

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Quality considerations in the zero-price economy – Note by the Russian Federation

28 November 2018

This document reproduces a written contribution from the Russian Federation submitted for item 2 of the joint meeting between the Competition Committee and the Committee on Consumer Policy on 28 November 2018.

More documentation related to this discussion can be found at:

www.oecd.org/daf/competition/quality-considerations-in-the-zero-price-economy.htm

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1. In the modern world, information is one of the most valuable resources of society, along with such traditional material resources as oil, gas, minerals, etc., which means that the method of its processing, by analogy with the methods of processing material resources, can be perceived as technology.
2. The rapid development of information technology in the modern world has created the conditions for a significant change in the turnover of goods in the formation of competitive advantage.
3. Thus, a new type of product has appeared on the market, which is offered to the market for the purpose of acquisition, use or consumption.
4. According to the legislation of the Russian Federation, a product is an object of civil rights (including work, service), intended for sale, exchange or other introduction into circulation¹, and it does not matter whether it is paid or not.
5. The product as an economic category has the unity of consumer and exchange value.
6. The main elements of the market are the product, demand, supply and price.
7. Goods can be viewed in the context of a variety of ways to monetize a business.
8. At first glance, many products of the digital era are provided to users "for free" in the usual sense of the word, that is, without charging money. On the other hand, many of the free services bring their owners indirect benefits, which can take many different forms.
9. Various models of attracting customers with “free lunch” have been known to the economy for a long time, but today the scale and target setting of this phenomenon have changed. From one-time stocks, free goods and services become a long-term strategy. A habitual model can be considered when free goods or services play the role of an advertising insert, which increases the demand for a commercial object. The core of a business model is a free product or service that provides a stable audience, i.e. potential market. If we talk about the software market, here the model of free use of the product is often used in exchange for paid related services, primarily technical support.
10. There is also an opinion that if a product is listed with a zero price and its turnover is made free of charge, then a commodity market is not formed.
11. The case of the FAS Russia against Google Inc., Google Ireland Limited, Google LLC has just refuted this point of view.
12. When considering this case in court, the FAS Russia had no difficulties in this part. The product, which had a dominant position in the market, and this is the Google Play application store, was provided to equipment manufacturers free of charge, but this does not mean that it has no value and is not monetized in adjacent or related product markets.
13. In this case, the relationship of the smartphone manufacturers and the owner of the software was reviewed.

¹ Article 4 of the Federal Law of July 26, 2006 No. 135-FZ “On Protection of Competition”

14. During the consideration of the case, it was determined that Google is the owner of the Google Play application store, which is designed to search, purchase, download and update other applications on devices running the Android OS. A large number of applications that are available to users through Google Play, as well as its wide popularity among users, taking into account the share of the Android OS in the market of operating systems for mobile devices, make this application store extremely popular for a manufacturer interested in releasing a commercially successful mobile device.

15. The feature of the Google Play app store is that the application store developers guarantee a high degree of security of installed and updated software (users are guaranteed protection against viruses, unacceptable/unethical applications, application disruptions, application updates are provided, intellectual property rights are guaranteed when the applications are downloaded) and the possibility of feedback from the end user to the software developer.

16. Thus, the application store preinstalled on a mobile device, being a software product (application), has unique functionality and forms consumer value for manufacturers of mobile devices, as an essential and necessary element of mobile devices for their subsequent implementation.

17. The value of the goods was also determined by the result of opinion polls conducted by the research holding Romir and the All-Russian Center for the Study of Public Opinion.

18. Based on the identified functional purpose of the software product - the Google Play application store, as well as the conditions for putting it into circulation, the FAS Russia came to the conclusion that the Google Play application is a product covered by the antimonopoly legislation of the Russian Federation.

19. Thus, the Federal Antimonopoly Service of the Russian Federation considers that to define a product, it is necessary to prove 2 things:

1. Separate functional value of the object of civil rights, the presence of supply and demand.
2. The fact of the introduction of goods into circulation, confirmed by acts of transfer of rights to the object.

20. At the same time, the issues of payment for the goods, methods of monetization of its circulation do not affect the fact of determining the goods, but, of course, should be taken into account during the analysis.