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## Global Forum on Competition

# ECONOMIC ANALYSIS AND EVIDENCE IN ABUSE CASES – Contribution from the Russian Federation

**- Session II -**

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More documentation related to this discussion can be found at: oe.cd/eac.

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# *Economic analysis and evidence in abuse cases*

## – Contribution from the Russian Federation –

Economic analysis is a basic tool in the practice of the FAS Russia in the investigation of cases of abuse of a dominant position.

## 1. The stage of market analysis and establishment of a dominant position

1. One of the key aspects in the investigation of such a category of cases is to conduct a proper analysis of the affected commodity market in terms of market boundaries, the composition of players, the level of concentration and barriers to entry to the market. The FAS Russia proceeds from the fact that in order to determine the dominant position, it is necessary to take into account not only quantitative indicators of market share, but also qualitative criteria indicating the presence of market power in the whole.

2. The basic criteria for dominance are established in the Federal Law of July 26, 2006 No. 135-FZ "On Protection of Competition", the methodology for conducting market analysis is approved by the Order of the FAS Russia[1] and several important Guidelines of the FAS Presidium which have been adopted and are used in the investigation of this category of cases and economic analysis.[2]

3. In particular, the Competition Authority, when analyzing the market and determining the dominant position of an economic entity, analyzes pricing and price dynamics, changes in demand volume when prices change and determines the cross-elasticity of demand indicator. These tools are used to determine the actual substitutability, assessment of the expansion of market boundaries, the fact of switching consumers to an alternative supplier.

4. Definitely, the FAS Russia uses the hypothetical monopolist test as a classic tool of antimonopoly analysis in the antimonopoly enforcement, including to assess the potential switch to substitute goods from alternative suppliers and within a particular geography.

5. At the same time, these classical economic analysis tools used by the FAS Russia to establish a dominant position have been significantly adapted as part of investigations of practices of digital transactional and non-transactional platforms. In particular, an economic analysis of network effects arising for both sides of the platform at the consumer level is carried out.

[1] Order of the Federal Antimonopoly Service of the Russian Federation of April 28, 2010 No. 220 "On approval of the Procedure for assessing the state of competition in commodity markets" (Russian version only)

[2] Guidelines of the FAS Russia Presidium of April 17, 2019 No. 17 "On certain issues of analysis of the state of competition", Guidelines of the FAS Russia Presidium of June 7, 2017 No. 8 |"On the application of the provisions of Article 10 of the Law on Protection of Competition", Guidelines of the FAS Russia Presidium of October 24, 2018 No. 15 "On bringing to responsibility for abuse of the dominant position of economic entities recognized as collectively dominant" (Russian version only)

6. For example, in the antimonopoly investigation against Apple Inc., the commodity market and the dominant position of the company were determined in the market of the transactional single-homing platform – the App Store. At the same time, the hypothetical monopolist test was conducted separately for each group of consumers (application developers/smartphone users).

7. This showed that application developers cannot abandon the App Store and switch to another app store in order to gain access to consumers and most of the surveyed users – with another operating system (OS) in case of an increase in the cost of accessing applications in the current way by more than 10%. Significant network effects have been identified. As a result, the combined presence of the market power of Apple Inc. allowed it to abuse its dominant position.

## 2. Stage of economic analysis of the anticompetitive practices of the dominant economic entity

8. In each case, the FAS Russia needs to establish an objective relationship between the market power of an economic entity, its actions and possible consequences which will be expressed in restrictions of competition, including in related markets or infringement of the interests of counterparty companies or an indefinite circle of consumers.

9. This position is basic and was expressed not only in the Guidelines of the FAS Presidium on the generalization of practice, but also in the new Resolution of the Plenum of the Supreme Court of the Russian Federation, which is fully devoted to issues of antimonopoly regulation.[3] The Plenum of the Supreme Court of the Russian Federation indicates that the Competition Authority should, among other things, analyze if the investigated actions of an economic entity could been committed and lead to the corresponding consequences outside the dominant position, is there such an objective relationship and if the actions demonstrate the abuse of market power.

10. Thus, as part of the investigation into the abuse of dominance against Google Inc. FAS Russia concluded that the practice of Google Inc. for the establishment of conditions for the world's largest vendors and preinstallation on Android smartphones exclusively by default of the Google search service, the GMS application package, priority preinstallation of these applications, as well as refusal to preinstall applications and services of competitors due to the practice of distributing income became possible only thanks to the market strength, i.e. dominant market position of pre-installed app stores.

11. Among this, the Competition Authority, as part of the investigation of cases of abuse of a dominant position and taking into account the arguments and evidence of the parties, conducts an economic analysis for the admissibility of the relevant dominant practices. In particular, the Competition Authority analyzes to what extent the positive effect of these practices, for example, from the point of view of the use of new technologies by the dominant entity, may be comparable with the possible restriction of competition, to what extent the benefits of the dominant entity from the implementation of such practices are comparable with the benefits for consumers, or consumers are deprived or limited in the possibility to choose a supplier due to the restriction of competition.

[3] Resolution of the Plenum of the Supreme Court of the Russian Federation № 2 of March 4, 2021 "On some issues arising in connection with the application of antimonopoly legislation by courts" (Russian version only).

12. For example, during the antimonopoly investigation by the FAS Russia against Microsoft, the Authority conducted an analysis, which concluded that the appearance of a new version of Windows and a connection with the company's new antivirus software became a disproportionate obstacle to the functioning of third-party software, which led to the deprivation of the consumer's right to choose and limited competition.

13. In the Booking.com case, the FAS Russia assessed the positive effect of the existence of the platform and the features of the service, but came to the conclusion that the practices of price parity are more harmful to the competition of hotels and to the interests of consumers.

14. It should be noted, that along with the general economic analysis of the practices of the dominant economic entities by the Competition Authority, there are also features in relation to individual practices with the elements of the offense.

15. In particular, the Law on Protection of Competition contains a prohibition on abuse of a dominant position in the form of setting monopolistically high prices.

16. The criteria for determining a monopolistically high price are established by law and require the Competition Authority to conduct an economic analysis of the necessary costs of an economic entity for the production and sale of goods, i.e. a reasonable level of profitability in the market in which it occupies a dominant position, as well as to analyze pricing in a comparable market if it exists and provided that this market is competitive.

17. When conducting investigations in export-oriented markets, the Competition Authority conducts an economic analysis of pricing using such methods as the weighted average price method (comparison of the weighted average price in the domestic market with the export price on the relevant delivery basis and for a relevant period of time), the use of exchange/off-exchange indicators and the use of the netback minus method.

18. Thus, within the framework of the antimonopoly investigation in the market of iron ore concentrate and iron ore in Russia, it was established that there was such an indicator as an index of iron ore fines[4]. The price of the dominant economic entity did not exceed the indicator, which reflected the level of supply and demand and the price at which consumers were ready to purchase the goods, that is, the amount of costs and profits necessary for the production and sale of iron ore concentrate. In this regard, the investigation was terminated.[5]

[4] FAS Russia press-release: http://en.fas.gov.ru/press-center/news/detail.html?id=54508

[5] Decision of the FAS Russia of August 20, 2018 on the case №1-10-156/00-05-17. URL: https://br.fas.gov.ru/ca/upravlenie-kontrolya-promyshlennosti/0525ff90-e228-4b28-81da-ce7b2e107feb/?query= (Russian version only).