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**THE PROMOTION OF COMPETITIVE NEUTRALITY BY COMPETITION AUTHORITIES -
Contribution from the Russian Federation**

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The Promotion of Competitive Neutrality by Competition Authorities

– Contribution from the Russian Federation¹ –

1. The antimonopoly legislation of the Russian Federation is based on the Constitution of the Russian Federation, the Civil Code of the Russian Federation and consists of the Federal Law of July 26, 2006 No. 135-FZ "On Protection of Competition" (hereinafter – the Law on Protection of Competition), other federal laws governing relations that are related with competition protection.
2. The legal foundations of competitive neutrality are contained in the country's fundamental act – the Constitution of the Russian Federation, which establishes equality in the recognition and protection of all forms of ownership².
3. Thus, Russian legislation in a neutral way regulates the relations of all economic entities, regardless of their belonging to any forms of ownership.
4. Antimonopoly legislation, based on the assessment of the presence of market power, contains the same requirements for both organizations with state participation and private organizations.
5. It is worth noting that economic entities in whose authorized capital there is a share of participation of the Russian Federation, a constituent entity of the Russian Federation, a municipality, of course, are also subject to prohibitions on anti-competitive agreements and abuse of dominance.
6. Thus, the legislation of the Russian Federation, including in the field of antimonopoly regulation, establishes the same requirements for economic entities of private, state, municipal and other forms of ownership.
7. Moreover, for objects of state ownership, the legislation of the Russian Federation establishes special requirements of a pro-competitive nature, limiting the methods of disposing of such objects exclusively or on a priority basis on pro-competitive terms.
8. In particular, the Law on Protection of Competition, establishing a pro-competitive nature in the management of state or municipal property, other objects of civil rights, as well as in the provision of property benefits, state or municipal guarantees, establishes control over the provision of state or municipal preferences.
9. The main authority carrying out activities to protect competition and ensure competitive neutrality is the Federal Antimonopoly Service (the FAS Russia).
10. The FAS Russia has a wide range of powers: control over compliance with legislation on public procurement, including in the field of defense and security, advertising, foreign investment in strategic business entities, trade (in terms of compliance with antimonopoly requirements), control over the provision of state aid, anti-competitive actions of public authorities, as well as the implementation of tariff regulation.

¹ The report was prepared by the FAS Russia.

² Part 2 of the Article 8 of the Constitution of the Russian Federation.

11. The FAS Russia carries out its activities directly and through its Regional Offices, which can consider cases of violation of the antimonopoly legislation, make decisions on them and issue remedies in cases and in the manner provided for by the legislation of the Russian Federation. Thus, Regional Offices are independent in making decisions within their competence and together with the Federal Antimonopoly Service's Central Office form a system of competition authorities in the Russian Federation.

12. In order to ensure competitive neutrality, the competition authorities, represented by both the FAS Russia and its Regional Offices, actively cooperate with law enforcement authorities and the Prosecutor's Offices of the Russian Federation, which, among other things, can conduct prosecutorial inspections.

13. Thus, an example of cooperation is the practice of involving representatives of the competition authorities as specialists during prosecutorial inspections. In the future, based on the results of such inspections, the materials can be submitted to the competition authorities for further identification of signs of violations of the antimonopoly legislation.

14. In addition, the FAS Russia carries out its activities in cooperation with other federal executive authorities, the Central Bank of the Russian Federation, state authorities of the constituent entities of the Russian Federation, local authorities, public associations and other organizations. In this area, the FAS Russia assesses sectoral policies for compliance with the legislation, and develops conclusions on the impact of such policies on the state of competition, which are submitted to the Government of the Russian Federation by the time a certain sectoral policy is adopted.

15. The FAS Russia exercises its powers in relation to authorities and control over their violation of the antimonopoly legislation. The Article 15 of the Law on Protection of Competition prohibits the authorities from taking actions or inactions that lead to the prevention, restriction, elimination of competition. Such actions include the imposition of restrictions on the creation of economic entities in any field of activity, the establishment of unreasonable requirements for economic entities, the imposition of restrictions on the free movement of goods, the provision of access to information to the economic entity on a priority basis, the creation of discriminatory conditions and other actions.

16. In addition, public authorities are not allowed to operate as economic entities in the market. The only exception to the antimonopoly legislation is the State Atomic Energy Corporation "Rosatom", which operates as an economic entity and as a regulator in the field of nuclear energy. This exception is established in the Federal Law of December 1, 2007 No. 317-FZ "On the State Atomic Energy Corporation "Rosatom".

17. To combat the actions of economic bodies and public authorities and local self-government bodies that have a negative impact on the state of competitive neutrality, the FAS Russia has a number of tools at its disposal, including preliminary approval of the issuance of state and municipal preferences, issuing warnings on termination of actions restricting competition to public authorities and local self-government bodies, issuance of conclusions on the compliance of internal acts of economic entities with the requirements of the antimonopoly legislation, control over economic concentration, consideration of the cases of violation of the antimonopoly legislation.

18. In order to ensure competitive neutrality and protect competition in general, the Law on Protection of Competition provides for the granting of state or municipal preferences with the prior written consent of the competition authority.

19. The Law on Protection of Competition defines the procedure for granting state or municipal preferences and establishes the goals within which state or municipal preferences can be granted.

20. Within the framework of this procedure, the competition authority may approve or not approve the issuance of such a state or municipal preference, while it is also possible to approve the issuance with the application of restrictions, including limiting the period for granting such a preference, the circle of persons who may be granted a state or municipal preference, the size of state or municipal preferences, the purposes of granting state or municipal preferences, as well as other restrictions, the application of which affects the state of competition.

21. In addition, one of the ways to ensure competitive neutrality is to conduct tenders for the provision of state/municipal property, the obligation to conduct which is established in the legislation regulating relations in more than 20 spheres of the Russian economy, for example, the Federal Law of December 21, 2001 No. 178-FZ "On privatization of state and municipal property", the Land Code of the Russian Federation, the Forest Code of the Russian Federation, the Water Code of the Russian Federation, the Federal Law of July 13, 2015 No. 224-FZ "On public-private partnership, municipal-private partnership in the Russian Federation and amendments into separate legislative acts of the Russian Federation", the Federal Law July 21, 2005 No. 115-FZ "On Concession Agreements".

22. Also, the Federal Law of July 18, 2011 No. 223-FZ "On the Procurement of Goods, Works, Services by Certain Types of Legal Entities" establishes special requirements for purchases carried out, including by state corporations, state-owned companies, as well as economic entities in whose authorized capital the share of participation of the Russian Federation, a constituent entity of the Russian Federation, a municipality in aggregate exceeds fifty percent.

23. Thus, the legislation of the Russian Federation contains special requirements for participation in civil circulation of subjects of state and municipal ownership, aimed at developing and supporting competition.

24. When identifying signs of restriction of competition in the actions of public authorities or municipal self-government authorities, the FAS Russia uses a warning mechanism, which makes it possible to quickly respond to such violations and is able to effectively eliminate them.

25. At the same time, the competition authority is empowered to issue a warning to any authority and local self-government authority when it detects signs of a violation, with the exception of the Government of the Russian Federation, legislative authorities at the federal level, courts, prosecutors, the Chamber of Accounts of the Russian Federation, the Investigative Committee of the Russian Federation.

26. Also, within the framework of ensuring competitive neutrality and in accordance with the National Competition Development Plan for 2018-2020, the FAS Russia has adopted the Methodological Recommendations on Antimonopoly Compliance for the authorities, which determine the main goals, objectives and principles of creating and organizing antimonopoly compliance by the authorities, the content and the procedure for the adoption of relevant legal acts, as well as the procedure for the creation and functioning of an authorized division responsible for the development and implementation of antimonopoly compliance in the authority.

27. In 2019-2020, the antimonopoly compliance system was organized by all 16 federal executive bodies, which are responsible executors of the federal roadmap for the development of competition in economic sectors. In addition, acts on antimonopoly compliance were proactively adopted by another 22 federal executive bodies.

28. In 2020, the Federal Law of March 1, 2020 No. 33-FZ "On Amendments to the Federal Law "On Protection of Competition" was adopted, which officially introduced the term "a system of internal compliance with the requirements of antimonopoly legislation" or in common terminology – "antimonopoly compliance". The law secured the right to implement antimonopoly compliance by economic entities, a list of requirements for the internal act of antimonopoly compliance, the possibility of its approval by the FAS Russia.

29. This mechanism undoubtedly contributes to an increase in the level of legality of the activities of economic entities in the commodity markets and creates additional incentives for economic entities, government and local authorities to take measures to prevent violations of the antimonopoly legislation.

30. An important direction of state policy at the present time is the systematic reduction of the share of state-owned enterprises and their gradual withdrawal from competitive markets. Currently, most of the state-owned enterprises in Russia operate in highly competitive areas – housing management, trade and service provision.

31. Such an organizational and legal form of a legal entity as state unitary enterprises and municipal unitary enterprises is appropriate for carrying out activities in those sectors of the economy where there are no incentives or expediency of the development of competitive relations.

32. In addition, there is a number of sectors of particular national importance, such as the defense industry, space industry, nuclear power and geological exploration of subsoil, in which the participation of state-owned enterprises is due to the specifics of such sectors.

33. At the same time, the activities of state-owned enterprises in competitive sectors of the economy negatively affect competition and slow down the development of the industry.

34. State financing of the expenditures of state-owned enterprises creates a high barrier to market entry for potential competitors who do not have additional sources of financing and maintain a competitive price.

35. In addition, the economic incentives of enterprises with state funding sources are lower than those of potential competitors, which may negatively affect the process of modernizing the technical process and the quality of products and services provided.

36. The liquidation of such enterprises in all competitive sectors of the economy is one of the necessary measures to eliminate excessive state regulation and eliminate possible violations by state-owned enterprises.

37. In this regard, amendments were adopted³ to the Law on State and Municipal Unitary Enterprises and the Law on Protection of Competition, according to which the FAS Russia was authorized to issue a warning on liquidation or taking measures to terminate the activities of a unitary enterprise that was established or operates in violation of the requirements of antimonopoly legislation.

³ Federal Law of December 27, 2019 No. 485-FZ "On Amendments to the Federal Law "On State and Municipal Unitary Enterprises" and the Federal Law "On Protection of Competition"

38. The FAS Russia, in cooperation with federal authorities and authorities of the constituent entities of the Russian Federation, works on the development and implementation of plans for the liquidation or reorganization of state unitary enterprises and municipal unitary enterprises, provides consultations and methodological assistance.

39. In addition to controlling the creation of state-owned enterprises, the FAS Russia is authorized to exercise control over transactions of economic concentration. In this regard, there is also no preferential approval regime for state-owned enterprises, all merger transactions are considered in accordance with the general rules of antimonopoly legislation. The only exception to this rule is the situation when merger transactions can be withdrawn from antimonopoly control by a corresponding decree of the Government of the Russian Federation or the President of the Russian Federation.

40. Competition authorities in the Russian Federation have a wide range of possible actions to solve problems related to the protection of competition. Throughout its existence, the FAS Russia and its Regional Offices have actively used and are applying the available tools, in practice identifying the strengths and weaknesses of the current legal regulation.

41. The result of such enforcement is, among other things, the release of reviews of the practice of competition authorities, guidelines on antimonopoly legislation. In the framework of interaction with the Government of the Russian Federation, the FAS Russia proposes changes to antimonopoly legislation, including with the aim of ensuring competitive neutrality.

42. Control over the activities of the state within the framework of ensuring competitive neutrality is not just one of the functions of the Federal Antimonopoly Service, but the basis for the further development of the economy of the Russian Federation, creating conditions for the activities of private entrepreneurship and protecting the rights and legitimate interests of citizens.