

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

Vertical mergers in the technology, media and telecom sector – Note by the Russian Federation

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This document reproduces a written contribution from the Russian Federation submitted for Item 10 of the 131st OECD Competition committee meeting on 5-7 June 2019.

More documents related to this discussion can be found at

<http://www.oecd.org/daf/competition/vertical-mergers-in-the-technology-media-and-telecom-sector.htm>

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1. In the Russian Federation, the assessment of vertical mergers is carried out in the same manner as the assessment of any other mergers, including horizontal mergers. The procedure for evaluating mergers is provided by the Law on Protection of Competition¹ and does not differ from the assessment of various types of mergers. In all cases, the decision on merger is made depending on the evaluation of the transaction's effects on competition and presume the development of measures (remedies) aimed at preventing competition restriction or at stimulating the development of competition.

2. The permissibility criteria based on the “rule of reason” approach established by the Law on the Protection of Competition are also unified in the assessment of all types of mergers, as well as agreements and abuses of market power.

3. At the same time, Article 12 (Permissibility of Agreements) of the Law on Protection of Competition establishes the cases when vertical agreements are considered permissible:

- If these agreements are agreements of commercial concession.
- If the share of each economic entity on the market of goods that is subject to a “vertical agreement” does not exceed 20% (except “vertical” agreements between financial organizations).

4. In our opinion, vertical mergers can be no less dangerous for competition than horizontal mergers in cases where merging companies (at least one) have substantial market power in the relevant product markets.

5. In the technology, media and telecommunications sector, there has recently been a qualitative transition from technological vertical mergers to mergers, which are aimed at combining various services, as well as combining resources to obtain data on consumer behavior.

6. 10 years ago, there were several major vertical mergers of telecommunications companies: cellular operators acquired large backbone data transmission providers owning channel capacity throughout the Russian Federation, including cross-border movement. MegaFon/Synterra, VimpelCom/GlobalTel - these mergers were approved.

7. Evaluating such mergers, the FAS took into account both the state of competition in the markets in which merge participants operate, and the benefits to the development of the industry and to consumers that will be obtained as a result of mergers.

8. Thus, the state of competition in the market of main communication channels was researched: the market was evaluated as a market with developed competition, including due to the policy of demonopolization of long-distance telephone communication, which has been successfully conducted in the Russian Federation since 2006. Mergers between mobile operators (subscriber business) and long-distance operators (inter-operator business) led to increased competition in the long-distance communication market.

¹ Federal Law "On Protection of Competition" dated July 26, 2006 No. 135-FZ: <http://en.fas.gov.ru/documents/documentdetails.html?id=14737>

9. Also, the FAS took into account the beneficial impact of these mergers on the development of the cellular data transmission segment due to the synergistic effect of the use of telephone and data networks infrastructures.

10. The Russian Federation business community adopted and implemented the principles of network neutrality developed by the FAS working group in 2016.

11. The principles of network neutrality are the conditions for interaction between end users, content, applications and services providers, and telecom operators, ensuring open and non-discriminatory use of the Internet to spread and gain access to information and services.

12. The basic principles of the network neutrality are:

- Providing end users with the right of access to information that is not prohibited for distribution in accordance with the legislation of the Russian Federation.
- The absence of market participants' discrimination in relation to the transmitted or received data on the Internet, including the data source - their own data, data of affiliated persons or other organizations.
- Interaction between market participants in the interests of maximally satisfying consumer needs and improving the quality of provided services.
- Traffic management to the extent necessary for ensuring the integrity of the network and the safety of consumers and the state, in cases expressly provided for by federal laws. In these cases, traffic management is applied as a necessary measure to protect networks and consumers, for example, traffic management is recognized as admissible one in order to prevent cyber-attacks, threats to violate communications secrets or theft of personal data, as well as in cases established by federal laws, including pursuant to a prescriber's order or pursuant to a court decision.
- Reasonable traffic management to the extent that is necessary to fulfill the conditions of the contract for the provision of communication services upon request of the counterparty while ensuring the overall basic quality of the service.

13. In these cases, traffic control can be applied:

- As a measure to restrict access to a certain resource (resources) in accordance with the will of the subscriber (including "parental control").
- As a measure to provide special services with better quality in cases where the subscriber explicitly declared his desire to receive such services, but on condition to maintaining at least the basic quality of the services provided to an indefinite number of persons.

14. At the same time, participants understand that the principles of network neutrality apply to relationships that arise during using the Internet, regardless of what technologies are used to create and distribute content, applications and services.

15. The participants in the working group came to the conclusion that the principles of freedom of dissemination of information are currently enshrined, and there are also mechanisms for preventing unfair actions of participants that violate the principles of network neutrality.

16. Possible cases of limiting network neutrality can be suppressed in accordance with the antimonopoly legislation.

17. The working group on ensuring network neutrality operates under the FAS on an ongoing basis and for the entire period no violations of the principles of network neutrality have been recorded.

18. In 2017, the FAS approved the merger of MegaFon PJSC and the Mail.ru Group. MegaFon PJSC is a cellular operator that occupies a dominant position in the market of cellular services as part of collective dominance with a share of 28%. Mail.ru Group owns one of the most popular email services, a large advertising platform on the Internet which is called myTarget and popular social networks VKontakte and Odnoklassniki.

19. It was also taken into account that the mobile operator MegaFon has been developing its own OTT-services (over-the-top)² since 2017.

20. During the consideration of the transaction, two aspects were analyzed that may affect competition in the markets of OTT-services:

1. Creation by the MegaFon mobile operator advantages to OTT-services belonging to a group of persons by preferential offers to their own subscribers of these services, or by prioritizing these services. Based on voluntary compliance with the principles of network neutrality by all market participants, the FAS concluded that the merger would not have a negative impact on the market of OTT-services.
2. The second aspect that was evaluated by the FAS was the possible usage of data on consumers of both merger participants, which could provide merging parties 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.

21. Currently, the largest owners of data on consumer behavior are telecom operators, 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 point out that in this research 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.

22. At the same time, the data arrays on consumer behavior intersect in most of cases.

23. Assessing a significant number of organizations which possess data on consumer behavior, analyzing the composition of such data, the FAS concluded that the merging parties are not persons who have exclusive data that could provide the merging parties with a competitive advantage in relevant commodity markets.

24. At the same time, the FAS relied 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

² Over the top (OTT) is a term used to refer to content providers that distribute streaming media as a standalone product directly to viewers over the Internet, bypassing telecommunications, multichannel television, and broadcast television platforms that traditionally act as a controller or distributor of such content.

carried out in accordance with the requirements established by law for the collection, processing and storage of personal data³.

25. As for the market position of the myTarget advertising platform, in the segment of online advertising, the share of this advertising platform does not exceed 10% (whereas Yandex.Direct platform share is 60% and the Google AdWords platform share is 30%) and the FAS has not identified factors that could significantly increase the influence of the Mail.ru Group in this market as a result of the merger.

26. After evaluating all the established factors, the FAS concluded that the merger of MegaFon and Mail.Ru Group will not have negative consequences for competition.

27. To sum up we can say that each vertical merger should be considered with taking into account all factors that could affect competition in the current regulatory environment, including established business practices, and taking into account the sustainability of the established behavior.

³ Federal Law of 27.07.2006 No. 152-FZ «On personal data»: <https://rg.ru/2006/07/29/personaljnye-dannye-dok.html>