.dex.ru/upload/all_news_files/iblock/052/%D0%A4%D0%90%D0%A1_4(8)_2016_light.pdf).

prepares analytical materials and weekly reviews of the Russian competition law enforcement.

4.5. Interaction with international expert community

106. Recognizing the importance of regular exchanges with the international expert and academic community in the field of competition, the FAS Russia maintains contacts and sends representatives for participation in scientific events of the world's leading universities, such as the University College of London, King's College, University of Applied Sciences in Zurich and others.

107. In addition, the FAS Russia supports the exchange of opinions between Russian and foreign academia in the field of competition law and policy by organising international conferences and meetings and inviting representatives from the academia (see Part 5).

5. Competition advocacy

5.1. Code of fair practices in pharmaceutical industry

108. In April 2016, the Code of Fair Practices in the Pharmaceutical Industry was adopted after being developed by the Association of European Businesses in cooperation with the FAS Russia. The main goal of the Code is to ensure the self-regulation of the pharmaceutical business in Russia. The Code contains a number of explanations of the antimonopoly legislation and is aimed at reducing probability of its violations. Up to the moment, 13 major Russian and foreign pharmaceutical companies have joined the Code.

109. The Code has become a supplement to the "soft" regulation in other industries, as similar documents have already come into force in the automotive and retail industries.

5.2. Fair roaming

110. In 2016, the International Working Group on Research of Competition Issues in the Market of International Telecommunications (Roaming), established on the FAS Russia's initiative, successfully implemented its objectives. As a result, the terms of interaction of telecom operators that are roaming partners were revised in a number of its member countries, inter-operator rates were significantly reduced (for calls - up to 4.6 times, SMS - up to 9.8 times, Internet - up to 18 times); subscriber tariffs were decreased (up to 57% in a number of countries) and special subscriber offers for reducing roaming payments were created.

111. This became the result of implementation of the "Roadmap" developed in order to reduce tariffs, enhance competition and establish basic principles for interaction of regulators and telecom operators named "Fair Roaming Principles" that imply:

- effective competition of cooperating operators, including when registering guest subscribers in each country;
- reciprocity of measures to develop competition and balance the interests of telecom operators and subscribers;
- non-discrimination of subscribers of interacting operators when receiving communication services in the country of registration and in roaming;
- non-discrimination of conditions for partner operators in provision of termination services by networks of foreign operators and operators in the country of registration.

5.3. International events

5.3.1. *Russian Competition Week (September 26-30, 2016)*

112. The FAS Russia organises annually a large international event inviting representatives of governments, business, international organisations and regional associations, as well as heads of competition agencies.

113. The Russian Competition Week in 2016 provided a number of venues for international discussions, including the Anniversary Meeting of the Headquarters on Joint Investigations of Violation of Antimonopoly Legislation in CIS Member States; a kick-off meeting of the BRICS Working Group; a meeting of the International Working Group on the topic “Protection and Development of Competition in Pharmaceutical Markets”.

5.3.2. *Conference “Antimonopoly Policy: Science, Practice and Education” (December 6-7, 2016)*

114. The event focused on a joint discussion of the new economy’s challenges faced by the academic community and competition agencies.

115. In addition to the plenary session with interventions of the heads of the Russian and Austrian antimonopoly authorities, director of the UNCTAD’s Department of International Trade, professors of the Oxford University, University College of London and Higher School of Economics, specialised discussions were held on topics: “Agro-genetics and global food chains”; “Innovations in Procurement”; “Antitrust challenges and regulation of digital markets”; “Intellectual property. Pharmaceuticals. Competition”.

5.3.3. *International Working Groups’ meetings*

116. The FAS Russia established international Working Groups on pharmaceuticals, food, automotive industry and information technologies. The meetings are held on a regular basis in the framework of international events and mostly become efficient platforms for creating new international initiatives in the field of competition advocacy (such as the abovementioned project “Fair Roaming”).

117. In 2016, five meetings of international Working Groups were held.

5.3.4. *Feedbacks from public and expert communities and their application*

118. According to the monitoring of small and medium-sized enterprises carried out by the all-Russian business organisation “Support of Russia” in 2016, the majority of respondents (62%) assess the level of competition in the country as strong or very strong.

119. The annual survey of the Association of Antimonopoly Experts revealed that the policy pursued by the FAS Russia in the current economic conditions is adequate, according to $\frac{3}{4}$ of respondents. The other results of the survey show that the FAS Russia takes into account constructive opinions of public and expert organisations. In 2016 the FAS Russia improved its competition advocacy. The majority of respondents (83%) also noted that they consider the FAS Russia's dawn raids to be an effective way for identifying violations of the antimonopoly legislation.

120. The Association of Corporate Lawyers based on its annual survey concluded that due to the FAS Russia's consistent and significant efforts, approaches and standards similar to international ones were developed in many areas.

121. The Chamber of Commerce and Industry of the Russian Federation and the Russian Union of Industrialists and Entrepreneurs also evaluate the state of competition in Russia and the activities of antimonopoly authorities annually.

122. The results of public organisations' assessments are published in the Report on Competition Development, which is annually submitted to the Government of the Russian Federation. The FAS Russia takes into account recommendations of these organisations for amelioration of its further work.

5.4. Public consultation and expert councils

123. The Public Consultation Council of the FAS Russia works through regular meetings in order to interact with business associations, non-profit organisations and public associations and monitor the improvement of the antimonopoly legislation and its violations as well as the FAS Russia's effectiveness. In 2016, two meetings of the Public Consultation Council were held.

124. Expert Councils are another tool for achieving the presented objectives, as well as for developing competition in certain economic sectors. They play the role of advisory bodies and involve the maximum number of stakeholders in their activities, including representatives of the FAS Russia and other authorities, scientific organisations, market participants, representatives of associations and associations. Expert Councils are active in such areas as retail trade, agro-industrial complex, science and education, communications, oil products, etc. In total in 2016, thirty-five meetings of the FAS Russia Expert Councils were held.

6. Resources overall

6.1. Annual budget

125. Resources for maintenance of activities of the FAS Russia and its Regional Offices are provided by the federal budget.

126. In 2016, the FAS Russia's budget amounted to 3.4 billion rubles (54.8 million euros), of which 75.2% were spent on employees' salaries.

6.2. Human resources

127. The total number of the FAS Russia's employees as of December 31, 2016 was 3 504. Of these, 1 189 employees work in the central office and 2 315 are employed by 86 Regional Offices in the subjects of the Russian Federation. 2316 employees are engaged in the antimonopoly and tariff legislation enforcement, others work on matters related to procurement and advertising. 1,807 employees are responsible for competition enforcement.

128. According to the information on higher education, 50% of employees are lawyers, 32% are economists, 18% have diplomas in other fields. 34 employees have a PhD in economics and law.