

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE**

Annual Report on Competition Policy Developments in the Russian Federation

-- 2018 --

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This report is submitted by the Russian Federation to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

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Russian Federation

1. Part 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. The Resolution of the President of the Russian Federation and National Competition Development Plan¹

1. Significant event of the past few years was the signing by the Russian President of the Resolution on the main directions of competition policy in Russia.
2. Following by the elections of deputies to the VII State Duma of the Federal Assembly of the Russian Federation, that was held on 18 September 2016, the regular meeting of the Russian Government took place on 29 September 2016, at which the issue «On state of competition in the Russian Federation» became the main item on the agenda. Igor Artemiev, Head of the FAS, presented the report on the subject².
3. The Head of the FAS took the initiative to prepare the National Competition Development Plan for 2018-2020. This initiative was approved by Dmitry Medvedev, the Chairman of the Government of the Russian Federation. The finalized plan was submitted to Vladimir Putin, the President of the Russian Federation, for consideration in 2016. At the same time, the Chairman of the Russian Government authorized 10 Russian Ministries³ in consultation with the Ministry of Economic Development and the FAS Russia to establish competition development plans ("road maps") in their respective fields.
4. As a result, in December 2017, the President of the Russian Federation signed the Resolution of 21.12.2017 No. 618 "On the Main Directions of the State Policy on the Development of Competition" (hereafter – the Resolution).
5. The Resolution refers to the articles 8 and 34 of the Constitution of the Russian Federation: in the Russian Federation guarantees shall be provided for the integrity of economic space, a free flow of goods, services and financial resources, support for competition, freedom of economic activity, recognition and equal protection shall be given to the private, state, municipal and other forms of ownership; everyone shall have the right

¹ <http://en.fas.gov.ru/documents/documentdetails.html?id=15342>

² In accordance with paragraph 10, part 2, article 23 of the Federal Law of 26 July 2006 No. 135-FZ "On Protection of Competition", the FAS annually submits the Report on state of competition in the Russian Federation to the Government of the Russian Federation and posts it in its official website in the Internet.

³ Ministry of Industry and Trade of the Russian Federation, Ministry of Transportation of the Russian Federation, Ministry of Communications and Mass Media of the Russian Federation, Ministry of Construction Industry, Housing and Utilities Sector of the Russian Federation, Ministry of Energy of the Russian Federation, Ministry of Agriculture of the Russian Federation, Ministry of Natural Resources and Environment of the Russian Federation, Ministry of Labour and Social Protection of the Russian Federation, Ministry of Education and Science of the Russian Federation, Ministry of Healthcare of the Russian Federation

to a free use of his abilities and property for entrepreneurial and economic activities not prohibited by law; the economic activity aimed at monopolization and unfair competition shall not be allowed⁴.

6. The Resolution No. 618 establishes active promotion of the development of competition in Russia as a priority for activities of the President of the Russian Federation, the Government of the Russian Federation, all public authorities and bodies of local self-government.

7. The Resolution establishes prohibition on the introduction and (or) preservation of restrictions that create discriminatory conditions for certain types of economic activity, the production and circulation of certain types of goods, the provision of certain types of services, except for cases provided for by federal laws, legal acts of the President of the Russian Federation, legal acts of the Government of the Russian Federation.

8. The Resolution also gives recommendations to the Supreme Court of the Russian Federation, the General Prosecutor's Office of the Russian Federation, senior officials (heads of the highest executive bodies of state power) of the constituent entities of the Russian Federation, local self-government bodies, the Public Chamber of the Russian Federation and public organizations on measures to promote development of competition.

9. The document contains on the one hand approaches to setting priorities and principles of competition policy. On the other hand, it contains specific objectives for competitive markets, as well as expected outcomes:

- increase of customer satisfaction by expanding the range of goods, works, services, improving their quality and reducing prices;
- increase of economic efficiency and competitiveness of economic entities, including by ensuring equal access to goods and services of natural monopolies and public services necessary for conducting business activities, stimulating innovation activity of economic entities, increasing the share of knowledge-intensive goods and services in the production structure, development of markets for high-tech products;
- stable growth and development of a multisectoral economy, development of technologies, reduction of costs in the scale of the national economy, reduction of social tension in the society, ensuring national security.

10. The Resolution provides for reducing the number of violations of the antimonopoly legislation by the authorities in 2020 and increasing procurement by small businesses and community-focused non-profit organizations by no less than twofold in comparison to 2017 as well as for securing in all sectors of the economy, with the exception of natural monopolies, the presence of at least 3 economic entities, at least one of which relates to private business.

11. Resolution approves the National Competition Development Plan in the Russian Federation for 2018-2020 (hereafter – the National Plan) and its annex - the list of sectors (spheres) of economy (types of activity) and the expected results of promoting competition, which contains instructions for the implementation of a set of organizational and legal measures and contributes significantly to the de-escalation of public sector in economy and further support of SMEs.

⁴ <http://constitution.kremlin.ru/> (Russian version only)

12. In particular, it is designed to reduce the share of state participation in the competitive sectors of economic activities, including limited formation of unitary enterprises, the reform of tariff regulation, effective prevention and suppression of antimonopoly violations that lead to restricting and eliminating competition on the markets, and supporting entrepreneurial initiative, including development of small and medium business.

13. According to the National Plan, special attention will be paid to the 13 sectors of economy: transport (including railroad, air and waterway); chemicals; communication and information technologies; road construction; defense industry; housing sector; oil and gas industry; electric energy; agroindustrial complex; fishing industry; health care; education; foreign trade activity.

14. The Resolution and the National Plan are the first such documents in our history. The documents determine the principles of interaction between the state and the society, implying intolerance to any incidents of unfair competition and abusing monopolistic position. The authorities at all levels will evaluate administrative decisions, taking into account the consequences of such decisions for competition.

15. Furthermore, on April 5, 2018, the meeting of the State Council on promoting competition was held⁵, as a result of which the President of the Russian Federation has instructed the Government⁶ to establish the integrated "road map" for competition development for 2018-2020⁷. The Roadmap was approved by the Resolution of the Government of the Russian Federation No. 1697-r dated August 16, 2018.

16. The "road map" defines lists of key indicators, including the achievement of expected results in sectors and spheres of the economy.

17. A number of instructions refers to the activities of federal executive bodies, executive authorities of the subjects of the Russian Federation and local self-government bodies.

18. Heads of regions were instructed to identify key indicators of competition development in at least 33 of 41 economic sectors - from education to transport and to devise and implement "road maps" for developing competition.

1.1.2. Antimonopoly compliance

19. In accordance with the National Competition Development Plan, the Russian Government adopted the Resolution of October 18, 2018 No. 2258-p "On the approval of Guidelines for the creation and implementation by federal executive bodies of antimonopoly compliance systems".

20. The Guidelines are adopted in order to form by the federal executive authorities, the executive authorities of the subjects of the Russian Federation and the local

⁵ The Russian Federation State Council is an advisory body that assists the President in guaranteeing coordinated functioning and interaction of the various state bodies of power. The State Council is composed of the Council's Chairman and members, who are key members of the Government, the Parliament and Heads of all constituent subjects of the Russian Federation. The President of Russia is also Chairman of the State Council.

⁶ <https://en.fas.gov.ru/press-center/news/detail.html?id=53303>

⁷ <http://government.ru/docs/33731/> (Russian version only)

governments a unified approach to creating and implementing antimonopoly compliance systems.

21. The Guidelines identify the main goals, objectives and principles for the creation and implementation of antimonopoly compliance by the authorities, the content and procedure for the adoption by the authorities of a legal act on antimonopoly compliance, and the procedure for creating and operating an authorized department responsible for the development and implementation of antimonopoly compliance.

22. The Guidelines also establish a procedure for identifying and assessing the risks of violating the antimonopoly legislation, which is an integral part of internal control over the compliance with the antimonopoly legislation by an authority. It includes an analysis of identified violations of the antimonopoly legislation for the previous 3 years (cautions, warnings, fines, complaints, prosecutions), analysis with the participation of representatives of the business community of existing regulatory legal acts, drafts of regulatory documents, monitoring and analysis of the practice of applying the antimonopoly legislation, development and maintenance up to date of methods of identifying internal and external risks of violating the antimonopoly legislation within or in connection with the general policy of application of antimonopoly compliance.

23. The Guidelines contain the "Risk Matrix", the assessment of indicators of which is used by the authority to identify individual risks and compile a risk map.

24. At the same time, the Guidelines contain the procedure for familiarizing employees (workers) of a governmental body with antimonopoly compliance and training them in implementing the requirements of the antimonopoly legislation and antimonopoly compliance.

25. In addition, the provisions of the Guidelines provide for the implementation by the Government of an assessment of the effectiveness of antimonopoly compliance, which establishes key performance indicators for the implementation of antimonopoly compliance measures for both the authorized department and the authority as a whole.

26. Guidelines are applied not only by the federal executive authorities, but also by the executive authorities of the subjects of the Russian Federation and the local governments. The FAS Russia regularly holds seminars for training of specialists in the field of antimonopoly compliance.

1.1.3. The fifth antimonopoly package

27. The Resolution No. 618 as one of the fundamental principles of the state policy on competition development establishes issues of improving antimonopoly regulation in the conditions of the development of the digital economy and its globalization.

28. In this regard, the FAS Russia drafted a Federal Law "On Amendments to the Federal Law "On Protection of Competition" and other legislative acts of the Russian Federation" (the so-called "fifth antimonopoly package")⁸.

29. Technologies (primarily digital technologies), information, digital and information platforms, and intellectual property form the basis of the modern market system.

30. Information and technologies can be spread and used among economic agents as part of legitimate cooperation or with intent to prevent, restrict or eliminate competition. In

⁸ <http://en.fas.gov.ru/documents/documentdetails.html?id=15345>

practice, the intensive development of information technologies apart from benefits also leads to the creation of "advanced" anticompetitive practices.

31. In some spheres, new digital companies dominate exercising significant influence on the real sector of economy.

32. The FAS can provide more and more examples of how the structure of modern markets is changing.

33. Evaluating the market position of a certain company, competition authorities have to take into account such phenomenon of the IT sector of the economy as direct and indirect network effects.

34. Direct network effects result in increased demand for a product as a consequence of an increase in the number of users. Such effects can serve as a serious obstacle to market entry. Achievement of a certain level of demand, a certain number of customers, comparable to the network effect achieved by a competitor becomes the condition for entering the market.

35. Indirect network effects, also referred to as network externalities, result in increasing demand for products and applications that come in addition to the core product.

36. In order to align with the evolving social relations in the digital economy, it is necessary to update antimonopoly legislation.

37. The draft law considers introduction of the additional criteria to the Law on Protection of Competition that allow to designate owners of digital platforms as dominant players if such a digital platform has a share of more than 35 percent in the market of substitute services delivered using digital platforms related to ensuring interaction between economic entities - sellers and buyers, and if network effects based on the number of users of the digital platform, give such an economic entity the opportunity to exercise a dominant influence on the general conditions for the commodity circulation in the relevant market and (or) to eliminate other economic entities from this market, and (or) to impede access of other economic entities to this market.

38. At the same time, in order to support the development of new projects based on the use of digital platforms, the draft law proposes to institute a rule stating that the owner of a digital platform, or several similar (substitutable) digital platforms, whose revenues for the last calendar year did not exceed 400 million rubles cannot be designated as dominant player.

39. In order to implement the proposed provisions, the draft law also defines the digital platform as an infrastructure located in the Internet, which is used to organize and provide interaction between sellers and buyers.

40. It is also proposed to define the concept of "network effect" - the dependence of the consumer value of goods on the number of consumers of the same group (direct network effect) or the change in the value of the goods for one group of consumers with a decrease or increase in the number of consumers in another group at the same time (indirect network effect).

41. Under conditions of the modern "digital" markets, approaches to controlling transactions of economic concentration should change as traditional criteria based on the amount availed or operations and value of their assets may not reflect the real impact on the economic conditions of a transaction carried out as part of economic concentration and related to the regulation of intellectual property rights.

42. Considering the above, a new condition should be introduced in the first place to control transactions of economic concentration - if the volume of the transaction exceeds seven billion rubles.

43. Taking account of successful foreign practice, it is proposed to specify in the Law on Protection of Competition the rules for involving trustee for the purpose of monitoring and facilitating the execution of a ruling issued under economic concentration, which includes the transfer of rights to intellectual property and technology, as well as to define clearly the role and responsibilities of external experts in the process of examination of violation of competition law and economic concentration cases.

44. In order to protect the interests of market participants, the draft law proposes to determine additional consequences of failure to comply with the ruling of the competition authority issued as part of monitoring economic concentration and associated with the use and transfer of intellectual property rights.

45. Thus, it is proposed to establish that in case of non-compliance with the ruling of the competition authority, if such non-compliance leads or can lead to the prevention, restriction or elimination of competition, the competition authority has the right to:

1. file a claim in court for the exemption to use in the territory of the Russian Federation in the interests of competition development the results of intellectual activity and equivalent means of personalization belonging to the person to whom the ruling was issued if the ruling was related to the exercise by such person of the exclusive rights to the results of intellectual activity and equivalent means of personalization, under conditions of the ruling;
2. file a claim in court with the request to prohibit (restrict) the turnover in the territory of the Russian Federation by the person to whom the ruling was issued, of goods produced using the results of intellectual activity, the exercise of exclusive rights to which is associated with the implementation of this ruling.

46. Adoption of the draft law will make it possible to ensure the effectiveness of antimonopoly compliance in the context of modern "digital" markets, increase the protection of the rights and interests of bona fide participants in such markets from possible manifestations of monopolistic activity, and create legal mechanisms to counter market power abuse by "digital monopolies".

47. Another important aspect for legislative novels is pricing algorithms that analyze markets and adjust prices. In conditions when companies use similar algorithms to control and regulate relationships with competitors, one should talk about the formation of cartels. The draft law proposes to define the concept of "pricing algorithms" as a software designed to monitor prices on the commodity market, calculate prices for goods, set prices for goods and (or) monitor prices for goods or take actions when bidding.

1.1.4. Legislation in the field of procurement

48. Amendments to Federal Law "On the Contract System for State and Municipal Procurement of Goods, Work, and Services"⁹ and Federal Law "On the procurement of goods, works and services by individual types of legal persons"¹⁰ introduced in the Federal Law dated December 31, 2017 No. 504-FZ and No. 505- FZ on transferring of procurement procedures to electronic form came into force on July 1, 2018.

49. Federal Law No. 504-FZ¹¹ changes the protocol of determination of supplier (contractor, performer). In particular, an open tender, tender with limited participation, two-stage tender, request for quotations and request for proposals are transferred to electronic form.

50. Starting from January 1, 2018, customers are entitled to carry out these procedures in electronic form, and from January 1, 2019, they are obliged to do that exclusively in electronic form.

51. Operators of electronic platforms will ensure carrying out of these procedures, which should reduce the possibility of collusion between customers and participants and among participants, as well as simplify process of collecting documents needed for participation in procurement.

52. Organization of electronic document flow in the contract system in the field of procurement is being improved, the procedure for registering and maintaining a unified register of procurement participants is established.

53. Mechanism of electronic filing of applications that consist of several parts is determined, which will ensure their step-by-step consideration and anonymity at the stage of assessing the quality of the offered goods, works, services.

54. There is a change in the procedure for securing an application. In particular, a special bank account is introduced, which is opened by the procurement participant in a bank included in the list of credit institutions that meet the requirements specified by the Government of the Russian Federation. Such an account will allow blocking funds of the participant to secure his application.

55. Federal Law No. 505-FZ¹² does not apply to relations connected with the execution by the customer of the contract concluded with a foreign legal entity, the subject of which is supply of goods, work or services outside the Russian Federation, procurement from legal entities interdependent with it, procurement of goods, work or services by a legal entity registered in the territory of a foreign state in order to carry out its activities in the territory of a foreign state.

⁹ Federal Law "On the Contract System for State and Municipal Procurement of Goods, Work, and Services" dated April 5, 2013, No. 44-FZ: http://legalacts.ru/doc/44_FZ-o-kontraktnoj-sisteme/ (Russian version only)

¹⁰ Federal Law "On the procurement of goods, works and services by individual types of legal persons" dated July 18, 2011, No. 223-FZ: http://legalacts.ru/doc/223_FZ-o-zakupkah-tovarov-rabot-uslug-otdelnymi-vidami-juridicheskikh-lic/ (Russian version only)

¹¹ <http://kremlin.ru/acts/news/56617> (Russian version only)

¹² <http://en.kremlin.ru/acts/news/56618>

56. It provides for the possibility of approving for budgetary institutions, autonomous institutions and unitary enterprises unified procurement regulations, as well as the right of affiliated legal entity to join the procurement regulations approved by the governing body of the parent company.

57. Procurement procedures are divided into competitive and noncompetitive ones. Competitive procurement procedures include tender, auction, request for proposals and request for quotations.

58. In addition to the above competitive procurements, participants of which can only be small and medium-sized business entities, are carried out in electronic form.

59. Such procurements are possible exclusively on electronic platforms that meet the requirements defined by the legislation of the Russian Federation on the contract system in the field of procurement of goods, works and services for state and municipal needs, as well as the requirements established by the Government of the Russian Federation for the purposes of the Federal Law "On the procurement of goods, works and services by individual types of legal persons".

60. Requirements for competitive procurement carried out in a closed way, and the requirements for procurement from a single supplier are clarified.

61. Federal Law No. 505-FZ provides for increasing the responsibility of customers and optimizing their procurement activities.

62. Transferring of all procurements, including tenders, into electronic form and conducting them on selected electronic trading platforms will significantly reduce time expenditures for customers and participants to exchange documents and process them, increase the transparency of procedures for the purpose of subsequent monitoring of the results of such procurements, reduce risk of bid rigging and corruption and, as a result, increase budget savings.

1.1.5. Draft Law on Antimonopoly Control Procedure for the Creation of State and Municipal Unitary Enterprises

63. Chairman of the Government of the Russian Federation Dmitry Medvedev proactively took charge of the Draft Law on Antimonopoly Control Procedure for the Creation of State and Municipal Unitary Enterprises.

64. By 2021, all 18 000 unitary enterprises should be eliminated except for the sphere of national defence and security. If they are not modified or abolished, the FAS will issue warnings. If the warnings are not fulfilled, the FAS will open investigations and, if necessary, abolish them in court. The creation of new state and municipal enterprises will require the approval of the antimonopoly body.

1.1.6. Draft Law on the State Regulation of Prices (Tariffs)

65. In 2015 after the abolition of the Federal Tariff Service, the FAS was entitled to tariff regulation. However, so far in Russia there is no single legal act regulating relations in the sphere of state regulation of prices (tariffs).

66. The main goal of the draft law is to form a unified and transparent legislative basis in the field of state regulation of prices and tariffs to fix the legal gap that has arisen after the elimination of many uncoordinated acts in this area.

1.2. Other regulatory measures, including methodological recommendations (administrative provisions, etc.)

1.2.1. Housing sector

1.2.1.1. Guidelines for connecting (technological connection) to heat networks

67. The FAS Russia developed the Guidelines for connecting (technological connection) to heat networks, including the rules of non-discriminatory access to services for connecting (technological connection) to heat networks, as well as the Guidelines for non-discriminatory access to services for the heat transfer and heat carrier¹³.

68. The Order provides the simplification of the current procedure for connecting to heat networks, increasing the transparency of connection charge calculation and the regulation of relations with related organizations.

69. In order to settle legal gaps and simplify law enforcement practice, the Order improved the concept of “draw-off point” of major construction objects to the heat networks.

70. In addition, the document provides the opportunity for regulatory authorities to review the connection charge to the heat networks installed on an individual basis, for example, in case of a change in the connected load or draw-off point.

71. Thus, due to the this Order, market participants will be able to overcome emerging problems in the process of connecting to heat networks, such as a long wait for technological connection, lack of guarantee of results, excess document requirements that eliminate significant barrier to enter the market.

1.2.1.2. Rules for determining the managing organization for the temporary management of blocks of flats

72. The problem of managing abandoned blocks of flats, which provide no economic interest for managing organizations, as well as other cases where the method of managing such houses is not chosen, is solved by approving the Rules for determining the managing organization for temporary management of blocks of flats¹⁴ drafted by the FAS Russia.

73. Now all old houses, which all management organizations refused to manage due to lack of economic interest, will be managed.

74. In such cases, the municipality appoints the managing organization on an equal basis from the list it approves on a priority basis in order to temporary manage such a house.

75. During this period, at the same time contests on the selection of managing organization are continuing for managing such a house until a managing organization is selected in a competitive order.

¹³ Order of the Government of the Russian Federation No.787 of September 5, 2018: <http://government.ru/docs/33210/> (Russian version only)

¹⁴ Order of the Government of the Russian Federation No. 1616 of December 21, 2018: <http://government.ru/docs/35175/> (Russian version only)

76. At the initiative of the FAS Russia, the Ministry of Justice of Russia was also ordered to develop legislative amendments to prevent violations of antimonopoly laws when implementing the procedure for the temporary management of blocks of flats.

1.2.1.3. Unification of information disclosure standards in certain areas of housing sector

77. In order to unify information disclosure standards in the areas of heat supply, water supply and wastewater disposal, as well as in the field of municipal solid waste management, as part of the priority project “Ensuring the quality of housing and communal services”¹⁵ the Order of the Government of the Russian Federation No. 390 of March 31, 2018¹⁶ introduced new standards of information disclosure, providing unification of information disclosure mechanisms by regulated organizations through a consistent system for the whole country.

78. Prior to this Order, the information disclosure mechanisms were hard to implement in practice, since there was no single approach to the publication of information. Some regulated organizations published information about their activities on their own websites, other organizations disclosed information exclusively on the websites of regulatory bodies, in some cases this information was difficult to access.

79. The FAS Russia approved¹⁷ the Forms for publishing information in the field of heat supply, water supply and water disposal, in the field of municipal solid waste management, which is subject to disclosure in the federal state information system “Unified data analytics system” Federal regulatory body - regional regulatory bodies - regulatory entities” (FGIS EIAS FAS Russia)¹⁸.

80. Due to these changes, the FAS Russia website contains full information on all regulated organizations and regulatory bodies.

81. The implementation of a centralized information disclosure mechanism will ensure maximum transparency of data on the activities of regulated organizations and regulatory bodies and will facilitate the search for relevant information for consumers and interested parties.

82. The FGIS EIAS FAS Russia, the state information system, is a modern tool of digitalization of the industry.

83. Information disclosure through the FGIS EIAS FAS Russia system is the first global step aimed at further development of the country's digital economy.

¹⁵ <http://government.ru/projects/selection/648/25518/> (Russian version only)

¹⁶ <http://publication.pravo.gov.ru/Document/View/0001201804050010> (Russian version only)

¹⁷ Order of the FAS Russia No. 1288/18 of September 13, 2018: <https://rg.ru/2018/10/02/fas-prikaz1288-18-site-dok.html> (Russian version only)

¹⁸ <https://eias.ru/> (Russian version only)

1.2.2. Pharmaceutical market

1.2.2.1. Improving the regulation of medicine prices

84. Initiated by the FAS Russia and with its participation, new rules for state registration and reregistration of sale prices for medicines from the list of Vital and Essential Medicines (VED list), as well as the methodology for calculating such prices, were developed and approved¹⁹ by the Government of the Russian Federation.

85. Due to the Order, for all manufacturers the principles of regulating the maximum selling prices of medicines included in the Vital and Essential Medicines List were significantly changed.

86. The key change is the introduction of the pricing method, which provides pricing based on objective indicators that cannot be manipulated and gained reputation in years-long international pricing practices.

87. New rules helped to introduce measures to support the production of low-cost medicines, vaccines and biosimilars; impose restrictions on price increase of expensive medicines; eliminate discrimination of national medicine manufacturers in relation to foreign; eliminate substantial problems of pricing and economic analysis in the previous rules.

88. Thus, a transparent objective and consolidated for all manufacturers unburdensome registration system of maximum selling prices for medicines was formed, which eliminated discrimination of Russian manufacturers, and also does not allow a significant increase in prices for expensive medicines and unprofitable production of cheap medicines.

1.2.3. Guidelines of the FAS Russia Presidium

89. Guidelines of the FAS Russia Presidium play an important role in ensuring compliance with antimonopoly laws and the formation of judicial practice.

90. In 2018 the FAS Russia Presidium issued 3 Guidelines of antimonopoly legislation adding to 12 Guidelines issued in previous years:

1. Guidelines of the FAS Russia Presidium No. 13 “On trade secret information within the framework of consideration of a case on violation of antimonopoly legislation, inspections of compliance with antimonopoly legislation and exercising state control over economic concentration”²⁰.

91. The Guidelines are based on the results of the study and generalization of antimonopoly legislation practice by antimonopoly authority in order to clarify the provisions of the Law on Protection of Competition to ensure the rights of persons involved in the consideration of cases of violations antimonopoly legislation in accessing case

¹⁹ Order of the Government of the Russian Federation No. 1207 of October 08, 2018 “On Amendments to Decisions of the Government of the Russian Federation of October 29, 2010 N 865 and September 15, 2015 N 979”: <http://publication.pravo.gov.ru/Document/View/0001201810180006> (Russian version only)

²⁰ Approved by the Protocol of the FAS Russia Presidium No. 2 of February 21, 2018: <https://fas.gov.ru/documents/617286> (Russian version only)

materials provided by the Law on Protection of Competition, as well as persons subject to antimonopoly compliance review.

2. Guidelines of the the FAS Russia Presidium No. 14 "On the Qualification of Agreements of Economic Entities Participating in Tenders"²¹.
92. The Guidelines are based of the results of study and generalization of the antimonopoly legislation practice by antimonopoly authority when establishing the facts of concluding anticompetitive agreements by business entities during preparation and participation in tenders.
3. Guidelines of the FAS Russia Presidium No. 15 "On the Responsibility for the abuse of the dominant position by collectively dominant economic entities"²².
93. The Guidelines were prepared in order to clarify the provisions of Part 3 Article 5 (Dominant position) of the Law on Protection of Competition.
94. The Guidelines were developed and discussed by the FAS Russia and competent antitrust lawyers, including the Association of Antitrust Experts and the Russian Corporate Council Association.

1.3. Government proposals for new legislation

95. The Resolution of the President of the Russian Federation No. 618 "On State Competition Policy Guidelines" includes a plan for developing legislation aimed at promoting competition²³:

- a) restriction of the number of newly created unitary enterprises on the competitive markets;
- b) interdiction of direct or indirect acquisition of stocks and shares of business entities that operate on competitive commodity markets by government and municipal entities (apart from defence complex and other entities of strategic importance for Russian national defence and state security and cases when acquisition of stocks and shares of the corresponding business entities is allowed by the federal laws and acts of the President of the Russian Federation or the Government of the Russian Federation);
- c) possibility of the Government of the Russian Federation for the benefit of national defence and state security, including health and survival of citizens, to allow exploitation of invention, utility model or pre-production prototype without the consent of patentee, yet with noticing him in the shortest time possible and paying an adequate compensation;
- d) reformation of the statutory regulation of the natural monopolies, including exclusion of the capability to declare economic entity natural monopoly if they operate on competitive market;

²¹ Approved by the Protocol of the FAS Russia Presidium No. 7 of May 30, 2018: <https://fas.gov.ru/documents/14-041f5f31-b953-49bb-92b5-6c46753b8cda> (Russian version only)

²² Approved by the Protocol of the FAS Russia Presidium No. 11 of October 24, 2018: <http://fas.gov.ru/documents/15-857491b4-c208-48cf-b056-36f50b1d8dd1> (Russian version only)

²³ <http://en.fas.gov.ru/documents/documentdetails.html?id=15342>

- e) phasing-out state regulation of prices (tariffs) in the competitive markets based on the analysis of consequences of the termination of such regulation in respect of certain natural monopolies;
- f) strengthening the rights of the consumer council that controls natural monopolies at both federal and subjects of the Russian Federation level, state-owned companies and regulated entities regarding tariffs decision-making and adoption and control of investment programmes;
- g) statutory regulation of the system of internal compliance with the requirements of the antimonopoly legislation;
- h) creating foundation for state regulation of prices (tariffs) using comparable uncontrolled price method and regulatory period not less than five years;
- i) establishing uniform procedure for pre-trial review of arguments that are connected with establishment and (or) application of regulated prices (tariffs).

2. Part 2. Enforcement of competition law and policy

96. Here and throughout part two of the present report, statistics are given which include the central office of the FAS Russia and 84 FAS Regional Offices in the subjects of the Russian Federation.

97. In 2018, the FAS Russia received 39,468 applications on violation of the Law on Protection of Competition, of which 30 510 applications concerned monopolistic activities (28 441 - abuse of dominant position and 2 001 - agreements or concerted actions), 3 687 - unfair competition, 6 918 - competition restrictions by public authorities, 3 800 - antimonopoly requirements to tenders and peculiarities of selection of financial organizations, 315 – granting of state or municipal preferences, 1 - responsibility for violation of the antimonopoly legislation.

98. In 2018, the FAS Russia initiated 3223 cases. (Therefore, in 2017, 3534 cases were initiated, in 2016 - 4040 cases, in 2015 - 9092 cases.) 2486 decisions were made on the existence of a violation. 1184 of them were appealed to the court (47.6%). 132 of the total amount of the FAS' decisions were declared invalid by the court (11.2%).

99. The number of cases in question in 2018 continued to decline due to the course on combating the unfair practices of large Russian and transnational corporations that have a significant impact on the Russian economy, the successful implementation of the institute of warnings, antimonopoly compliance system and efficiency in courts (the FAS Russia wins more than 80% of cases).

100. The number of cases initiated under the abuse of dominant position in 2018 was 685 (in 2017 – 847, in 2016 - 1340, in 2015 - 3059).

101. The number of cases initiated under the prohibition of restrictive agreements and concerted actions by economic entities amounted to 435 in 2018 (420 in 2017, 360 in 2016, 375 in 2015).

102. Under the provisions of the Law on Protection of Competition on unfair competition, the FAS Russia initiated 517 cases in 2018 (in 2017 – 409, in 2016 - 453, in 2015 - 1113).

103. The number of cases of violation of the antimonopoly legislation by the authorities in 2018 was 736 (in 2017 – 770, in 2016 - 736, in 2015 - 3109).

2.1. 2.1. Actions against agreements and concerted actions

2.1.1. 2.1.1. Summary of activities of competition authorities and courts

104. In 2018, the FAS Russia received 2 001 applications on agreements (concerted actions) of economic entities restricting competition (1757 in 2017, 1390 in 2016, 2151 in 2015). 435 cases were initiated (420 in 2017, 360 in 2016, 375 in 2015), decisions were issued on the recognition of the violation in 378 cases (329 in 2017, 284 in 2016, 304 in 2015), 480 rulings were issued (472 in 2017, 378 in 2016, 547 in 2015). 73 decisions have been appealed to the court (73 in 2017, 64 in 2016, 92 in 2015), 10 of them have been found to be legal (4 in 2017, 8 in 2016, 20 in 2015), 0 decisions have been declared invalid (3 in 2017, 2 in 2016, 0 in 2015), the rest are in the stage of judicial appeal.

105. In 2018, the FAS Russia received 97 applications under the leniency program (118 in 2017, 91 in 2016, 46 in 2015).

2.1.2. Description of significant cases

Coordination of economic activity in the market of locking and sealing mechanisms

106. On June 29, 2017, the FAS Russia initiated a case against JSC IPK Strazh, LLC Trans-plombir, LLC TD KZMI, LLC SotekKomTsentr, CJSC OTSV.

107. On March 28, 2018, the decision²⁴ was issued on violation by the five first companies of clauses 1 and 3 of Part 1 of Article 11 (Prohibition of agreements between business entities restricting competition), and also by CJSC OTSV of Part 5 of Article 11 of the Law on Protection of Competition, which resulted in coordinating the economic activities of the defendants, which led to the establishment of prices for locking and sealing mechanisms (hereinafter referred to as LSM) on the market for LSM used for rail transportation²⁵.

108. Since 2008, LSM manufacturers have concluded and implemented an anticompetitive agreement, the purpose of which was to establish and maintain prices, as well as to divide the commodity market by sales volume and the composition of buyers (consumers) of LSM used in rail transportation²⁶.

109. Using a special software, the cartel exchanged information that allows to control the life cycle of any LSM from the time of production until disposal. At the same time, all the cartel members had access to this system, which allowed them to track the sales volumes and counterparties of their competitors.

²⁴ The FAS Decision on the case No. 1-11-69/00-22-17 of 28.03.2018: <https://fas.gov.ru/documents/621068> (Russian version only)

²⁵ The final court decision (ruling), which entered into force - the decision of the Ninth Arbitration Court of Appeal of 07.12.2018 № 09АП-60694/2018 on the case No. A40-124258/18

²⁶ <http://en.fas.gov.ru/press-center/news/detail.html?id=52882>

110. During the inspections, correspondence and documents were discovered, according to which the cartel regularly coordinated sales volumes, as well as selling prices for LSM. A correspondence was found between coordinated persons (cartel members) and the coordinator (CJSC OTSV), as a result of which, following the instructions of CJSC OTSV, the producers raised prices for LSM.

111. In addition, the illegal coordination of economic activities of business entities by CJSC OTSV in order to establish prices for certain types of LSM has been established.

112. Coordination of the economic activities of manufacturers of LSM has led to the maintenance of prices in the market for the realization of locking and sealing mechanisms used in the implementation of rail transportation.

113. Based on the results of the consideration of this case, the purchase prices for the LSM for final consumers are reduced by two or more times²⁷.

114. The antimonopoly authority stopped the activity of the hard core cartel, which existed for about 10 years and controlled the market, including through the section of procurement procedures of almost all Russian consumers in the private sector.

115. In addition to typical evidence (correspondence, protocols, etc.), the use of special software for monitoring and recording of locking and sealing mechanisms used by cartel members was revealed.

116. Administrative cases have been initiated against all defendants, which are currently under consideration.

117. Competition in the product market for locking and sealing devices used in rail transportation has been restored. The materials of the case and the decision were transferred to the Russian Ministry of Internal Affairs to resolve the issue of initiating a criminal case on the grounds of corpus delicti provided for by Article 178 (Restriction of competition) of the Criminal Code of the Russian Federation.

118. This decision of the antimonopoly authority can be used to file private claims for recovery of damages caused by the unlawful actions of the defendants, since the case contains information on the price of the goods both in the cartel and after its end.

Coordination of the economic activities of smartphone resellers

119. On June 28, 2017, the FAS Russia initiated a case against LG Electronics RUS LLC.

120. On February 21, 2017, an unscheduled on-site inspection of LG Electronics RUS LLC was conducted, during which correspondence of employees and managers of LG Electronics RUS LLC with LG smartphones resellers was discovered, indicating coordination of their activities by LG Electronics RUS LLC.

121. On February 26, 2018, the FAS Russia recognized that LG Electronics RUS violated Part 5 of Article 11 of the Law on Protection of Competition²⁸.

²⁷ <http://en.fas.gov.ru/press-center/news/detail.html?id=53601>

²⁸ <http://en.fas.gov.ru/press-center/news/detail.html?id=52813>

122. LG Electronics RUS in the period from 28.11.2014 to 15.02.2017 coordinated the economic activities of resellers of LG smartphones²⁹.

123. Coordination of economic activities of resellers was carried out by LG Electronics RUS LLC with the use of special software — price algorithms — developed by both the company and other organizations. In addition, illegal coordination included the following elements:

- the establishment of recommended retail prices for LG smartphones, which were published on the website on the Internet at <http://www.lg.com/ru> and communicated to resellers;
- the impact of LG Electronics RUS on resellers in order to comply with the recommended retail prices;
- application of sanctions to resellers who did not comply with recommended retail prices (termination of shipments).

124. As part of this case, the illegal practice of coordinating the economic activities of Russian smartphones resellers, which was carried out by LG Electronics RUS using special software, was examined and stopped. 02.26.2018 LG Electronics RUS announced that it has stopped illegal activities to coordinate the economic activities of LG resellers.

125. Also LG Electronics RUS reported that it had developed and implemented a new compliance policy in the company.

126. A fine in the amount of 2 500 000 rubles was imposed on LG Electronics RUS³⁰. The circumstances mitigating administrative liability were voluntary termination of unlawful conduct prior to opening the antimonopoly case and assisting the FAS Russia in the investigation. The aggravating circumstance was the duration of the violation – it lasted more than a year.

127. In addition, the managers of LG Electronics RUS who were directly involved in illegal coordination were brought to administrative responsibility. Fines were subsequently paid by them.

Coordination of activity leading to the maintenance of bid prices

128. Identification and suppression of cartels in the field of digital technologies is one of the priorities of the FAS Russia.

129. By order of the FAS Russia dated January 30, 2017, case No. 1-11-11 / 00-22-18 was initiated on the grounds of a cartel agreement³¹ (violation of clause 2 of Part 1 of Article 11 of the Law on Protection of Competition”) in relation to Progress Soft LLC and RegionKom LLC, expressed in the conclusion of an oral agreement, which led to the maintenance of prices for tenders for the right to conclude government contracts for the

²⁹ Models: L90 – D410, G4s – H736, G3s – D724, Magna – H502, H502F, G4 – H818, G4c – H522y, Spirit – H422, Nexus 5 – D821, G3 – D855, K5 – X220DS, K7 – X210DS, K8 – K350E, Class – H650E, K10 LTE – K430ds, X Power – K220DS, G5 SE – H845

³⁰ <http://en.fas.gov.ru/press-center/news/detail.html?id=53101>

³¹ The FAS Russia Ruling on scheduling of the case No. 1-11-11-/00-22-18 of February 12, 2018: https://br.fas.gov.ru/generate_pdf/d1f5841f-b7da-47c3-b5bf-dcd7398bf5a7/ (Russian version only)

provision of IT services (performance of works in the field of IT infrastructure) for government organizations in 2015 -2016.

130. As part of the consideration of the case, the FAS Russia established that the anticompetitive agreement was implemented in 22 tenders (13 electronic auctions, 7 open tenders, and 2 request for proposals) for the right to conclude state contracts for the provision of IT services for the needs of state organizations, and the total amount of initial maximum contract prices was about 140 million rubles.

131. Progress Soft LLC and RegionKom LLC jointly participated in the bidding, during which they alternately refused to compete in favor of the second participant of the potential cartel, who was then supplied with software under a subcontract.

132. The participants did not deny the fact of having a cartel and did not appeal against the decision³² of the FAS Russia on this case.

2.2. Actions against abuses of dominant positions

2.2.1. Summary of activities of competition authorities and courts

133. In 2018, the FAS Russia received 28 441 applications related to the abuse of market power: 685 cases were initiated (847 in 2017, 1340 in 2016, 3059 in 2015), of which 232 were terminated due to non-confirmation of the fact of violation. In consideration of the remaining cases, 453 decisions recognized the violation (516 in 2017, 713 in 2016, 2479 in 2015), 310 rulings were issued (330 in 2017, 490 in 2016, 1818 in 2015). 229 decisions were appealed in court (234 in 2017, 316 in 2016, 753 in 2015). The court adjudicated that 36 decisions were lawful (42 in 2017, 99 in 2016, 192 in 2015) and nullified 4 decisions (8 in 2017, 6 in 2016, 14 in 2015); the rest are in the stage of judicial review.

2.2.2. Description of significant cases

Collective dominance of mobile operators

134. In 2017, the FAS Russia began an investigation of pricing for intranet roaming. As a result of the investigation, MTS, Beeline, Megafon and Tele2 received the FAS ruling to equalize the prices for intranet roaming in Russia, but the companies did not comply with the requirements of the antimonopoly service.

135. Intranet roaming is a service that an operator provides to its subscriber when it arrives in another region of Russia and automatically connects to the network of its operator. The FAS Russia has been seeking its cancellation for years. In the spring of 2018, the operators equated the cost of services (calls, sms and Internet traffic) in the region where they were home, but introduced a charge for incoming long-distance calls to compensate for lost income.

136. Later in 2018, the FAS Russia considered the cost of incoming and outgoing long-distance calls unreasonably overvalued and, in this connection, initiated administrative cases regarding the Big Four mobile operators: MTS, Beeline, Tele2 and MegaFon. The FAS Russia found that these telecom operators used tariffs for their subscribers in national roaming at a significantly higher level compared to the inter-operator rate, which exceeds

³² The FAS Russia Decision, case No. 1-11-11/00-22-18 of April 19, 2018: <https://fas.gov.ru/documents/626269> (Russian version only)

economically reasonable costs and profits. Companies set different tariffs for the same service, without an economic and technological rationale.

137. The main goal of the FAS Russia was to bring subscriber tariffs for communication services when traveling through the territory of the Russian Federation to a fair level and to ensure non-discriminatory conditions for subscribers when traveling within the territory of the Russian Federation to ensure the functioning of a single telecommunication space.

138. In August 2018, by decisions of the FAS Russia on national roaming cases, each of the Big Four operators were fined 750 thousand rubles³³.

139. In addition, the antimonopoly service has achieved the abolition of intranet roaming by Russian operators. The first company to cancel intranet roaming was Beeline: it does not charge price for incoming calls from other regions when traveling around Russia since August 20, 2018. MTS canceled roaming since August 30, Tele2 since August 27, MegaFon since September 1.

Infringement of the interests of market participants

140. In 2018, the FAS Russia recognized³⁴ that Unipro PJSC and the System operator of the Unified power system (SO UPS JSC) violated Part 1 of Article 10 of the Law on Protection of Competition³⁵.

141. In February 2016, a fire occurred at the generating facility of Unipro PJSC (Power Unit No. 3 of Berezovskaya TPP), which resulted in the actual non-operability of the Power Unit and the termination of power supply.

142. Unipro PJSC, being aware of the actual inoperability of the equipment, did not state the need for extraordinary certification in order to establish the objective condition of the equipment and its actual ability to be ready for power generation. This would certainly affect the establishment of zero (actual) volumes of capacity and, accordingly, on the invoices issued to consumers.

143. In turn, SO UPS JSC, having information that the power unit does not generate energy and having direct and indirect data on the scale of the accident, also did not initiate an extraordinary procedure for testing the generating equipment.

144. As a result of the anticompetitive behavior of the two companies, consumers continued to pay for capacity that was not actually delivered to the market for 9 months (the overpayment was over 950 million rubles (13 million euros)).

145. The Moscow Arbitration Court confirmed the legitimacy of the decision of the FAS Russia.

146. The case caused a wide public response both from the market community and among the executive authorities.

³³ <http://en.fas.gov.ru/press-center/news/detail.html?id=53263>

³⁴ <https://en.fas.gov.ru/press-center/news/detail.html?id=52745>

³⁵ The FAS Russia decision on the case No. 1-10-79/00-21-17 of 15.02.2018: <https://br.fas.gov.ru/ca/upravlenie-regulirovaniya-elektroenergetiki/21-9602-18/?query=%D0%9F%D0%90%D0%9E%20%C2%AB%D0%AE%D0%BD%D0%B8%D0%BF%D1%80%D0%BE%C2%BB> (Russian version only)

147. At the stage of consideration of the case in the court of appeal, a settlement was concluded with Unipro PJSC and SO UPS JSC, in which Unipro PJSC recognized the violation.

148. Due to the antimonopoly proceedings, changes were made to regulatory legal acts and to the regulations of the wholesale market in order to improve the procedure for calculating volumes in the event of such situations.

149. Thus, at the present time, cases of payment by consumers of capacities not delivered to the market are eliminated.

Creating discriminatory conditions

150. The FAS Russia found that Rosneft PJSC reduced the volume of sales of gasoline while simultaneously acquiring a substantial part of the volumes on the basis of supplies of Ai-92 gasoline to Surgutneftegas OJSC³⁶.

151. As a result of the above actions in the period from March 28 to April 3, 2018 at the Saint-Petersburg International Mercantile Exchange (or SPIMEX)³⁷ the exchange index on this basis increased by around 2%.

152. Since actions of Rosneft PJSC have signs of breaching the antimonopoly law – creating discriminatory conditions and infringing the interests of consumers at large (Clause 8 Part 1 Article 10 of the Law on Protection of Competition), the FAS Russia issued a warning to the company to stop the above actions by undertaking measures to eliminate the consequences of the violation by 17 April 2018:

- Adopt measures to prevent discriminatory on-exchange conditions for independent market participants, particularly, by increasing the volume of on-exchange sales of petrochemicals, based on the production capacity of economic entities – members of the same group with Rosneft PJSC
- If there is a need to buy petrochemicals through the exchange, Rosneft PJSC and economic entities – members of the same group should acquire them from economic entities – members of the same group with vertically-integrated companies, exclusively at an additional trading session.

153. Within a week after the warning was issued, Rosneft PJSC made changes in its work and eliminated violations in the gasoline trading.

2.3. Mergers and acquisitions

2.3.1. Summary of activities

154. In 2018, the FAS Russia considered 1,086 pre-merger notifications and 189 post-merger notifications of economic entities (1103/128 in 2017, 1379/83 in 2016 and 1749/165 in 2015) of which 1,245 pre-merger and post-merger notifications were satisfied (1209 in 2017, 1441 in 2016, 1864 in 2015), including 67 with the issuance of rulings (30 in 2017, 39 in 2016, 66 in 2015). 171 applications filed during the period under consideration were transferred to Phase II of the review (144 in 2017, 100 in 2016, 180 in

³⁶ <http://en.fas.gov.ru/press-center/news/detail.html?id=52910>

³⁷ Official website of the Saint-Petersburg International Mercantile Exchange (or SPIMEX): <http://spimex.com/en/>

2015). At the same time, the competition authority refused to approve 30 transactions (22 in 2017, 21 in 2016, 50 in 2015).

2.3.2. Description of significant cases

Fortum/Uniper deal

155. In 2018, the FAS approved the acquisition of less than 50% of the voting shares of Uniper SE (Germany) by Fortum Deutschland SE (Germany)³⁸.

156. The Fortum Deutschland SE group, indirectly by 100% owned by the public company Fortum Oyj, includes the generating company PJSC Fortum, carries out activities for the production and purchase and sale of electrical energy in the Russian wholesale electricity market within the First Price Zone (Europe and the Urals)³⁹.

157. One of the acquired companies is the generating company PJSC Unipro, which carries out activities for the production, sale and purchase of electric energy on the wholesale electric energy market within the boundaries of the First and Second Price Zones (the Siberian zone).

158. According to the results of the transaction the FAS approved the deal with remedies⁴⁰, which the merging parties should implement during the next 5 years, containing a number of behavioral remedies for companies aimed at:

- prevention of actions that lead (may lead) to a significant increase in prices on the wholesale market of electric energy and power in the formation of price bids for participation in the competitive selection procedure for the day ahead;
- using the strategy of minimizing the cost of fuel to produce a unit of electrical energy; when choosing the structure of consumed fuel for each hour of the day - consuming the cheapest type of technologically used fuel;
- submit quarterly information to the FAS on the progress of the execution of the ruling.

Bayer/Monsanto deal

159. In 2017-2018, the FAS has considered the merger between “Bayer AG” (Germany) and “Monsanto Company” (USA) and concluded a review of it in two phases: the

³⁸ The FAS Russia Decision No. VK/44196/18: <https://br.fas.gov.ru/ca/upravlenie-regulirovaniya-elektroenergetiki/vk-44196-18/> (Russian version only)

³⁹ The list of territories that are combined into price zones of the wholesale electricity and capacity market is established by Annex No. 1 to the Rules for the Wholesale Electricity and Capacity Market, approved by the Government Resolution dated December 27, 2010 No. 1172 "On approving the wholesale electricity and capacity regulations and amendments to some acts of the Government of the Russian Federation on the organization of the functioning of the wholesale market for electric energy and power": <http://government.ru/docs/20168/> (Russian version only)

⁴⁰ The FAS Russia Ruling No. VK/44196/18: <https://br.fas.gov.ru/ca/upravlenie-regulirovaniya-elektroenergetiki/vk-44198-18/> (Russian version only)

competition analysis and the imposition of conditions on the merging company (7 November 2017)⁴¹ and the final approval of the merger (20 April 2018)⁴².

160. This merger affects the markets for the products used by agricultural producers including agricultural crops (seeds), certain crop protection products, in particular nonselective herbicides, as well as digital offerings for agriculture.

161. Both Bayer and Monsanto are vertically integrated full-cycle agrotechnology companies active in agrotechnology research and development as well as in the distribution and marketing of their products to agricultural producers.

162. The first phase of the review corresponded to the FAS decision to impose conditions on the merging company. The conditions put forward on November 7, 2017, contained requirements to “Bayer AG” aimed at creating conditions for the development of potential competition from Russian companies.

163. In the course of this merger review, the FAS organized a series of consultations with the relevant federal authorities, as well as scientific and business communities, and foreign competition authorities. The FAS also met the parties of the merger in order to discuss the possible negative effects the merger could have on competition as well as remedies helping to eliminate them.

164. Considering that technological transformations, including digitalization worldwide, have become key to understanding competitive dynamics in the agricultural sector, the FAS has applied new methodological approaches to identify potential anticompetitive effects of the merger both in the Russian and global markets developed in cooperation with reputable academic institutions.

165. After conducting an in-depth market analysis (See Section 3.1. of the Report) the FAS Russia has concluded that the merger can cause the following anticompetitive effects:

- creating new and increasing existing barriers to entry in relevant markets (including those generated by introduction of closed digital agronomic platforms to the Russian market);
- enhancing incentives for anticompetitive agreements and concerted practices (considering already high level of concentration in this sector, the merger might substantially reduce a number of market players having all necessary technical and data capacities to effectively compete in the new technological and economic environment);
- increasing possibility of abuse of market power (combining innovative technologies, data, and platform solutions will allow the combined company to rapidly increase its market share up to a dominant position in a short term perspective).

166. Hence, the FAS has concluded that the merger creates substantial risks of restriction of competition, and those risks should be leveled in the course of the merger review.

167. The requirements contained in conditions imposed by the FAS on Bayer AG provide for the transfer to Russian companies of the molecular means of selection and

⁴¹ <https://en.fas.gov.ru/press-center/news/detail.html?id=52417>

⁴² <https://en.fas.gov.ru/press-center/news/detail.html?id=52952>

germplasm needed to create new varieties and hybrids, with which the combined company has a strong position in the Russian market.

168. In addition, in order to develop competition in the digital farming markets, the ruling of the FAS also contains obligations to provide Russian companies engaged in the development of agricultural software and applications with non-discriminatory access to digital farming platforms, including access to historical data related to the Russian Federation, as well as to the data that will be collected by Bayer AG after it commercializes its software products on the territory of the Russian Federation. Access to such data is a key factor for the development and implementation by Russian companies of their IT-developments in the field of precision farming.

169. The obligations of Bayer AG also imply the creation of a plant biotechnology research centre in the Russian Federation, which will provide practical training for Russian specialists in the field of accelerated breeding with the involvement of highly qualified specialists with significant experience in this field.

170. On April, 2018, the FAS made a decision to approve the merger.

171. Considering the global nature of this transaction (the transaction is being considered in more than thirty jurisdictions), in preparing its decision, the FAS actively cooperated with foreign competition authorities using waivers, which allow competition authorities to exchange confidential information, with the purpose of developing common approaches and synchronizing requirements for participants in the transaction.

172. Taking into account the fact that in order to monitor the fulfilment by Bayer AG of the requirements contained in the FAS ruling, as well as that special knowledge in the field of selection and IT technologies is required to efficiently transfer molecular breeding tools and germplasm, a mechanism which is new for Russian practice was used entailing the involvement of a third-party organization in the process, on the basis of which the Technology Transfer Centre was established⁴³.

Barry Callebaut/ Inforum Prom Ltd deal

173. The FAS Russia reviewed the application of the Barry Callebaut NL Russia, which is part of the Barry Callebaut Group (Switzerland), to obtain prior consent to acquire 100% of the voting shares of Inforum-Prom Ltd, and approved⁴⁴ the deal by issuing the “Barry

⁴³ <http://en.fas.gov.ru/press-center/news/detail.html?id=53920>

⁴⁴ The FAS Russia Decision No. TA/4063/19 of October 23, 2019: <https://br.fas.gov.ru/ca/upravlenie-kontrolya-agropromyshlennogo-kompleksa/tsa-4063-19/> (Russian version only)

Callebaut NL Russia” the Ruling⁴⁵ on the implementation of certain actions aimed at ensuring competition.

174. Barry Callebaut Group is the world’s leading manufacturer of high-quality chocolate and the supplier of cocoa products to the Russian market. In its turn, Inforum Prom Ltd is a leading producer of industrial chocolate, couvertures, compound coatings and fillings in Russia.

175. During the consideration of the transaction, the FAS Russia found that, in the result of the deal, horizontal integration would take place on the Russian chocolate market, and the total share of Barry Callebaut NL Russia LLC and Inforum-Prom Ltd would significantly exceed the shares of other participants of this commodity market, which can lead to restriction of competition in the chocolate market of the Russian Federation.

176. According to a survey of chocolate consumers, that is enterprises of the confectionery industry, the FAS Russia found that there are large manufacturers in the confectionery market that have a complete production cycle from raw materials to end products, and, therefore, that are completely or significantly independent of the chocolate mass supply, as well as small and medium-sized enterprises that do not have their own raw materials base and procure chocolate semi-products from Barry Callebaut NL Russia LLC and Inforum-Prom Ltd.

177. In this regard, small and medium-sized businesses were concerned about the transaction regarding the monopolization of the supply of chocolate semi-finished products (chocolate mass) as a result of the transaction and a possible restriction of the availability of these products.

178. That being said, the decision to approve the deal was accompanied by rulings to the Barry Callebaut NL Russia LLC with behavioral conditions that ensure the availability of chocolate semi-finished products (chocolate mass) for small and medium enterprises of the confectionery industry (avoidance of capacity decrease of chocolate production, ensuring the possibility of a minimum order quantity of 1000 kilograms).

2.4. Actions against unfair competition

2.4.1. Summary of activities of competition authorities and courts

179. The total number of applications considered in order to prevent and combat unfair competition (Article 14 "Prohibition of unfair competition" of the Law on Protection of Competition) in 2018 was 3,687 (3466 in 2017, 3623 in 2016, 3439 in 2015). 517 cases were initiated (409 in 2017, 453 in 2016, 1113 in 2015). In 381 cases, a decision was made to recognize the violation (269 in 2017, 288 in 2016, 841 in 2015) and 246 rulings were issued (169 in 2017, 211 in 2016, 512 in 2015).

180. There were 77 appeals against the decisions taken by the FAS Russia in 2018 (67 in 2017, 51 in 2016, 147 in 2015). The court found 23 decisions to be lawful (10 in 2017, 13 in 2016, 40 in 2015), 0 decision partially invalid (1 in 2017, 1 decision invalid in 2016, 8 in 2015) and the remaining decisions are in the stage of judicial review.

⁴⁵ The FAS Russia Ruling No. TA/4065/19 of October 23, 2019: <https://br.fas.gov.ru/ca/upravlenie-kontrolya-agropromyshlennogo-kompleksa/tsa-4065-19/> (Russian version only)

2.4.2. Description of significant cases

Misleading consumers

181. The FAS Russia systematically review cases on labeling and packaging of goods in such a way that the consumer has wrong impression of the origin (production place) of such goods.

182. One of them is a case initiated by an application of the CHOCOSUISSE Association (hereinafter - Applicant) about violation of antimonopoly laws by LLC Sobranie (hereinafter - Respondent), expressed in unfair competition connected to the designation “Swiss chocolate”, “Le controle du chocolat de la Suisse” (fr. “control of chocolate by Switzerland”), “Swiss original” on the packaging of its products, as well as a graphic element that reproduces the flag of the Confederation of Switzerland with the above mentioned designations, which creates the risk of misleading consumers about the place of production of the goods.

183. CHOCOSUISSE, the Association of Swiss Chocolate Manufacturers, represents the Swiss chocolate industry. Apart from protecting the brand ‘Switzerland’, CHOCOSUISSE obliges all companies belonging to the Association to refrain from making false statements about products manufactured by founding companies, subsidiaries and affiliates outside Switzerland.

184. The Applicant found out that Sobranie LLC (until 16.09.2016 called Manchester Enterprise LLC) produces, distributes, advertises and offers Bucheron and Swiss Original chocolate for sale, on the packaging there are above-mentioned phrases, as well as the Swiss flag, which is confirmed by the inspection protocol on the company's website⁴⁶.

185. According to the information on the product packaging, Bucheron and Swiss Original chocolate is produced in the Yaroslavl region, and chocolate is “made under the control of the Chocolate Manufacture Geneve Sarl (Avenue de Champel 29, CH-1211, Geneva, Switzerland)”. There is no information that this company is a producer of Swiss chocolate or is somehow related to the production of chocolate in open sources: the company is not in the list of Swiss chocolate producers of the CHOCOSUISSE Association and, according to an extract from the commercial register of the canton of Geneva provided by CHOCOSUISSE, was not listed in the Swiss trade registers in the requested time period (2013-2016).

186. Analyzing the evidence and explanations of the parties in the case, the FAS Russia concluded that, while using the Bucheron chocolate packaging, the phrases containing the words “swiss” and “suisse” with the graphic element that reproduces the flag of the Confederation of Switzerland, in relation to products originating from the territory designated by this indication, LLC Sobranie misleads consumers with regard to the geographical origin of the goods, and also receives unreasonable advantages over the goods of other chocolate producers due to the use of the association with the Swiss chocolate.

187. According to Paragraph 3 Article 14.2 of the Law on Protection of Competition, unfair competition by means of misleading is prohibited, particularly, with regard to the place where the goods offered for sale are manufactured, the manufacturer of the goods, manufacturer’s or seller’s warranties.

⁴⁶ <http://sobranie.shop/> (Russian version only)

188. The Decision of the FAS Russia⁴⁷ ruled that the actions of Sobranie LLC were recognized as an act of unfair competition⁴⁸ expressed in the use of the above designations on the packaging of their products, as well as a graphic element that reproduces the flag of the Swiss Confederation. It misled consumers regarding the place of production of goods.

Deterioration in terms of providing services to consumers

189. "Rostelecom" PJSC has worsened terms of providing services to consumers, raising the cost of a package with interactive television and home Internet.

190. According to the results of the case review initiated on the grounds of violation of the antimonopoly legislation by "Rostelecom" PJSC, the FAS Russia found mobile network operator guilty of unfair competition⁴⁹.

191. Rostelecom attracted consumers to activate services with the "Package for Ever" marketing campaign and then significantly worsened the conditions for their provision. The company has increased the cost of services for the "Interactive TV" and "Home Internet" by an average of 40 rubles, which is a significant amount for such packages. Commission qualified the company's actions as violating Article 14.8 (Prohibition of other forms of unfair competition) of the Law on Protection of Competition.

192. The FAS Russia issued a ruling to Rostelecom on termination of actions that violate antimonopoly legislation.

Creation of confusion

193. LLC "First Managing Franchise Company" acquired and used exclusive rights to the verbal mark "ZARACITY" and two individual entrepreneurs used a similar mark in the signboard.

194. On March 16, 2018, the FAS Russia recognized anticompetitive actions of two economic entities, as well as LLC "First Management Franchising Company"⁵⁰.

195. Individual entrepreneurs used on the signboards of clothing stores the verbal mark "ZARA CITY" similar to confusion with the signs of ZARA stores. The competition authority qualified these actions as acts of unfair competition⁵¹.

⁴⁷ The FAS Russia Decision on the case No. 1-14-10/00-08-18 of July 18, 2019: <https://br.fas.gov.ru/ca/upravlenie-kontrolya-reklamy-i-nedobrosovestnoy-konkurentsii/ak-55509-18/?query=Le%20controle%20du%20chocolat%20de%20la%20Suisse> (Russian version only)

⁴⁸ <https://fas.gov.ru/news/25790> (Russian version only)

⁴⁹ <https://fas.gov.ru/news/26683> (Russian version only)

⁵⁰ <https://fas.gov.ru/news/24535> (Russian version only)

⁵¹ Clause 1 Article 14.6 (Prohibition of unfair competition related to confusion) of the Federal Law "On Protection of Competition"

196. In its turn, LLC "First Management Franchising Company" acquired and used exclusive rights to a combined trademark, including the verbal mark "ZARACITY", which also violates the Law on Protection of Competition⁵².

197. The materials of the case were transferred for drawing up a protocol on an administrative offence for imposing a fine⁵³.

198. The competition authority opened a case based on a statement by Inditex S.A. (Spain) and JSC "ZARA CIS". Inditex S.A. (Spain) is the copyright holder of the ZARA/3APA trademarks. JSC "ZARA CIS" manages the authorized ZARA stores in the Russian Federation.

2.5. Actions against public authorities' anticompetitive conduct

2.5.1. Summary of activities of competition authorities and courts

199. In accordance with Articles 15 and 16 of the Law on Protection of Competition, the FAS Russia is empowered to monitor the actions of public authorities, including anticompetitive acts and actions (inactions) taken by them, as well as agreements restraining competition or concerted actions. For violation of the prohibitions established by these articles, the FAS Russia has the right to make decisions abolishing anticompetitive acts and actions of authorities and imposing sanctions against the authorities.

200. In 2018, the FAS Russia considered 6 394 applications (Article 15, acts and actions that restrain competition) (6078 in 2017, 5780 in 2016, 5301 in 2015) and 461 cases were initiated (531 in 2017, 498 in 2016, 2885 in 2015). In 383 cases, a decision was made to recognize the violation (436 in 2017, 336 in 2016, 2542 in 2015) and 272 rulings were issued (316 in 2017, 213 in 2016, 1958 in 2015).

201. 113 decisions were appealed in court (109 in 2017, 94 in 2016, 430 in 2015). Of these, 14 decisions were found lawful (20 in 2017, 16 in 2016, 126 in 2015), 3 - invalid (10 in 2017, 3 in 2016, 15 in 2015) and the remaining decisions are in the stage of judicial review.

202. In 2018, 524 applications regarding anticompetitive agreements with the participation of authorities were received (Article 16, restricting competition agreements and concerted actions) (435 in 2017, 437 in 2016, 371 in 2015). 275 cases were initiated (239 in 2017, 238 in 2016, 224 in 2015). In 233 cases, a decision was made to recognize the violation (181 in 2017, 196 in 2016, 192 in 2015) and 133 rulings were issued (106 in 2017, 130 in 2016, 162 in 2015).

203. 47 of the decision were appealed in court (61 in 2017, 56 in 2016, 44 in 2015). Of these, 8 decisions were found lawful (5 in 2017, 8 in 2016, 3 in 2015), 0 - invalid (2 in 2017, 2 in 2016, 0 in 2015) and the remaining decisions are in the stage of judicial review.

⁵² Clause 1 Article 14.4 (Prohibition of unfair competition related to acquiring and using the exclusive right for means of individualization of a legal entity, means of individualization of goods, works or services) of the Federal Law "On Protection of Competition"

⁵³ <https://fas.gov.ru/news/26354> (Russian version only)

2.5.2. Description of significant cases

Anticompetitive actions in the retail market

204. During 2015-2017, as a result of the anticompetitive actions of the Federal Prison Service (FPS), detainees were forced to purchase goods at unreasonably high prices, which led to numerous complaints from these individuals and their relatives to the FAS Russia.

205. The FPS has changed the system of organizing sales (realization) of food products, basic necessities, and other industrial goods for the needs of suspects and accused persons detained in the territories of the FPS institutions located within the boundaries of the Moscow city. The sales organization was assigned exclusively to the Federal State Unitary Enterprise “Kaluzhskoye” FPS of Russia, which resulted in:

- reduce the number of suppliers of goods;
- exclusion of any opportunity to enter the retail sale market for persons held in correctional institutions of economic entities other than Federal State Unitary Enterprise “Kaluzhskoye” FPS of Russia;
- unreasonably inflated prices and an increase in the actual expenses of detained persons and their relatives for the purchase of goods.

206. Given the entire circumstances of the cases, the FAS Russia established that the actions of the Federal Prison Service violate Part 1 of Article 15 of the Law on Protection of Competition.

207. Based on the FAS decision⁵⁴, a mandatory ruling⁵⁵ was issued to FPS, on the basis of which the FPS was obliged to stop violating the antimonopoly legislation and ensure competition in the retail market for persons held in correctional institutions.

208. The FPS, having disagreed with the FAS decision, filed an application with the Moscow Arbitration Court to declare the decision illegal⁵⁶.

209. By the decision of the Arbitration Court of the Moscow city dated 03.10.2017, which was left unchanged by the decision of the Ninth Arbitration Court of Appeal dated January 10, 2017, it was refused to satisfy the stated requirements. By decree of the Arbitration Court of the Moscow District of 17.04.2018, these judicial acts were left unchanged⁵⁷.

210. The Supreme Court of the Russian Federation, by its ruling dated 09.08.2018 No. 305-KG18-11114, refused the claim of the Federal Prison Service and the Federal State Unitary Enterprise “Kaluzhskoye” to transfer cassation complaints for consideration at a

⁵⁴ The FAS decision on the case No. 1-15-198/00-18-15 of 07.02.2017: <https://br.fas.gov.ru/ca/upravlenie-kontrolya-sotsialnoy-sfery-i-torgovli/ak-6917-17/?query=1-15-198/00-18-15> (Russian version only)

⁵⁵ The FAS ruling in the case No. 1-15-198/00-18-15 of 07.02.2017: <https://br.fas.gov.ru/ca/upravlenie-kontrolya-sotsialnoy-sfery-i-torgovli/ak-6919-17/?query=1-15-198/00-18-15> (Russian version only)

⁵⁶ The number of the court’s case: No. A40-72145/2017

⁵⁷ <http://en.fas.gov.ru/press-center/news/detail.html?id=52925>

court session of the Judicial Panel on Economic Disputes of the Supreme Court of the Russian Federation.

211. Thus, the execution of the ruling will ensure the level of prices for goods sold in correctional institutions, equal to the level of prices for similar goods prevailing in retail markets in a competitive environment, and also ensure competition in the market for the sale of goods for the needs of persons in custody.

Failure to establish the requirements for the organization and performance of work

212. Issues of licensing of medical activities and related problems of the quality of medical care affect all medical organizations and every citizen of the Russian Federation.

213. In 2013, the Ministry of Health of the Russian Federation issued Order No. 121n⁵⁸, which, in the opinion of the FAS Russia, violated the Regulation on licensing medical activities⁵⁹, as it did not contain any licensing requirements for works and services constituting medical activities that should guide applicants for licenses, licensees, and licensing and supervision authorities.

214. The absence of a unified system of licensing requirements actually establishes barriers to access to the medical services market and creates various supervisory conditions for the work of medical organizations throughout the country.

215. In 2016, the FAS Russia sent a warning to the Ministry of Health, and in 2017 it was forced to initiate proceedings. Given the available evidence, the FAS Russia qualified the inaction of the Ministry of Health, expressed in failure to establish the requirements for the organization and execution of works (services) constituting medical activity, for licensing purposes, as a violation of Part 1 of Art. 15 of the Law on Protection of Competition.

216. On November 29, 2018, the Moscow District Arbitration Court (cassation instance) refused the request of the Ministry of Health of Russia to cancel the decision⁶⁰ and the ruling⁶¹ of the FAS Russia. The court also upheld the decision of the court of first instance

⁵⁸ Order of the Ministry of Health of Russia dated 11.03.2013 No. 121n “On approval of requirements for the organization and performance of work (services) in the provision of primary health care, specialized (including high-tech), emergency (including emergency specialized), palliative care, provision of medical care at sanatorium-resort treatment, during medical examinations, medical expertise, medical examinations and sanitary and anti-epidemic (preventive) measures in the framework of medical care, in case of transplantation of organs and (or) tissues, circulation of donor blood and (or) its components for medical purposes ”

⁵⁹ Established by the resolution of the Russian Government of 16.04.2012 No. 291: <https://rg.ru/2012/04/24/medicina-site-dok.html> (Russian version only)

⁶⁰ The FAS decision on the case No. 1-15-200/00-18-16 of 17.10.2017: <https://br.fas.gov.ru/ca/upravlenie-kontrolya-sotsialnoy-sfery-i-torgovli/18-71516-17/> (Russian version only)

⁶¹ The FAS ruling on the case No. 1-15-200/00-18-16 of 17.10.2017: <https://br.fas.gov.ru/ca/upravlenie-kontrolya-sotsialnoy-sfery-i-torgovli/18-71518-17/> (Russian version only)

and the ruling of the appeal instance, which had previously recognized the decision and ruling of the antimonopoly authority as lawful.

The combination of the functions of the public authority and the economic entity

217. In accordance with paragraph 3 of Part 15 of the Law on Protection of Competition, combining the functions of a public authority and an economic entity is expressly prohibited by antimonopoly legislation, with the exception of cases established by federal laws, decrees of the President of the Russian Federation or decrees of the Government of the Russian Federation.

218. An example of a violation of this article is the case of the FAS Russia on the violation of the antimonopoly legislation by the Federal State Budgetary Institution "Federal Cadastral Chamber of the Federal Registration Service" (hereinafter - the Cadastral Chamber)⁶².

219. In 2017, the order of the Federal State Statistics Service⁶³ was adopted, under which the Cadastral Chamber carried out separate powers of the Federal State Statistics Service and economic activity, which brought income, namely, entered into contracts for the implementation of cadastral and land management works.

220. In this regard, the FAS Russia issued a warning⁶⁴ about the cessation of actions (inaction), which contain signs of violation of the antimonopoly legislation. Cadastral Chamber ignored the warning.

221. In the summer of 2018, the FAS Russia received appeals that the Cadastral Chamber continues to conclude contracts for the performance of cadastral and land management works. In this connection, on September 13, 2018, the FAS Russia announced that it had made a decision to open a case on violation of the antimonopoly legislation.

222. On December 3, 2018, the FAS Russia issued a decision on the case against the Cadastral Chamber, which, combining the functions of a public authority and those of an economic entity by offering cadastral and land management services, violated Part 3 of Article 15 of the Law on Protection of Competition.

223. From the moment of the official decision of the antimonopoly body, the Cadastral Chamber was not entitled to conclude contracts for cadastral and land management work. In addition, the Cadastral Chamber was obliged to bring the statute in line with the requirements of the antimonopoly legislation.

Restriction of entry into a goods market

224. During the consideration of the case of violation of antimonopoly legislation the FAS Russia recognized the administration of the municipal formation "Saratov City", the property management Committee of Saratov and the business entity violated Clause 4⁶⁵ Article 16 of the Law on Protection of Competition.

⁶² <http://en.fas.gov.ru/press-center/news/detail.html?id=53637>

⁶³ The Order of Rosreestr No. P/0302 of June 28, 2017

⁶⁴ <https://fas.gov.ru/documents/598423> (Russian version only)

⁶⁵ Restriction of entry into a goods market, exit from a goods market or removal of economic entities from it.

225. The case was considered due to the citation of the Saratov region prosecutor.
226. During the consideration of the case, it was established that, according to the results of the citizen's application to the Administration and the Committee on the choice of a land plot for construction, the media made a publication about the possibility of renting the land plot. This procedure was regulated by the land legislation of the Russian Federation.
227. After the publication citizens, who were interested in renting a land plot, could apply to the Committee. This could be the basis for the Committee to hold auction.
228. Informing citizens about possible granting of a land plot is necessary not only in order to identify people who want to purchase such a plot, but also to inform citizens whose legitimate interests may be affected regarding the granting of the land plot.
229. The FAS Russia found that the Saratovskaya Panorama newspaper is the official print media of Saratov with a circulation of 14,000 copies.
230. At the same time, the publication about granting the land plot was published in a special issue of the newspaper Saratovskaya Panorama No. 75 of December 29, 2014, issued in an amount of 500 copies.
231. Among these 500 copies, 54 copies were handed over to distributors, 5 copies each were handed over to citizens, in whose interests publications were published, 3 more copies were handed over to subscribers and several copies were sent to libraries. More than 150 copies of the newspaper were not claimed and written off.
232. The FAS Russia concluded that the publication on the forthcoming granting of land for construction in a special issue of the Saratovskaya Panorama newspaper, the circulation of which consisted of 500 copies, of which only 57 copies were distributed, did not accomplish a purpose of public awareness on the granting the land.
233. Moreover, it was impossible to conclude about the exact location of the land plot from the publication, as there was no specification or indication of the address.
234. Based on the body of evidence, the FAS Russia established that the actions of the Committee and the Administration were aimed at granting the land to a specific person without bidding.
235. The Administration did not agree with the decision of the FAS Russia and tried to appeal. Three judicial instances refused to satisfy the stated claims, confirming the legality of the FAS Russia decision⁶⁶.

2.6. Summary of courts' action

2.6.1. Summary of activities of competition authorities and courts

236. In 2018, attempts were made to appeal 632 decisions of the FAS Russia in the area of competition protection (688 in 2017, 676 in 2016, 1577 in 2015), of which 508 at the end of 2018 were in the stage of judicial review. The court supported the decisions of the competition authority in 112 cases (114 in 2017, 174 in 2016, 430 in 2015); 1 decisions were held partially invalid (7 in 2017, 5 in 2016, 15 in 2015). Revocation of the FAS's decisions was recognized to be necessary in 11 cases (31 in 2017, 15 in 2016, 40 in 2015).

⁶⁶ <https://fas.gov.ru/news/26648> (Russian version only)

237. 53 968 proceedings for administrative offences in the field of antimonopoly regulation were instituted in 2017 (47 539 in 2017, 42 299 in 2016, 40 483 in 2015). 42 490 decisions on the imposition of fines in a total amount of 6 480 102 448 rubles (89 258 500 euro) were issued (36 803 decisions in a total amount of 4 168 447 170 rubles (54 785 200 euro) in 2017, 31 398 decisions in a total amount of 4 276 991 649 rubles (56 211 800 euro) in 2016, 28 982 decisions in a total amount of 66 323 379 800 rubles (871 677 000 euro) in 2015).

238. As an example of the Russian judicial practice in 2018, in addition to examples included into previous sections of Part 2 of the Report, one can cite the regulation of the Tatarstan Regional Office of the FAS issued to the Russian Association of Motor Insurers (RAMI)⁶⁷ on termination of actions containing signs of violation of Part 1 of Article 10 of the Law on Protection of Competition, which resulted in the abuse of a dominant position while compiling handbooks and ignoring the fact of the economic situation of the region and, as a consequence, neglecting the possibility of a difference between the cost of spare parts or works in a particular subject of the Russian Federation and average cost in the region where the car repair service is provided.

239. According to these handbooks, the cost of spare parts is calculated, which is used in determining the amount of payments under insurance contracts throughout Russia. Handbooks do not take into account the specificity of each region and prices actually existing in its territory.

240. The case was initiated in 2015, and in March 2016, the Commission of the Tatarstan Regional Office of the FAS found the RAMI to have violated the antimonopoly legislation and issued a ruling to RAMI to bring handbooks into line with the legislation.

241. Having disagreed with the ruling, the RAMI appealed to the arbitration court of first instance, which supported the conclusion of the Tatarstan Regional Office of the FAS.

242. The courts of appeal and cassation canceled the decision and ruling of the antimonopoly authority, indicating that the RAMI is a non-profit organization, which prepares and forms handbooks free of charge. Therefore, in this case there are no goods and a commodity market.

243. Nevertheless, insisting on the existence of violations, the Tatarstan Regional Office of the FAS appealed to the Supreme Court of the Russian Federation. On March 14, 2018, the judicial panel on economic disputes of the Supreme Court reviewed the cassation complaint of the Tatarstan Regional Office of the FAS regarding the correctness of the preparation and formation of handbooks by the RAMI and did not support the conclusions of the courts of appeal and cassation, stating⁶⁸ that in accordance to the Law on Protection of Competition, business entities include, among other things, non-profit organizations that carry out income generating activities.

⁶⁷ <https://fas.gov.ru/news/24510> (Russian version only)

⁶⁸ The Ruling of 16.03.2018 on the case No. A65-16238/2016: <https://sudact.ru/vsrf/doc/MVSM6PKscs12/> (Russian version only)

3. Part 3. Conducted market studies

244. From 2012 the FAS Russia Commission for the analysis of commodity markets, which includes representatives of the structural departments of the central office and territorial bodies of the FAS Russia, the Public Advisory Council⁶⁹ and expert councils⁷⁰ of the FAS Russia, as well as business entities, public associations and scientific organizations, has been in charge of analyzing commodity markets. The Commission's functions include consideration of proposals by representatives of the FAS Russia and the development of draft plans of the authority for analyzing commodity markets, guidelines for relevant analyzes and their approval, as well as reviewing the materials of conducted commodity markets analyzes.

245. The Head of the FAS Russia approves the FAS Russia's Work Plan for analyzing the state of competition in commodity markets, which specifies the list of commodity markets for the annual review.

246. The Commission is chaired by the Deputy Head of the FAS Russia Andrey Tsyganov.

247. According to the amendments to the Russian competition legislation, which entered into force in 2016 with the adoption of the "Fourth antimonopoly package", market research (or "market analysis" in accordance with the Russian conceptual apparatus) is conducted in the volume necessary for decision-making when all cases of violation of antimonopoly legislation and economic concentration cases are examined.

248. The FAS Russia also conducts market studies in order to assess the state of competition in socially significant markets.

249. Thus, according to the List of commodity markets for the annual review, the FAS Russia annually analyzes the state of competition in the following markets: wholesale automobile gasoline market, wholesale diesel market, wholesale raw oil market, wholesale aviation kerosene market, fuel oil wholesale market, wholesale oil bitumen market, the wholesale market of fuel additives, which increase the octane number of automobile gasoline, the wholesale market of liquefied petroleum gases, the wholesale market of energy coal, the wholesale market of natural gas, mobile telephone communications market, wholesale and retail electricity power markets, heat supply market.

250. Besides, the FAS Russia conducts market studies, according to the Work Plan for analyzing the state of competition in commodity markets. Thus, in accordance with the Plan for 2017-2018, the FAS Russia analyzed the following markets⁷¹: retail automobile gasoline market, retail diesel market, outdoor wholesale automobile gasoline market, outdoor wholesale diesel market, oil and flammable natural gas services market, the market for construction (reconstruction) of roads of regional significance, the market for construction (reconstruction) of federal roads, the market of sugar beet seeds, the powdered

⁶⁹ [http://fas.gov.ru/councils/sovet-po-konkurenczii-pri-fas-rossii-\(obshhestvenno-konsultativnyij-sovet\)](http://fas.gov.ru/councils/sovet-po-konkurenczii-pri-fas-rossii-(obshhestvenno-konsultativnyij-sovet)) (Russian version only)

⁷⁰ https://fas.gov.ru/pages/vazhnaya-informacziya/otkryitoe-vedomstvo/ekspertnye_sovety (Russian version only)

⁷¹ The FAS Russia Order No. 1718/16 of December 05, 2016 «On the Work Plan for Analyzing the State of Competition in Commodity Markets for 2017 - 2018»: <http://legalacts.ru/doc/prikaz-fas-rossii-ot-05122016-n-171816-o-plane/> (Russian version only)

milk market, the market of soybean seeds for sowing, the market of services provided by clearing organizations, the markets of gold, platinum, nonmetallic building materials, the market of services for the protection of objects that are not subject to private security activities and market of temporary storage warehouses services.

251. It is notable that the analysis of the state of competition in the commodity markets of the FAS Russia is carried out within the framework of consideration of cases of antimonopoly legislation violations.

3.1. Market studies of Bayer/Monsanto deal

252. For example, in-depth market analysis was conducted by the FAS Russia in the framework of Bayer/Monsanto deal in 2017-2018 (see description of merger review in Section 2.3.2. of the Report).

253. The FAS has conducted market analysis for the factors of agricultural production relevant to the merger review including emerging market integrated agrotechnological solutions that has been recently formed in a process of ongoing systemic technological and business transformations within the agricultural sector.

254. All these markets were analysed by the FAS in the context of increasing globalization of the world economy and integration of agricultural production into the global food value chains. This required the FAS to assess not only 'horizontal' relations between the market competitors but also 'vertical' interactions between different segments of the global food value chains.

255. In the context of the accelerating pace of innovation in the agrotechnology sector, the FAS assessed not only the merging parties' market shares but also the most probable scenarios for market transformation including changes in their competitive structure and dynamics in the short and medium term perspectives.

256. These changes are caused by an ongoing systemic shift in the agrotechnology markets that requires from companies if they want to be globally competitive to provide integrated (packaged) solutions to farmers which includes customized seeds, targeted crop protection solutions, as well as digital solutions based on big data analysis (with regards to soil, climate and other agronomic parameters) collected and processed within the digital farming platforms.

257. Moreover, due to a high degree of globalization of Russian agricultural production both in terms of export of agricultural products and importation of factors of production, the abovementioned global systemic transformations in the agricultural sector are transmitted to the Russian market.

258. In assessing the impact of the transaction on competition in the Russian market, the FAS based on the assumption that the combined company possesses strong capacities including big genetic data; latest technologies for accelerated genetic selection allowing the development of biotechnology seeds with predicted characteristics not subject to regulatory restrictions aimed at the control of cultivation of genetically modified organisms; as well as big data and algorithms for digital farming. All this may allow the combined company to increase its market power in a technologically changing environment quickly and effectively. This may possibly lead to a fast increase in the combined company's market share up to reaching a dominant position in the affected markets dependent on the abovementioned technological changes; as well as to creation of high

entry barriers for market player lacking some of those technological and data capacities at once.

3.2. Market studies of MegaFon/Mail.Ru.Group deal

259. In 2017, the FAS Russia approved merger of "MegaFon" PJSC and the Mail.Ru Group. MegaFon is a mobile network operator that holds a dominant position in the market of mobile communications services as part of collective dominance with 28% share. Mail.Ru Group owns one of the most popular email services, large online advertising platform myTarget, popular social networks VKontakte and Odnoklassniki.

260. The fact that mobile network operator MegaFon has been developing its own OTT services (over-the-top)⁷² since 2017 was taken into account when considering the deal.

261. During the consideration, it was assessed that competition in the markets of OTT services may be affected by MegaFon's establishment of advantages to OTT services owned by a group of persons by preferentially offering these services to their own subscribers or by prioritizing these services.

262. Based on voluntary compliance with the principles of network neutrality by all market participants, the FAS Russia concluded that this merger would not have a negative impact on the market of OTT services.

263. The second aspect that was evaluated by the FAS Russia was the possible use of data on consumers by both participants of the deal, which could provide them with advantages in the markets of mobile communication services and in the markets of OTT services, as well as advantages for the operation of the myTarget advertising platform.

264. Currently, the largest holders of data on consumer behavior are communications providers, credit organizations (banks), search and postal services, social networks, as well as developers of operating systems and applications for mobile devices. It is important to note that in this study we did not take into account data on consumers that are contained in state information systems, since these data are not used for commercial practices.

265. At the same time, the data sets on consumer behavior largely overlap.

266. After evaluating a significant number of organizations possessing data on consumer behavior and after analyzing the composition of such data, the FAS Russia concluded that the participants of the deal are not persons possessing exclusive data that could provide them with competitive advantages on the corresponding commodity markets.

267. The FAS Russia based on the fact that the processing of data on consumer behavior and the transfer of the results of processing such data to commercial practices is carried out in accordance with the requirements established by the law for the collection, processing and storage of personal data⁷³.

268. In respect of the market position of the myTarget advertising platform, in the segment of online advertising its share does not exceed 10% (share of the Yandex.Direct

⁷² OTT (Over the Top) — method of providing video services over the Internet. The term OTT means delivering a video signal from a content provider to a user's device (set-top box, computer, mobile phone) over data networks, often without direct contact with the carrier.

⁷³ Federal Law dated July 27, 2006, No. 152-FZ "On Personal Data": <https://rg.ru/2006/07/29/personaljnnye-dannye-dok.html> (Russian version only)

platform is 60% and Google AdWords - 30%). At the same time, the FAS Russia did not detect any factors that could significantly increase the influence of the Mail group in this market as a result of the merger.

269. Considering in aggregate all the established factors, the FAS of Russia concluded that the merger of MegaFon and the Mail.Ru Group would not have a negative impact on competition.

270. In conclusion, we believe it is possible to state that every vertical merger should be considered taking into account all factors that could affect competition in the current regulatory environment, including current business practices and taking into account the stability of the established behavior.

3.3. International comparative study on medicine prices

271. According to the results of the international comparative study on medicine prices and comprehensive set of measures undertaken by the FAS Russia, since 2016 a significant reduction of 1 070 maximum selling prices of producers was achieved, including 444 prices reduced in 2018.

272. Average size of the price reduction in 2018 was 44% (from 1% to 96%), and in rubles the largest decline was up to 21 000 rubles (290 euros) from one consumer package. For example, the price for the "Remicade" medicine (INN - Infliximab) was reduced by 40%, and in rubles by 17 000 rubles (235 euros) and for the "Aranesp" medicine (INN - Darbepoetin Alfa) by 32%, and in rubles by 21 000 rubles (290 euros). For the "Nexium" medicine (INN - Esomeprazole) the price was reduced more than 10 times by the manufacturer.

273. Decrease in the producer prices leads to a decrease in the initial (maximum) prices of the contract for public procurement and, consequently, to budget savings, as well as to a decrease in retail prices in pharmacies.

4. Part 4. International cooperation

4.1. Interaction with international organizations

274. Active cooperation with the relevant international organizations is important for the FAS Russia in order to identify best practices and improve the application of Russian competition legislation, including the Organization for Economic Cooperation and Development (OECD), the International Competition Network (ICN), the UN Conference on Trade and Development (UNCTAD), Asia-Pacific Economic Cooperation (APEC).

275. In 2018 the FAS Russia participated in all meetings of the Competition Committee, as well as meetings of the Global Forum on Competition and its working groups within the framework of the OECD Investment Committee and meetings of the OECD Network of Economic Regulators. Employees of the FAS Russia also took part in two OECD workshops on combating cartels. The FAS Russia prepared 13 reports on the legislative

and law enforcement experience of the authority that were published in the OECD documents database⁷⁴.

276. In 2018, the FAS Russia's cooperation with the OECD-GVH Regional Center for Competition in Hungary (RCC)⁷⁵ continued to develop. The FAS Russia together with the RCC held a seminar "Effective Cartel Enforcement"⁷⁶ in St. Petersburg.

277. Initiated by the OECD and the FAS Russia, a series of seminars on antimonopoly compliance were held: international seminars "Interacting with the public procurement system in Russia: good practices and guidance to fight bid-rigging"⁷⁷ in February 2018 in Moscow and Kazan; international seminars on corporate governance and business integrity in June 2018 in St. Petersburg and in Moscow⁷⁸.

278. The purpose of the seminars is to draw the attention of companies to the implementation of antimonopoly compliance in order to minimize and prevent antimonopoly risks, as well as to examine the experience of using this tool by various companies in the Russian Federation.

279. About 200 representatives of Russian and foreign companies operating in the Russian Federation took part in the events.

280. One of the priorities of the FAS Russia in 2018 was the further implementation on the UNCTAD platform of a Russian initiative to create legal frameworks that secure mechanisms to effectively combat unfair practices of large international companies, suppress transborder violations of antimonopoly laws and interact while considering global economic concentration deals⁷⁹.

281. The FAS Russia implemented a set of measures aimed at promoting this initiative on the UNCTAD platform. Up to the moment the draft of the Guiding Principles and Procedures for International Cooperation is discussed within the UNCTAD Discussion Group on International Cooperation.

282. Regarding cooperation with the APEC, the FAS Russia took part in the Annual Meetings of the APEC Economic Committee and the APEC Competition Policy and Law

⁷⁴ On the website <https://one.oecd.org/> № DAF/COMP/WP2/WD(2018)20; DAF/COMP/WD(2018)19; DAF/COMP/WP3/WD(2018)24; DAF/COMP/WD(2018)41; DAF/COMP/WP2/WD(2018)42; DAF/COMP/WP3/WD(2018)47; DAF/COMP/WD(2018)99; DAF/COMP/WD(2018)116; DAF/COMP/GF/WD(2018)11; DAF/COMP/GF/WD(2018)33; DAF/COMP/GF/WD(2018)52; DAF/COMP/WD(2018)152; DAF/COMP/WD(2018)88

⁷⁵ <http://www.oecdgvh.org/menu/about>

⁷⁶ http://www.oecdgvh.org/menu/events/Archive2018/10_2018.html?query=Effective+Cartel+Enforcement

⁷⁷ <http://femc.fas.gov.ru/novosti/vzaimodejstvie-s-sistemoy-gosudarstvennyh-zakupok-v-rossijskoj-federacii-luchshie-praktiki-i-rukovodstvo-po-bor-be-so-sgovorami-na-torgah/> (Russian version only)

⁷⁸ <http://www.oecd.org/corporate/ca/corporategovernanceandbusinessintegrityinrussia.htm>

⁷⁹ <http://en.fas.gov.ru/press-center/news/detail.html?id=53385>

Group⁸⁰, in formation, updating and implementation of the Comprehensive Action Plan of the Russian Federation in the APEC Forum for the relevant periods (“Structural Reforms” and “Competitive Policy” Section “Trade liberalization, investment, regional economic integration”)⁸¹, as well as the Individual Action Plan of the Russian Federation to implement the “Bogor goals for 2016-2018” (sections “Investments”, “Competition Policy”, “Public Procurement”, “Review of deregulation/regulation”)⁸².

283. In 2018, representatives of the FAS Russia took an active part in the activities of the ICN, including meetings of the ICN Working Groups and the ICN Annual Conference.

284. In the ICN Annual Conference⁸³ representatives of the FAS Russia were the key speakers on international cooperation between competition authorities, consideration of global mega-mergers in the agro-industrial sector, combating cartels and anti-competitive agreements in the digital economy.

285. Besides, in the framework of the Conference, participants discussed further activities of the ICN Working Groups and determined the chairs and co-chairs. Thus, the FAS Russia was re-elected as a Co-Chair of the second subgroup of the ICN Cartel Working Group.

286. Moreover, within the framework of the Conference, the ICN Coordinating Committee approved a number of new recommendations prepared by the ICN Working Groups. The ICN Cartel Working Group presented the draft Handbook of the International Competition Network for the Development of Private Law Enforcement in Cartel Affairs. One of its sections was prepared by the FAS Russia together with the Italian Competition Authority on the basis of information on the development of national private law enforcement received from the ICN Cartel Working Group.

287. In addition, in 2018 the FAS Russia participated in the activities of the Energy Regulators Regional Association (ERRA)⁸⁴ and its committees and working groups. For example, Customers and Retail Markets Working Group, the Tariff and Pricing Committee and the Licensing and Competition Committee.

288. On April 23, 2018, representatives of the FAS Russia attended the ERRA Annual Meeting in Sochi⁸⁵ where participants discussed the results of ERRA activities, as well as a strategy for the development of cooperation and a work plan for the future.

289. During the first meeting of ERRA contact persons in June 2018, a representative of the FAS Russia made a report on upcoming international events in 2018 with the assistance

⁸⁰ As part of the APEC Forum Senior Officials Meetings on 3 March, 2018 in Port Moresby (Papua New Guinea)

⁸¹ On March 1-2, 2018 and August 6-8, 2018 in Port Moresby (Papua New Guinea)

⁸² Bogor Declaration (Indonesia, 1994), where so called “Bogor goals” were introduced in order to reduce barriers to trade and investment by 2010 for developed and by 2020 for developing economies

⁸³ New Delhi, India, March 21-23, 2018

⁸⁴ <http://en.fas.gov.ru/international-cooperation/erra/>

⁸⁵ <https://erranet.org/erra-general-assembly-2018-sochi-russia/>

of the Russian authority, as well as possible options for cooperation among ERRA member countries at the existing training platforms in bilateral and extended formats⁸⁶.

290. In April 2018, Russian department of the International Advertising Association (IAA) with the support of the FAS Russia, representing the federal agency responsible for monitoring and supervising compliance with the legislation in the field of advertising, submitted an application for organizing and conducting IAA World Congress in Russia in 2020. The proposal received support from the IAA Board of Directors and was included in the schedule of the IAA events. For preparation for the 45th IAA World Congress, the National Organizing Committee (NOC) was established, co-chaired by the Head of the FAS Russia Igor Artemiev.

4.2. Bilateral and multilateral cooperation with Competition Authorities

291. In 2018, the FAS Russia made efforts to expand the legal framework enhancing international cooperation with foreign competition authorities in order to create a legal basis for applying modern mechanisms to combat transborder violations of antimonopoly legislation.

292. The work was carried out in coordination of the draft Cooperation Agreement in the field of competition policy between the Government of the Russian Federation and the Government of the Republic of Belarus.

293. Domestic procedures in the two countries for signing the Cooperation Agreement⁸⁷ were completed by the end of 2018 and it was signed at the end of February 2019⁸⁸.

294. This Cooperation Agreement is the first bilateral international treaty that establishes modern mechanisms of cooperation between the competition authorities of Russia and Belarus in law enforcement.

295. In 2018, Memorandum of understanding in the competition policy field between the FAS Russia and the Competition Authority of Tajikistan was signed. Besides, the FAS Russia and the Korea Fair Trade Commission (KFTC) signed the Minutes of the 18th Consultation Meeting on Competition Policy.

296. Agreements on signing a new intergovernmental cooperation agreement with China were reached. Moreover, the FAS Russia and the competition authority of Norway prepared a draft Cooperation Agreement that will be signed in 2019.

297. As part of the implementation of the international legal framework, the FAS Russia annually conducts international internships for representatives of foreign competition authorities.

298. Workshop entitled "New Approaches to Defining Markets in Antimonopoly Investigations" was held on the basis of the FAS Centre for Education and Methodics (Kazan) on March 27-29, 2018. Representatives of the competition authorities of Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Czech Republic, Estonia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkey, Uzbekistan and the Eurasian Economic Commission attended the event.

⁸⁶ <https://erranet.org/first-meeting-of-the-liaison-officers-held-in-the-erra-office/>

⁸⁷ Order of the Government of the Russian Federation No. 2051-r dated September 27, 2018

⁸⁸ <http://en.fas.gov.ru/press-center/news/detail.html?id=53870>

299. The FAS Russia also organized three internships for representatives of the Belarus, Kazakhstan, and Kyrgyzstan competition authorities.

300. In May 2018, representatives of the FAS Russia took part in the 8th St. Petersburg International Legal Forum (hereinafter - the Forum). Over the past six years, the FAS Russia has been a regular participant of the Forum. Through the use of the Forum's platform, it became possible to attract the attention of a wide range of international experts interested in development of modern competition law to the problems of antimonopoly regulation both in the Russian Federation and in the BRICS and EAEU spaces.

301. Within the framework of this Forum, the FAS Russia formed major issue-related area under the general title "New Challenges: New Competition Policy".

302. In addition, the FAS Russia annually organizes "The Russian Competition Week"⁸⁹ - major international event with the participation of representatives of government, business, international organizations and integration associations as well as heads of competition authorities from all over of the world.

303. International Event "The Russian Competition Week" 2018 was held in Sochi. It was a platform for international discussions, including session of the Interstate Council on Antimonopoly Policy (ICAP), Headquarters for Joint Investigations of Violations of the Antimonopoly Law by the CIS member-states, meeting of the International Working Groups on Research of Competition Issues in the ICT sector, pharmaceutical sector and the International Roundtable on market concentration.

304. Apart from that, the IV Annual International Conference "Antimonopoly Policy: Science, Practice, Education"⁹⁰ organized by the FAS Russia and HSE-Skolkovo Institute for Law and Development was held in Moscow at the end of 2018. Key topics of the discussion were issues of the digital economy and competition policy. Over 200 experts from different countries attended the Conference. The speakers and participants of the Conference were representatives of scientific community, high-level academic staff of the leading universities, experts of international standing, representatives of innovative companies, heads of foreign competition authorities and international organizations, as well as representatives of Central and Regional Offices of the FAS Russia.

4.3. Development of competition legislation and its enforcement at regional and multinational level

4.3.1. *Commonwealth of Independent States (CIS)*

305. The main platform for conducting joint research in the infrastructural and socially important markets of the CIS member-states and drafting proposals for the competition development is the Headquarters for Joint Investigations of Violations of the Antimonopoly Law by the CIS member-states (Headquarters) under the Interstate Council on Antimonopoly Policy (ICAP), which was established in 2006.

306. In 2018, the Headquarters carried out work to study the state of competition in the markets of medical products (work continues).

⁸⁹ <http://en.fas.gov.ru/press-center/news/detail.html?id=53281>

⁹⁰ <http://en.fas.gov.ru/press-center/news/detail.html?id=53458>

307. In addition, the Report "On the formation of competition policy in the CIS member-states in the context of the development of the digital economy"⁹¹ was prepared in 2018.

308. The purpose of this Report was to determine the general description of the digital economy in the CIS member-states, analyze new challenges for competition policy in the digital economy as well as evaluation of the readiness of competition legislation for new challenges and the need for changes in the legislation of the CIS member-states⁹².

309. In line with the decisions of the ICAP (May 30, 2018) and Headquarters (May 28, 2018) sessions held in Minsk (Republic of Belarus), competition authorities of the CIS member-states provided information on practical implementation of recommendations on competition development in the air transportation, telecommunications, retail food distribution, medicine, oil and petroleum products markets, which was included in the report "Interstate Council on Antimonopoly Policy: Practical Effect"⁹³.

310. In addition, the Headquarters completed its work on research in the markets of non-metallic construction materials and economy class housing construction in 2018⁹⁴.

4.3.2. The Eurasian Economic Union (EAEU)

311. During 2018, the FAS Russia cooperated with the European Economic Community (EEC) regarding 27 submitted applications (materials) on signs of violation of general competition rules, including EEC statutory filing, execution of motivated EEC requests for proceeding, etc.

312. Discussion of current issues in the field of the EAEU competition policy is carried out during meetings of the heads of the competition authorities of the EAEU member-states and the Member of the Board (Minister) on competition and antimonopoly regulation of the Eurasian Economic Commission, which are held in accordance with Paragraph 57 of Appendix No. 19 to the EAEU Treaty.

313. Purpose of such meetings is to discuss the most pressing issues of law enforcement, legal harmonization of the EAEU member-states and information exchange. Such meetings were called the meeting of the heads of competition authorities of the EAEU member-states in the 5 + 1 format.

314. In 2018, such meetings were held three times - in Moscow (February) at the site of the Eurasian Economic Commission, in St. Petersburg (May) as part of the St. Petersburg International Legal Forum and in Yerevan (October) as part of the International Forum "Eurasian Week".

⁹¹ Resolution of the 80th meeting of the CIS Economic Council (December 7, 2018 - Moscow)

⁹² Report was addressed at the meetings of the Economic Policies Commission (September 17, 2018) and CIS Economic Council (December 7, 2018).

⁹³ Report is currently being finalized.

⁹⁴ Report "On the state of competition in the economy class housing market in the CIS member-states" was approved on June 14, 2018 at a meeting of the CIS Economic Council in Moscow. Report "On the state of competition in the aggregates markets in the CIS member-states" was approved on May 16, 2018 by the Economic Policies Commission of the CIS Economic Council and incorporated into information analysis content for the meeting of the CIS Economic Council held on December 7, 2018.

315. Another important area of cooperation between the competition authorities of the EAEU and EEC member-states was work on the improvement of the contractual legal framework.

316. In 2018, the EAEU member-states agreed on amending the Treaty on the Eurasian Economic Union, dated May 29, 2014 (hereinafter - Treaty) in order to introduce into the EAEU law the warning mechanisms of violations of general competition rules.

317. These mechanisms have proved to be remarkably effective in the EAEU member-states, in particular in the Russian Federation. They will allow to restore competitive conditions in the EAEU transboundary markets in a short timeframe without long investigation procedures.

318. Pending the entry into force of the relevant amendments to the Treaty, as a provisional measure rules are included in the Procedures for Hearing on Cases on Competition Rules Violations⁹⁵ that provide for the possibility of developing proposals aimed at resolving possible violations and restoring competition in the commodity market with respect to an economic entity (market entity), whose actions show signs of a violation of general competition rules.

319. On the entry into force of these amendments, EEC has prepared six such proposals.

320. In 2018, the work on the Procedures for submitting to the EEC appeals from the EEC member-states regarding the introduction of state price regulation, their consideration by the EEC and consultations⁹⁶ was completed.

321. In addition, during the meeting of the EEC Council (October 24, 2018) a Protocol of Accession of the Republic of Armenia to the Agreement on the Procedures for confidential information protection and liability for disclosing it in the course of the Eurasian Economic Commission exercising its powers to control compliance with the common competition rules was signed.

322. During 2018, cooperation with EEC on competition advocacy continued to develop. Cooperation was established between the press-services of the national authorities of the EAEU and EEC member-states, as well as the EEC Public Reception Office began to work on a regular basis, in which representatives of the FAS Russia took part.

323. An important initiative of the EEC, supported by the competition authorities of the EAEU member-states, was the proposal for the implementation of the public initiative mechanism. Public initiative is a mechanism for receiving "feedback" or "signals" from business, government bodies and others regarding competition issues in various markets. The implementation of the public initiative will be carried out through a questionnaire to the public, relevant information about the work being carried out will be published on the official websites of the EEC and the competition authorities of the EAEU member-states. Based on the evaluation of information received, decisions will be made on adoption of antimonopoly response measures.

⁹⁵ Eurasian Economic Commission Council Resolution dated November 23, 2012, No. 97:

<https://cis-legislation.com/document.fwx?rgn=55976>

⁹⁶ Eurasian Economic Commission Council Resolution dated December 25, 2018, No. 221:

<https://cis-legislation.com/document.fwx?rgn=112602>

324. The practical implementation of the public initiative mechanism is scheduled for 2019.

325. A separate set of activities implemented in 2018 and related to the improvement of the Treaty was related to the work on proposals for amending the List of Procurement Procedures from a Single Source or from Sole Supplier (Executor, Contractor)⁹⁷ in terms of excluding the criterion of number of employees with disabilities in non-governmental associations of disabled persons.

326. It is important to further develop the cooperation of the EEC and the competition authorities of the EAEU member-states, which will increase the efficiency of their enforcement activities in order to protect and promote competition in the EAEU markets, as one of the most important factors for the effective functioning of the Union.

327. In addition, the FAS Russia participated in the following discussions at the EEC platform during 2018:

- mutual recognition by the EAEU member-states of bank guarantees within the framework of the implementation of the state order, mutual recognition of the electronically arranged signature made in accordance with the legislation of the EAEU member-states;
- legal harmonization of the EAEU member-states (Republic of Armenia, Republic of Kyrgyzstan) in order to eliminate the identified inconsistencies of the national legislation on securing the unimpeded participation of economic entities of other EAEU member-states in mutual government procurement of goods, works and services, to the Treaty;
- development of draft rules for determining the country of origin of goods, works and services for the purposes of procurement approved by the EEC, the adoption of which will ensure equal competitive positions for suppliers in the EAEU procurement market and the provision of equality of aliens for goods, works and services originating from the territory of the EAEU member-states.

328. Discussion of these issues continues.

329. During 2018, addressing the issue of legalization of "parallel imports" also continued.

330. The FAS Russia together with the authorized authorities of the EAEU and EEC member-states developed procedural and institutional arrangements to introduce exceptions to the existing regional principle of the exhaustion of trademark rights in relation to selected goods and to define criteria for determining these goods amongst other things on the basis of price, availability and quality of goods imported into the Russian market, compared with similar goods in foreign countries, taking into account the provision of necessary terms of transport, level of the potential risk to buyers in the case of the counterfeit purchase, availability of goods for the consumer and other factors.

331. The given initiative was considered during a meeting of the Eurasian Intergovernmental Council that was held on November 27, 2018 in Minsk (Republic of

⁹⁷ Appendix No. 3 to the Protocol on Regulation of Procurement of the Treaty on the Eurasian Economic Union

Belarus). Taking into account the discussion that has taken place, the work on improving the principle of the exhaustion of trademark rights on the territory of the EAEU continues.

4.3.3. *BRICS*

332. Active cooperation of the competition authorities of the BRICS countries continued in 2018. Meeting of the heads of the competition authorities of the BRICS countries was held within the framework of the 8th St. Petersburg International Legal Forum in May 2018. In September 2018, session of the BRICS Coordination Committee on Antimonopoly Policy was held within the framework of the International Event "The Russian Competition Week" in Sochi. Apart from that, working meeting of representatives of the BRICS competition authorities was held within the framework of the ICN Annual Conference.

333. In addition, in accordance with the provisions of the Memorandum of understanding in the competition policy field signed by the heads of the competition authorities of the BRICS countries on May 19, 2016 in St. Petersburg, BRICS Working Groups on pharmaceutical sector, global food chains, automobile markets and digital economy are carried out on a regular basis.

334. In 2017, the President of the Russian Federation Vladimir Putin supported the idea of FAS Russia on establishment of an international BRICS center in the field of competition law and policy in Russia⁹⁸. Since that time, the FAS Russia has been exploring the possibility of creating such center.

335. In July 2018, the BRICS Antimonopoly Center (hereinafter - BRICS Center) was established and began to function as part of the National Research University Higher School of Economics (hereinafter - HSE)⁹⁹.

336. Activities of the BRICS Center are intended to be an important tool in the work of the competition authorities to ensure fairness in the socially important markets and create conditions for more efficient development of the competitive environment across the BRICS space, as well as to promote the institutionalization of cooperation between competition authorities and academia of the BRICS countries.

337. Apart from that, the preparation for the key event of the BRICS competition authorities - the BRICS Competition Conference (hereinafter - Conference), which is held in turn in each of the BRICS countries every two years started in 2018.

338. Order of the Government of the Russian Federation dated February 23, 2017, No. 309-p was adopted as well as Organizational Committee for the Preparation and Holding of the Conference was formed in order to hold the VI Conference in Moscow in September 2019.

339. Work was carried out on the formation of the Conference program and its coordination with the BRICS partners, a number of administrative nature issues were resolved.

340. The Conference will be an important step in preparing for Russia's chairmanship of the BRICS in 2020, participating in the preparation of the concept and plan of which the FAS Russia also took an active part in 2018.

⁹⁸ Order of the President of the Russian Federation dated April 26, 2017, No. Pr-813

⁹⁹ Online platform: <http://bricscompetition.org/>

5. Part 5. Competition advocacy

341. The FAS Russia continues to strengthen its position as one of the most open Russian authorities. A new Information Policy Concept was developed regarding international community to raise awareness among various groups of stakeholders (government, courts, business community, citizens, scientific community) about the functions and principles of the FAS Russia. The main activities of the FAS Russia within the framework of the Concept are the analysis of global and regulatory competitive systems, cooperation with specialized international journals and news services, participation in international research projects, activities on the platforms of embassies and trade delegations of the Russian Federation abroad, activity in the Internet and foreign media space.

342. The FAS Russia has collegial bodies¹⁰⁰ that analyze and review materials on the study of the practice of applying antimonopoly legislation, provide Guidelines on its application, review the decisions and instructions of the territorial bodies of the FAS Russia on cases of violation of antitrust legislation.

343. Experts of the FAS Russia, representatives of federal executive bodies, executive bodies of subjects of the Russian Federation, business unions, non-profit organizations, public associations and scientific organizations take part in meetings of FAS collegial bodies.

344. Thus, the FAS Russia has the following collegial bodies: the Public Council¹⁰¹, the Methodological Council¹⁰², the Methodological Council on Tariff Regulation¹⁰³, the Competition Council (Public Advisory Council)¹⁰⁴, the Commodity Markets Commission¹⁰⁵, Research-and-Methodological Council¹⁰⁶, the Non-Profit Partnership "Market Council"¹⁰⁷, etc.

345. The FAS Russia has 26 expert councils on key markets¹⁰⁸. The Expert Councils include market participants, representatives of non-profit associations and regulatory authorities. It allows the FAS Russia to fairly assess the situation in the relevant markets and increases the transparency of its decisions.

¹⁰⁰ https://fas.gov.ru/pages/new.fas.gov.ru/pages/kollegialnie_organizatsii (Russian version only)

¹⁰¹ <http://os.fas.gov.ru/> (Russian version only)

¹⁰² <https://fas.gov.ru/councils/metodicheskii-sovet> (Russian version only)

¹⁰³ <https://fas.gov.ru/tags/175> (Russian version only)

¹⁰⁴ [http://fas.gov.ru/pages/councils-list/soveto-po-konkurencii-pri-fas-rossii-\(obshchestvenno-konsultativnyi-sovet\)](http://fas.gov.ru/pages/councils-list/soveto-po-konkurencii-pri-fas-rossii-(obshchestvenno-konsultativnyi-sovet)) (Russian version only)

¹⁰⁵ https://fas.gov.ru/councils/komissiya_po_tovarnym_rynkam (Russian version only)

¹⁰⁶ <http://nms.fas.gov.ru/> (Russian version only)

¹⁰⁷ <http://www.en.np-sr.ru/en/srnen/index.htm>

¹⁰⁸ <https://fas.gov.ru/pages/vazhnaya-informatsiya/otkrytie-vedomstva/ekspertnye-sovety> (Russian version only)

5.1. Meetings of the FAS Russia's executives with the Heads of subjects of Russia

346. On June 8, 2018, the Head of the FAS Russia Igor Artemiev held a meeting with senior officials of the subjects of the Russian Federation on the implementation of measures of the National Plan on the Development of Competition in Russia and instructions of the President of the Russian Federation on the results of the State Council on Promoting Competition held in April 2018. Representatives of more than 70 subjects of the Russian Federation took part in the meeting.

347. The parties discussed the methodology of regional public authorities for the development of key indicators of the development of competition in sectors of the economy and draft "roadmaps" for the development of competition in the regions of the Russian Federation.

348. Besides, during 2018 the Head and Deputy Heads of the FAS Russia held meetings with senior officials of the regions in the majority of subjects of the Russian Federation on the implementation of the National Plan, which resulted in agreements on cooperation between the FAS Russia and the heads of regions. Heads of regional executive bodies, territorial bodies of the FAS Russia, representatives of public organizations, business and the media also took part in these meetings.

349. According to the Executive Order of the President of the Russian Federation No. 618 "On State Competition Policy Guidelines" and Government Decree No. 1697-r (on complex roadmaps), the FAS Russia will summarize the results of the implementation of the National Plan on the Development of Competition and submit it to the President of the Russian Federation on a regular basis.

5.2. Exchange Committee under the FAS Russia

350. In order to develop organized exchange trade in commodity markets and register off-exchange transactions, the FAS Russia together with the Federal Tax Service of Russia and the Bank of Russia concluded an agreement on cooperation in developing commodity markets and creating an Exchange Committee¹⁰⁹. From 2015, meetings of the Exchange Committee are held on a weekly basis in the FAS Russia.

351. At the meetings of the Exchange Committee, participants analyze the current situation on the markets of oil, petroleum products, gas and coal, take measures to develop and improve exchange trading, give recommendations to market participants aimed at preventing possible violations of antimonopoly legislation.

352. Representatives of interested federal executive bodies, market participants, including large companies, infrastructure organizations, stock exchanges and expert organizations take part in these meetings.

353. Exchange trade is a systematic measure of improving the efficiency of the economy. It is an element of the introduction of structural reforms that allow to remove barriers to entry for new players and to create competitive conditions for existing players.

354. Exchange trading covers all segments of the market, thereby increasing the transparency of pricing in these markets, changing the nature of economic relations in these

¹⁰⁹ https://fas.gov.ru/exchange_committees/1 (Russian version only)

markets, including the markets for oil, liquefied petroleum gas, mineral fertilizers, timber, agricultural products and etc.

355. Exchange quotations and price indexes of over-the-counter transactions can improve the efficiency of public procurement and tariff regulation. Exchange quotations for fuel helped to decrease subsidies from the budget twice against the previously announced by the regions of Russia. Exchange trading also balances markets providing them with necessary flexibility. Thus, in gas markets exchange trading has become an incentive for deregulation and increase of the efficiency of gas markets. Exchange indexes in these markets depend on seasonal irregularities (in terms of increase or falling-off in demand). Due to flexible pricing, uneven gas supply and gas consumption are equalized.

356. Exchange trading in spot goods markets shows the inefficiency of pricing in non-transparent markets. Thus, timber trade on the stock exchange in 2018 led to an increase in prices from 50 to 400% compared with prices in the over-the-counter segment in 2017. The final consumer paid the same price, but there were numerous intermediaries or quasi-legal schemes for the product to reach him. At the same time the tax basis and income from customs payments were underestimated.

357. In order to regulate these actions within the framework of the Exchange Committee, the Bank of Russia, the FAS Russia and the Federal Tax Service of Russia develop programs that are able to consolidate interests of market participants to obtain coordinated decisions on the development of these commodity markets.

358. Due to the activities of the Exchange Committee, the main commodity markets have significantly changed. During the exchange trade in the oil products market, 17.6 million tons or about 23% of light oil volume were sold in the domestic market. About 1.7 million tons of fuel oil, more than 0.5 million tons of liquefied petroleum gases and a million cubic meters of timber were sold. The potential of exchange trading in these positions is huge, exchange trading in other commodities is also developing.

359. The annual turnover of all spot goods traded on the Russian stock exchanges has already reached up to 1 trillion rubles.

360. At the same time the exchange-traded derivative markets are developing, where the annual turnover was 14 trillion rubles. For example, the records for the annual turnover of futures contracts for the Brent index are already more than a dozen trillion rubles. The exchange trade of Russian oil of Urals brand is developing.

361. Due to the Exchange Committee, exchange quotations (spot market and production tools), price indexes of off-exchange transactions and price indicators of comparable foreign markets are formed and published on a regular daily basis. It enables organizations and enterprises to engage in new marketing and risk management using modern business technologies.

362. It is notable that exchange trade changes the activity conditions of organizations that operate in the production infrastructure (main oil and oil product pipelines, main gas pipelines, railroads). These organizations become commodity supply operators, they reorganize commercial accounting, reduce the time of goods transportation. They begin to work not only as subjects of natural monopolies, but as organizations of commercial infrastructure in accordance with the legislation on organized trading and clearing activities. Natural monopolies become commodity supply operators.

5.3. Measures for the advocacy of competition on electric power markets

5.3.1. Method of reference costs for calculating sales premium of guaranteeing suppliers

363. Since 2018 the first pilot has been operating on a major implementation of the principle of reference costs when calculating the sales premium of guaranteeing suppliers, developed by the FAS Russia as a mandatory method of tariff regulation.

364. Thus, when calculating the sales premium of guaranteeing suppliers, the method of reference costs is used in accordance with the Methodology on the calculation of sales premiums of guaranteeing suppliers¹¹⁰, adopted pursuant to Order of the Government of the Russian Federation No. 863 of July 21, 2017¹¹¹. Draft acts were developed by the FAS Russia.

365. The use of the new method allows to achieve a transparent and clear pricing procedure, which is beneficial for all participants of the process, from regulated organizations to the consumer.

366. The main aim of reference costs method is to stimulate energy sales companies to increase business efficiency and reduce the spread in the differentiation of sales premium level.

367. Since July 2018 sales premiums of guaranteeing suppliers for small and medium-sized businesses significantly decreased in 12 regions of Russia.

368. There is a gradual transition to the reference costs method (the transition period is 3 years).

5.4. Measures for the advocacy of competition on advertising markets and preventing unfair competition

5.4.1. Recommendations on the compliance with the law on advertising non-prescription medicines

369. Last few years advertisers began to massively use the word “quickly” and similar word forms to endow medicine products with characteristics of high efficiency and beneficial effects. Such statements assure consumers that the medicine will work quickly, thereby ensuring its effectiveness and beneficial effects during the treatment. However, the endowment of a medicine with such characteristics like quick action and effectiveness is not based on the principles of evidentiary medicine.

370. According to the Law on Advertising¹¹², advertising of medicines should not guarantee the beneficial effect of the advertised object, its safety, effectiveness and absence of side effects.

¹¹⁰ Order of the FAS Russia No. 1554/17 of November 21, 2017: <https://rg.ru/2017/11/30/fas-prikaz1554-17-site-dok.html> (Russian version only)

¹¹¹ <http://government.ru/docs/28571/> (Russian version only)

¹¹² Clause 8 Part 1 Article 24 of the Federal Law On Advertising No. 38-FZ of March 13, 2006: [http://en.fas.gov.ru/upload/documents/Federal%20Law%20No.%2038-FZ%20On%20Advertising%20\(as%20amended%20in%202014\).pdf](http://en.fas.gov.ru/upload/documents/Federal%20Law%20No.%2038-FZ%20On%20Advertising%20(as%20amended%20in%202014).pdf)

371. The implementation of the Law was complicated because of the statements that cannot be verified (confirmed): “quickly eliminates”, “quick relief”, “acts faster”, etc., and the absence of a provision in the Law that would prohibit the use of unverifiable statements in advertising regarding the characteristics of medicines.

372. As a result of the activities in 2017-2018, the FAS Russia found approximately 20 pharmaceutical companies violating the prohibition established by law to guarantee the beneficial effect and effectiveness of medicines in their advertisement. The FAS Russia activities resulted not only in blocking concrete advertisement, but also to elimination of the words “quickly” and similar word forms that characterized medicines from these advertisements. The court has repeatedly confirmed the eligibility of the actions of the FAS Russia.

373. This problem in medicine advertising has been repeatedly discussed at the Expert Councils of the FAS Russia with the participation of a wide range of the pharmaceutical market players.

374. The actions of the FAS Russia encouraged participants of the pharmaceutical and advertising market to initiate the development of recommendations on the application of advertising legislation for creating advertising of medicines in accordance with the legislation and eliminating the negative impact of advertising on consumers.

375. With the active participation of the FAS Russia in 2018, pharmaceutical companies have consolidated efforts in order to adopt Recommendations on compliance with the legislation on non-prescription medicines advertising (hereinafter - Recommendations)¹¹³ in order to form a uniform and consistent practice to allow the advertiser to avoid mistakes when preparing advertising materials.

376. During 2018 public discussions of the draft recommendations with the participation of the FAS Russia and on its margins were held four times, the text of the recommendations was repeatedly processed completely, and as a result, the FAS Russia and the pharmaceutical company participants gained understanding and developed a consistent approach to the assessment of violations in medicine advertising addressed to a wide range of consumers.

377. The process of developing Recommendations ended with their signing by a number of pharmaceutical companies, both Russian and foreign, on November 7, 2018 in Moscow¹¹⁴.

378. Recommendations as a self-regulation mechanism are subject to execution by associations and companies that have signed them. The use of Recommendations by advertisers will generally reduce the control required and the number of cases involving violation of advertising legislation.

379. Recommendations are open for signature by any associations and companies on the pharmaceutical market.

¹¹³ <https://fas.gov.ru/documents/669036> (Russian version only)

¹¹⁴ <https://fas.gov.ru/news/26296> (Russian version only)

5.4.2. Development of antimonopoly practice for the protection of rights holders' rights in the organization and running of international sports events

380. Protection of sports symbols is one of the problems of organizing and running major sports events for preventing violations of the property rights of international sports federations and the use of sports symbols in the interests of unauthorized subjects.

381. While organizing and holding the FIFA 2018 World Cup in the Russian Federation, the 2017 FIFA Confederations Cup, antimonopoly regulation tools were actively used to protect FIFA property rights.

382. Government guarantee No. 6 of April 14, 2010 "Protection and Exercise of Property Rights" (hereinafter - Guarantee) provided a special status of FIFA and its partners and licensees and the obligations of the state where the event takes place in order to ensure the protection of their property rights associated with the FIFA brand.

383. For the purposes of the Guarantee, the Federal Law No. 108-FZ of June 6, 2013 "On Organizing and Holding of the FIFA 2018 Football World Cup in the Russian Federation and the FIFA 2017 Confederations Cup and on Amendments to Certain Legislative Acts of the Russian Federation"¹¹⁵ provided special requirements to protect FIFA property rights related to the organization and conducting of the 2018 FIFA World Cup, including special conditions for organizing trade and advertising in the venues of FIFA events, as well as recognition of number of marketing practices relating to ticket sales and promotion of goods and services using sports symbols or associative links with FIFA events as unfair competition.

384. Thus, during the World Cup, registered championship symbols and a specially created recognizable font could only be used directly by the championship organizers and official sponsors and partners who have concluded licensing agreements and have received permission.

385. As a result of the implementation of these provisions, Russian competition authority initiated more than 80 cases of unfair competition relating to the FIFA symbols. Almost half of them concern the sale of goods with championship symbols or the use of symbols on websites, shop-windows and office design. Certain promotional activities were revealed from a number of large business entities aimed at promoting their own products/services, where FIFA tickets or other products with FIFA symbols were awarded.

386. Besides its own competence in the field of antimonopoly regulation and supervision in conducting FIFA events the FAS Russia took part in organizing the work of an interdepartmental body, the FIFA Property Rights Protection Committee.

387. On October 10, 2016, the Ministry of Sport of Russia established this Committee in order to coordinate the activities of law enforcement authorities that prevent violations of exclusive rights. The Committee included the Ministry of Internal Affairs of Russia, the Federal Customs Service of Russia, the Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing (Rospotrebnadzor), the Federal Service for Intellectual Property (Rospatent), The Federal Service for Supervision of Communications, Information Technology, and Mass Media (Roskomnadzor) and the Federal Antimonopoly Service of the Russian Federation. The Head of the Committee is the Deputy Head of the

¹¹⁵ <https://rg.ru/2013/06/11/chempionat-dok.html> (Russian version only)

FAS Russia, Andrey Kashevarov. Representatives of the Prosecutor General's Office of the Russian Federation and FIFA (Zurich) also participated in the meetings of the Committee.

388. The following activities were held on the margins of the Committee with the participation of FIFA representatives:

- discussion of the problematic aspects of the FIFA property rights protection and future work;
- summarizing the activities of each authority during the certain period and identifying unresolved problems;
- development of various kinds of interdepartmental and international cooperation in order to most effectively protect the FIFA brand;
- coordination of intradepartmental work on the organization of procedures and processes related to the protection of the FIFA brand (informing territorial bodies, considering cases, etc.);
- development of a coordinated information policy (informing consumers and businesses about established restrictions and requirements of the law, ways to detect counterfeit and the grounds and procedure for filing complaints).

389. Coordination and informational work of the FIFA Property Rights Protection Committee included the following:

1. Informing of consumers and business community:
 - Legal information: clarification on the application of legislation, legal consequences of violations and liability;
 - Prompt information: press releases on the results of the Committee's meetings, revealed violations and instructions issued, as well as meetings with representatives of major retail chains, etc.;
 - Communication tools: special sections on the official websites of law enforcement authorities with methodological information and contacts.
2. Coordination of law enforcement bodies:
 - Legal information: clarification on the application of law and procedures for reviewing certain cases, seminars and meetings for territorial bodies
 - Amendments to legislation to increase the effectiveness of preventing violations (consideration deadlines, exception of warnings, etc.);
3. Interdepartmental and international cooperation:
 - Interdepartmental coordination and information: sending out FIFA information letters and materials through the Committee, exchanging experience with regional bodies, as well as joint meetings and conferences;
 - International cooperation: interaction with foreign customs authorities in order to suppress the channels of production and export of goods with illegal FIFA trademarks.

390. As a part of the work done, antimonopoly authority took a number of organizational measures and carried out methodological work, which provided basis for law enforcement authorities to ensure the protection of property rights of international sports associations

during major sporting events. The FAS Russia has developed a methodological basis for preventing unfair competition while using sports symbols, as well as a model for organizing and coordinating law enforcement authorities to combat violations of exclusive rights, which can be used in the implementation of similar projects in the future.

5.5. Measures for the advocacy of competition on financial markets

5.5.1. *Changes in the formation of the Central Depository Service User Committee*

391. Central Depository¹¹⁶ is a key element of the Russian financial market infrastructure, a supplier of high-tech post-trading services and infrastructure solutions for market participants.

392. In order to form the Central Depository Service User Committee (hereinafter - the User Committee) and ensure necessary influence on its tariff policy by the service users, in 2018 the FAS Russia issued a decision with a ruling providing new requirements for forming the User Committee¹¹⁷.

393. This decision ordered the Central Depository, which is a monopolist, to form the User Committee with at least 3/4 of the Central Depository users, but not more than 1/4 of the total number of the User Committee members can be affiliated with the Central Depository or related individuals and/or legal entities. In this regard, on August 13, 2018, the new User Committee was formed to meet the specified requirements.

394. It is notable that, according to the Federal Law No. 414-FZ of December 7, 2011 “On the Central Depository” (hereinafter - the Law on the Central Depository)¹¹⁸ in the Central Depository, among other bodies, including the User Committee, the Board of Directors (Supervisory Board) was formed.

395. According to Article 9 of the Law on the Central Depository, a number of internal documents approved by the Board of Directors (Supervisory Board), including Tariffs for the services of the central depository connected with securities transactions in respect of which it has been opened a nominee account of the central depository or in respect of which it performs mandatory centralised custody of securities, may be submitted for the consideration of the Board of Directors (Supervisory Board) of the central depository only provided that the Users Committee has reviewed these documents.

396. Within the context of the mentioned circumstances, the composition of the User Committee and the Supervisory Board of the depository with a status of the Central Depository, plays an important role, as the former User Committee had the same structure as the Central Depository's governing body, whereas it had to be an “counter balancing” mechanism and act as a filter for decisions of such a management body related to the approval of tariffs.

¹¹⁶ The non-bank financial institution “The National Settlement depository(NSD)”: <https://www.nsd.ru/en/>

¹¹⁷ The FAS Russia Decision No. AD/48343/18 of September 27, 2018 “On the Amendments to the Ruling of the FAS Russia No. AK/35134 of September, 15, 2011”

¹¹⁸ <https://www.cbr.ru/Content/Document/File/27590/414-FZ.pdf>

397. Under such conditions, taking into account the role and exclusive position of the Central Depository on the market, the main function of the Users Committee on collective representation, upholding and ensuring the interests of Central Depository clients cannot be exercised, which excludes any real market influence of the Central Depository users on its activities.

398. The measures taken in 2018 ensured a fair representation of Central Depository clients in the Users Committee, including persons not affiliated with it and persons associated with it. This, in turn, allows the User Committee to effectively exercise its functions.

399. Currently, the work on the establishment of such a formation of the Committee at the legislative level is in progress.

5.5.2. Development of the institution of joint letters of regulators aimed at preventing competition restriction

400. An effective antimonopoly co-regulation system of the FAS Russia and the Central Bank of the Russian Federation has been established in Russia. Federal Law "On Protection of Competition" provides that violations of antimonopoly legislation in the financial markets are investigated by the FAS Russia jointly with the Central Bank, whose representatives are included in the Commissions for considering cases on competition laws violations in financial markets.

401. With regard to preventing antimonopoly violations, encouraging fair practices, as well as fair and high-quality competition in the financial services market, institution building of "joint letters" of the FAS Russia and the Central Bank of the Russian Federation clarifying the position of regulators regarding certain market practices should be pointed out.

402. In 2018, a joint letter of the FAS Russia and the Bank of Russia¹¹⁹ on practice of recognizing as act of unfair competition the process of credit institutions of raising funds from physical persons for fixed-term bank deposits with a subsequent deterioration of consumer properties of these deposits compared to the initial statements became one of the examples of publishing such letters.

403. Extensive practice of competition authority, who came across such unfair practices of credit institutions in the market for raising funds from physical persons for deposits served as the basis for preparation of this letter.

404. For example, the FAS Russia established that due to the downturns in the country's economy, in order to retain current depositors and attract additional demand for allocating money in bank deposits, banks significantly increased interest rates on them, while in most cases assuring deposit replenishment at such rates throughout deposit period.

405. At the same time, after reducing the average interest rates on deposits, a number of banks attempted to worsen the consumer properties of previously set up deposits and, thereby, to reduce the size of their obligations.

¹¹⁹ Letter of the FAS Russia and the Central Bank of the Russian Federation dated December 29, 2018, No. IA/108764/18/IN-01-52/82 "On Inadmissibility of Unfair Competition in the Deposit Market"

406. Having performed such actions, banks, in addition to receiving benefits could create losses to competitors in the form of lost profits since many depositors would not enter into deposit agreements with these banks if they knew that banks had committed these actions, alternatively they would have turned to other banks.

407. Considering that the behavior of banks, in addition to other consequences, could also undermine depositors' credibility in the banking system as a whole and lead to social tensions, the suppression of this behavior was key priority for the FAS Russia.

408. The most significant achievement in this part was the recognition by the Arbitration Court of Moscow legitimacy of decision and ruling to the bank that reduced the interest accrued on deposit replenishments and thus violated antimonopoly legislation. In order to implement the following ruling, the defendant cancelled its decision to reduce the interest accrued on deposit replenishments in respect of the already existing deposit agreements and paid more than 156 million rubles undeclared interest on deposits to more than 9 thousand of active depositors.

409. Preparation of such joint letter allowed to convey to both market participants and consumers of relevant services a joint position of regulators on the inadmissibility of such actions.

5.5.3. Extending the areas of cooperation between the FAS Russia and the Bank of Russia

410. In 2018, the FAS Russia and the Bank of Russia signed an additional cooperation agreement¹²⁰ (hereinafter - Supplementary Agreement), which expanded the area of cooperation between the competition authority and the regulator in the financial services market, including monitoring and oversight of compliance with the advertising legislation by financial organizations supervised by the Bank of Russia.

411. Thus, at present, if the Bank of Russia detects possible signs of violation of advertising legislation by these organizations, it informs the FAS Russia, which, in turn, reports on the results of law enforcement monitoring and analytical activities taken upon the information received. Such cooperation significantly increases the efficiency and effectiveness of monitoring and oversight of compliance with the advertising legislation by financial organizations.

412. Another new element embodied in the Supplementary Agreement was the agreement of the parties to cooperate in the implementation of the Standards of competition development in the Subjects of the Russian Federation¹²¹. In order to implement this arrangement, it is planned to establish a separate procedure, which will include the provision of information to the Bank of Russia on the state of competition in commodity markets that it requires when analyzing non-monetary inflation factors in the regions.

413. It should be noted that in terms of monitoring compliance with antimonopoly legislation the parties have been cooperating since 2005, when the first cooperation

¹²⁰ Agreement dated June 8, 2017, No. BR-D-40/559 with amendment dated October 4, 2018, No. BR-D-40/559-S1: <https://fas.gov.ru/p/contents/2241> (Russian version only)

¹²¹ Order of the Government of the Russian Federation dated September 5, 2015, No. 1738-r "Standards of competition development in the Subjects of the Russian Federation": <http://static.government.ru/media/files/EPhsiaffQIT8bK1Eov94GawSO179HxFL.pdf> (Russian version only)

agreement was concluded. Such information exchange practice can be assessed as extremely positive since through the use of materials of the Bank of Russia, cases on violations of antimonopoly legislation by financial organizations have been repeatedly identified.

5.6. Policy on information openness

414. In order to improve the effectiveness of provision of information regarding the activities of the competition authority, implementing the principles of transparency and simplifying access to public information related to the FAS Russia, a new version of the official website¹²² of the FAS Russia was launched in 2017. The new website has become more convenient, more logical and more informative. News of the competition authority are also published in real time manner on Twitter, Instagram, Facebook, VKontakte, YouTube, Telegram-channel, as well as in the form of podcasts on iTunes and Sound Cloud.

415. Another significant source of publicly available information and analytical articles related to the topic of protection of competition in the Russian Federation is the journal "Russian Competition Law and Economics"¹²³. Its editorial board includes representatives of the FAS Russia, including the Head of the FAS Russia Igor Artemiev, as well as well-known Russian experts in the field of legal and political sciences. The journal is included in the bibliographic database of scientific publications of Russian scientists - Russian Science Citation Index (RSCI). Since 2018, this journal has been included in the list of leading peer-reviewed journals that are included by the Supreme Attestation Commission of the Russian Federation in the list of publications recommended for publishing the main scientific results of the candidate and doctoral thesis papers.

416. Representatives of the FAS Russia are also members of the editorial board of the electronic and print journal "Competition and Law" (www.cljournal.ru), which prepares analytical materials, including weekly reviews of the development of Russian competition law enforcement.

417. In addition, the issue of the information-analytical journal "Competition Today"¹²⁴ started in 2017 on the basis of the FAS Centre for Education and Methodics in Moscow, the editorial board of the journal also includes representatives of the FAS Russia. The journal is monthly published in open access in electronic format and is focused on the dissemination of the practice of addressing the problems of competition development, cartels and abuse of a dominant position.

5.6.1. Work with profile printed and electronic international publications

418. In 2018, active work continued with the international journal of competition policy and regulation Global Competition Review. Apart from participating in traditional GCR questionnaires, the FAS Russia prepared an article on Russian antimonopoly legislation and policy that was published in the issue dedicated to the European, Middle Eastern and African Antitrust Review, as well as provided materials for GCR Handbook of Competition

¹²² <https://en.fas.gov.ru>

¹²³ <https://www.dex.ru/rkpie-journal-english>

¹²⁴ <http://femc.fas.gov.ru/lib/ct/> (Russian version only)

Enforcement Agencies and GCR Handbook of Competition Economics. In 2018, 14 publications were published in the GCR on the experience of the FAS Russia.

419. As a result of the increased activity of the FAS Russia related to foreign media, 33 articles on the activities of the FAS Russia were published (9 articles in Competition Policy International (CPI), 12 in E-concurrence, 11 in Reuters, 1 in The Economist).

420. In 2018, English-language interviews of the Head of the FAS Russia Igor Artemiev were published in GCR¹²⁵, Policy and Regulatory Report (PaRR)¹²⁶ and Bloomberg.

421. PaRR covered International Event "The Russian Competition Week" in Sochi (September 24-26, 2018).

422. In 2018, representatives of foreign media continued to request for the information on various aspects of the FAS Russia activity. In total, 43 requests for information came from the foreign media to the FAS Russia. Requests came not only from international journals, cooperation with which has already become a tradition for the FAS Russia (PaRR, GCR, CPI and Concurrence), but also from specialized media publishing information on global market concentrations (Reorg M&A, Mergermarket, CTFN).

423. In 2018, 6 articles on antimonopoly regulation prepared by the FAS Russia employees were published in English (article by Igor Artemiev in the Concurrence - Liber Amicorum edition on the work of Professor Frédéric Jenny¹²⁷, 3 articles in the OECD-GVH RCC Newsletter, 2 articles in the Ost/Letter newsletter (Germany) and a special issue of the Expert Guide (United Kingdom) on competition).

5.6.2. Participation in research projects and educational events

424. The IV Annual International Conference "Antimonopoly Policy: Science, Practice, Education" was organized jointly with the FAS Russia and HSE-Skolkovo Institute for Law and Development on December 6-7, 2018. More than 200 people took part in this event; speakers were 18 leading foreign scholars and experts specializing in the field of competition law and economics.

425. As part of educational activities on competition advocacy, regional seminars-meetings with the heads and specialists of the Regional Offices of the FAS Russia, judges and representatives of state authorities of the Russian Federation are held annually in each of the federal districts.

426. In addition, the FAS Centre for Education and Methodics in Kazan¹²⁸ and its branch in Moscow¹²⁹ regularly hold educational seminars for representatives of the FAS Russia and the international antimonopoly community. Speakers at these seminars are

¹²⁵ <https://globalcompetitionreview.com/insight/volume-20-issue-9-february-2018/1158718/an-interview-with-igor-artemiev>

¹²⁶ "FAS head pushes for common BRICS approach on pharma sector regulation – Russia Competition Week" of 01.10.2018; "Russian government has rejected deals on geopolitical considerations – FAS head" of 04.10.2018; "FAS smartphone app pre-installation proposal derived from Google Android remedy – FAS head" of 09.10.2018

¹²⁷ <https://www.concurrences.com/en/all-books/frederic-jenny-liber-amicorum-88568>

¹²⁸ <http://emc.fas.gov.ru/> (Russian version only)

¹²⁹ <http://femcfas.ru/> (Russian version only)

representatives of the Central Office of the FAS Russia. Seminars include theory and practice aimed at professional improvement and advanced training of employees of competition authorities.

427. In order to ensure stability and institutional continuity in the framework of competition advocacy, an annual contest of professional skills "My useful initiative" is held annually for the FAS Russia employees.

428. Objectives of the project: 1) development of professional competencies of the employees, retention of the skilled workers through the formation of a comprehensive career development program, which allows future winners and participants to apply for leadership positions; 2) creation of conditions for the development and formation of an existing candidates pool, consisting of professional staff, focused on achieving successful results; 3) accumulation of ideas and initiatives for their further implementation and dissemination of best practices.

429. For employees of FAS Russia there is an internal web portal. This is a common informational space for the employees of the competition authority. Here you can find the latest news, documents, useful information and access to services, watch broadcasts and recordings of internal events, as well as make use of mechanisms for communication and training.

430. 50 departments and centers in the field of competition law have already been established in Russia during last 10 years. Competition law discipline is mandatory for students in many universities. This means that all students who receive a law degree already have a basic knowledge of antimonopoly regulation. Earlier for recent graduates adaptation to work took more than 6 months, now this period has been reduced to 1 month.

431. In 2018, professional standard - "Competition Law Specialist" was approved¹³⁰, the main goal of a competition law specialist is to prevent violations of the antimonopoly legislation of the Russian Federation, reduce the risk of such violations, terminate and suppress them and develop competition¹³¹.

432. In order to increase investment attractiveness of the Russian economy and advocate competition, the FAS Russia together with embassies and chambers of commerce undertakes work on organizing consultative meetings with representatives of foreign businesses operating in the Russian Federation. Experts of the FAS Russia discuss distinctions of the Russian antimonopoly legislation and law enforcement, as well hold Q&A session.

433. In 2018, such meetings were held with the embassies of the Republic of Korea, Thailand, Belgium, France, China and the French Chamber of Commerce and Industry.

¹³⁰ Order of the Ministry of Labour and Social Protection of the Russian Federation dated October 9, 2018, No. 625n On approving a professional standard – "Competition Law Specialist": <http://publication.pravo.gov.ru/Document/View/0001201811010006> (Russian version only)

¹³¹ <http://en.fas.gov.ru/press-center/news/detail.html?id=53535>

5.6.3. Winning the Competition Advocacy Contest of the World Bank and the International Competition Network

434. In 2018, the FAS Russia became one of the winners of the Competition Advocacy Contest of the World Bank and the International Competition Network (ICN) in the category "Creating markets for private sector development"¹³².

435. Upon the initiative of the FAS Russia, the description of the medicine for procurement for state needs was developed and approved by the Resolution of the Government of the Russian Federation¹³³. By virtue of the adopted document, prohibitions and restrictions have been established with respect to the description of the specifications of the purchased medicines in terms of customers indicating therapeutically insignificant characteristics that correspond to specific brand names of the medicines, leading to competition restriction.

436. Main goal of the initiative was to increase the availability of medicines for citizens of the Russian Federation and effectiveness of budget expenses on medicine provision through reduction of medicine prices at auctions due to competition development among medicine suppliers, as well as preventing unfair customers and cartelization among bidders.

437. From January 1, 2018, public procurement authorities cannot purchase medicine by manipulating therapeutically insignificant characteristics indicating a particular manufacturer and suppress competition in the auction.

438. Reducing the price of medicines (price drop at the auctions reaches up to 70% of the starting price in a competitive environment) will lead to substantial savings of public funds that can be instead allocated to public medicine assistance.

439. Examples of such price reduction under conditions of effective competition with the correct title of the purchased product are the purchase of medicines in the International Nonproprietary Names (INN) "Bevacizumab" - ZAO "Biocad" offered price 80% less than the initial minimum contract price; and the purchase of medicines in the "Trastuzumab" INN - "R-Pharm" JSC offered price 71.5% less than the initial minimum contract price.

5.7. Presidium of the FAS Russia approved recommendations on applying waivers of confidentiality when considering merger control transactions

440. FAS Russia appreciated the necessity to systematize work on the application of the waivers of confidentiality and in 2018 the developed Recommendations on applying waivers of confidentiality when considering merger control transactions (hereinafter - Recommendations).

441. Taking into account the importance of waivers of confidentiality from a practical point of view, the FAS Russia also proposed to shift the Recommendations to the CIS format - develop and adopt Model Recommendations for the competition authorities of the

¹³² <https://www.worldbank.org/en/events/2018/12/06/2018-2019-competition-advocacy-contest#4>

¹³³ Resolution of the Government of the Russian Federation dated November 15, 2017, No. 1380 on the Specifics of Describing Pharmaceutical Medicine for Procurement for State and Municipal Needs: <http://government.ru/docs/30157/> (Russian version only)

CIS member-states within the Interstate Council on Antimonopoly Policy (ICAP)¹³⁴. This proposal has also received a positive response from the competition authorities of the CIS member-states¹³⁵.

442. Recommendations were developed by the FAS Russia with the participation of representatives of the Association of Antimonopoly Experts and the Non-Commercial Partnership "Competition Promotion in the CIS Countries".

443. Draft Recommendations were developed in November 2018 and discussed within the framework of the meeting of the competition authorities of the CIS member-states on the margins of the IV Annual International Conference "Antimonopoly Policy: Science, Practice, Education" held in the Innovation Center Skolkovo in December¹³⁶.

444. Taking into account past discussions, draft Recommendations were finalized and submitted for consideration and approval at the Presidium of the FAS Russia¹³⁷.

445. Waivers of confidentiality allow competition authorities to use their resources more efficiently, ensuring the effective achievement of law enforcement objectives.

446. FAS Russia has experience in using this mechanism, in particular it was used to review the merger control transactions of Oracle Corporation and Sun Microsystems (2009, consultations with the European Commission), Yandex and Uber (2017, consultations with competition authorities of Belarus and Kazakhstan), Bayer and Monsanto (2017-2018, consultations with the competition authorities of Brazil, India, China, South Africa and the European Commission), Siemens and Alstom (2018-2019, consultations with the competition authorities of USA, Australia, Brazil, India, South Africa and European Commission).

447. One of the main objectives of the Recommendations is to ensure a uniform application of waivers of confidentiality throughout the FAS Russia when interacting with the competition authorities of other countries and with parties of the transactions.

6. Part 6. Resources overall

6.1. Annual budget

448. Maintenance cost of the Central Office of the FAS Russia and its Regional Offices is funded at the expense of funds provided for in the federal budget.

449. In 2018, the budget of the FAS Russia was equal to 4.3 billion rubles (60 million euros).

¹³⁴ <https://fas.gov.ru/news/26004> (Russian version only)

¹³⁵ Relevant decision to carry out the necessary work is reflected in the Protocol of the 49th session of ICAP dated September 26, 2018 (Sochi).

¹³⁶ <https://fas.gov.ru/news/26573> (Russian version only)

¹³⁷ Protocol of the Presidium of the FAS Russia dated March 13, 2019, No. 2: <https://en.fas.gov.ru/press-center/news/detail.html?id=53894>

6.2. Human resources

450. Total number of members of staff of the FAS Russia as of December 31, 2017 was 3 504. 1 189 employees worked in the Central Office and 2 315 employees in 84 Regional Offices of the FAS Russia in the constituent entities of the Russian Federation. Out of the total number of the FAS Russia employees, 2 400 are engaged in law enforcement practice related to antimonopoly and tariff regulation (no division), the rest of the employees are involved in procurement and advertising issues.

451. 1 904 employees are engaged in antimonopoly enforcement.

452. The FAS Russia does not have a clear delineation of official duties of employees into the three categories indicated. Therefore, it is possible to discuss the percentage of presence in the competition authority of employees of the three indicated categories on the basis of data on the higher education: 51% of employees have a law degree, 33% - economics, 16% - other. At the same time, we note that this percentage also includes employees who have two or more degrees (legal and economics, legal and other, economics and other).