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**The Benefit of Competition Policy for Consumers**

**Contribution  
by  
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## **Introduction**

1. It is widely known truth that citizens have a right for fair prices on goods and services they need in their daily life and good conditions for their business activity. Unfortunately, sometimes the restrictive actions of some companies are able to damage a lot the market and consumers through establishing high prices, producing goods of low quality and limiting supply of some goods. Under these circumstances competition policy plays a crucial role in the process of establishing proper market conditions in which consumers will not be damaged from anticompetitive behaviour of business entities.

2. In the Russian Federation the authority empowered with consumer protection is the Federal Service for Supervision of Consumer Rights Protection and Human Welfare while the Federal Antimonopoly Service of the Russian Federation (hereinafter – the FAS Russia) exercises supervision over protection of competition<sup>1</sup>. Despite of this fact, the FAS Russia is fully committed to the principle of enhancing of consumer welfare and all the decisions of the FAS Russia are made based on this principle.

3. With respect to general line of Russian economic policy, the FAS Russia is empowered to protect competition and sanction anti-competitive practices such as abuse of dominance position, anti-competitive agreements, unfair competition, bid-rigging in public procurement. The FAS Russia also is empowered to exercise control over mergers and acquisitions, relevant activity of public authorities and compliance of the advertising legislation<sup>2</sup>.

4. The FAS Russia takes claims not only from economic entities but also individual citizens, which are dissatisfied with behavior of certain companies. For the period of activity of the FAS Russia, the authority gained vast experience in investigating cases of violation of antimonopoly legislation in the key consumer markets.

## **Cartels**

5. Among all possible violations of competition legislations, cartels are the most dangerous one. Agreements of economic entities could lead to consequences harmful for consumers: maintaining high prices on necessary goods, limit choices, supply goods of low quality, etc.

6. In the period of 2009-2011, in Russia significant steps to strengthen the fight against cartels were taken, as follows: necessary changes in legislation (the Law on Protection of Competition, the Criminal Code of the Russian Federation, the Code of Administrative Offences of the Russian Federation) were adopted, direct administrative liability is introduced in the form of turnover fines for anticompetitive agreements concluded; within the framework of the FAS Russia a special unit to fight against cartels is established, cooperation with law enforcement bodies of the Russian Federation is conducted.

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<sup>1</sup> It is worth to note that the two authorities mentioned are independent in decision-making process and providing independent policy.

<sup>2</sup> For more detailed information see [http://en.fas.gov.ru/legislation/legislation\\_50726.html](http://en.fas.gov.ru/legislation/legislation_50726.html)

7. However, the disclosure of the cartels is one of the most difficult tasks and it is considered a priority area of the FAS Russia. The Head of the FAS Russia Igor Artemiev in February 2012 said “For the next four years fighting against cartels will be field of high priority of the FAS Russia”. In 2012 a number of steps was taken to develop cooperation with the police bodies of the Russian Federation.

8. During the period of 2008 – 2011 the FAS Russia considered the tree “waves” of cases on abuse of collective dominant position in the market by the large vertically integrated companies, both state-owned companies, such as Gazprom Neft and Rosneft, and private companies Lukoil, TNK-BP and Bashneft. The courts have fully confirmed the legality and validity of the conclusion of the FAS Russia. Violation was stated in:

- setting of monopolistically high prices on oil products;
- creation of discriminative conditions for consumers;
- fixing different prices for oil products without economic, technological or other justifications.

The amount of fines transferred to the budget of the Russian Federation was more than 470 mln. euros.

9. The FAS Russia carried out a huge international investigation regarding to the members of the Association formed a “Pollock cartel”, which resulted in decreased production, an artificial shortage of Pollock and Pollock products, as well as growth of prices across the entire territory of the Russian Federation.

10. The grounds for initiating the case were the findings of the inspections of the Association and several companies involved in Pollock catching, carried out by the FAS Anti-Cartel Department in May – August 2012.

11. In December 2012, the FAS Russia found that the Pollock Catchers Association coordinated economic activities of market agents, resulting in reduced production. The main evidence of the cartel was the protocols of the Association meetings. Evidence also included communications between members of the Association and agreements on the volume of Pollock harvesting and production of Pollock products (Pollock caviar, Pollock filet, “Pollock B/G”, fish-flour, etc.). Cartel participants discussed sale conditions and prices, signed agreements between companies – members of the Pollock Catchers Association, which formed artificial shortage of Pollock and Pollock products.

12. Every year over one million tons of Pollock is caught in the Russian Federation – more than salmon, herring and codfish together. Pollock makes one third of Russian fish market. That is why low prices on such products are extremely important for poor people. Existing of a cartel on this market leads to the situation in which poor people cannot afford Pollock products because of high prices.

13. Nowadays the FAS Russia is under of the process of consideration of possibility to file a class suits to the courts on the facts of violations of competition legislation. This measure will help to protect consumers from harmful influence of cartel’s participants and simplify the procedures.

## **Investigations on the key sensitive markets**

14. As it have been already mentioned the FAS Russia pays close attention to the protection of competition on key sensitive markets which are of most importance for consumers. The example of such a market is pharmaceutical market. Free access and proper prices to medicines and drugs are crucial for humans living and restrictions and violation of competition on this market could damage people's life.

15. One of the most illustrative cases is a case against "Novo Nordisk" Ltd which was investigated by the FAS Russia in 2010-2011. The pharmaceutical company "Novo Nordisk" Ltd. (Russian subdivision of the one of the largest insulin producers – Dutch company "Novo Nordisk") were fined the company with 85.9 mln rub (approximately 2 mln. EUR). That was the first fine imposed on the pharmaceutical company by the FAS Russia.

16. The essence of the violation were that commercial politics of this company were not clear and did not contain achievable criteria for potential distributors (contractors). That fact led to exclusivity of vertical agreements and impossibility of some distributors to work with the company and supply products on the Russian market.

17. This violation was voluntary eliminated by the company. In 2011 the FAS Russia and "Novo Nordisk" Ltd. reached an amicable settlement, under which "Novo Nordisk" Ltd.

- admitted violating the antimonopoly law;
- fully executed the determination issued by FAS Russia: approved a new policy regarding commercial partners and a standard supply contract that contains unified requirements, clear criteria and procedures for the work with distributors. These documents are aimed at observing the law of the Russian Federation on protection of competition and do not contravene American and British anti-corruption laws;
- made these documents publicly available on the official company web-site [www.novonordisk.ru](http://www.novonordisk.ru) so any interested persons can be aware of them;
- the company has a right to check whether potential and actual counteragents observe Russian, foreign and international anti-corruption laws subject to compliance with the antimonopoly law of the Russian Federation.

18. Due to voluntary elimination of the antimonopoly violation, the Court reduced the administrative fine to 53.5 mln. Rubles (approximately 1.2 mln. EUR) – a minimum fine under Article 14.31 of the Code on Administrative Violations of the Russian Federation.

19. The case outcome attracted considerable international attention – in follow-up of the discussion, in 2011-2012 many significant international events took place to elaborate on the rules of conduct of the companies that dominate the market. (including two Russian-American Round tables)

20. Within the elimination of exclusivity of the vertical relations and for reducing risks of antimonopoly investigation the FAS Russia offers to other dominant companies to generate commercial policies containing clear, countable and achievable criteria to potential (current) contractors, description of decision-making process concerning contracting or refusal of contracting. Commercial policies should be available for all potential contactors (distributors) of the dominant companies. Such measures aim at preventing of extinction of the vital goods from the market.

21. Summing up, this case demonstrates that generating the clear commercial policies with regard to commercial distributors, creation of the equal conditions of market supply of the vital consumer goods (in this case – medicines) promotes equal access for consumers to goods of such companies.

### **Advertising**

22. One of the most important consumer markets is the consumer loan market. In 2007 the FAS Russia obliged all the banks providing loans, to specify the effective interest rate in the contract, i.e. along with the cost of the loan to inform about all the conditions of its receipt (terms, amount of the initial payment, etc.) as well as all fees - for account management, cash-out, etc. It has high importance for consumers, because concealment of some loan terms can mislead consumers and significantly increase the total cost of the loan. This initiative of the FAS Russia was fully supported by the Federal Service for Supervision of Consumer Rights Protection and Human Welfare – federal executive authority of the Russian Federation responsible for supervision of consumer rights protection.

23. The FAS Russia pays close attention to advertisement of bank loans. Inappropriate advertising of bank products can have a negative impact on financial solvency of people. In 2007 the FAS Russia prepared certain recommendations concerning the content of the advertisement of the bank loans. According to the recommendations, while advertising their loans banks need to indicate their real either effective interest rate, calculated with the use of the method of the Bank of Russia, or the rate of the primary loan and all the additional charges and commission except penalties.

24. In this case specifying of the rate of the primary loan and a list of additional charges can be a basis for the FAS Russia to ask the Bank of Russia to check the bank on the forming of the unified loan portfolio.

25. Banks are required to disclose the information about effective interest rate, time and amount of loan, if it influence its cost for consumer. In this case it needs to inform about all the possible combinations of period, amount and interest of loan in the advertisement. All the loan terms should be of the same font size and be readable for average citizens, regardless of the advertising medium.

26. The FAS Russia has investigated the cases about advertising of the loans for cars with the lack of sufficient information about loan conditions. Sometimes, a bank specifies only one loan condition when all the rest conditions which form the real interest loan rate, are not available.

As a rule, in such a case, in advertisement the most attractive loan conditions are highlighted when the rest of the terms are written with a small unreadable font. Thus, additional conditions are not perceived by the consumer, it leads to misperceptions about amount of money, which is required for use of the advertised product. All the necessary information required by the law should be reported directly to advertising in order to allow to consumer to evaluate that and make a weighted decision.

27. While investigating such a case in 2011 against the company “SUZUKI MOTOR RUS” (LLC) for inappropriate advertising of «SUZUKI SWIFT» car indicating the possibility of a credit, the FAS Russia issued to stop further spread of inappropriate advertisement of the financial product (credit).

28. In the process of investigation the FAS Russia makes an analysis of situation of competition on the certain market aiming at identification of possible damage from the activity of the companies. This is made for protection of consumers who have to buy goods of such companies at high prices. Special analysis of the impact of the FAS Russia’s decisions on consumers is not conducted, but the FAS Russia in its activity is guided by the principles of the increase of the welfare of consumers and makes decision based on this principles.

### **Unfair competition**

29. The FAS Russia exercises control over unfair competition. Trade marks should be clearly identified by consumers. Sometimes there is the situation on the market when companies issued or combined trade marks which could be similar to the famous ones and consumers cannot identify “fail” goods from the first sight. This is the violation of Part 2 Article 14 of the Federal Law “On Protection of Competition” of the Russian Federation.

30. In 2013 investigating a case upon petitions of Richemont International SA (Switzerland) and “Vacheron & Constantine” (Switzerland) (further on referred to as the Petitioners), the FAS Russia found that actions of “VASHERON” Trading Alliance” Ltd. for acquiring and use of exclusive rights for the “VASHERON” combined trade mark under No.362861 Certificate, constituted an act of unfair competition under Part 2 Article 14 of the Federal Law “On Protection of Competition”.

31. The FAS Russia established that “VASHERON” Trading Alliance” Ltd. (further on referred to as the Respondent) acquired for individualizing the company’s goods and services the “VASHERON” verbal label registered as a trade mark, while the above person, members of its bodies knew about “VACHERON CONSTANTIN” registered mark. In the course of the investigation, FAS revealed the circumstances and obtained evidence indicating that the goods offered for sale by the respondent are marked by the “VASHERON” label as well as an image of the Maltese cross, which even more increases similarity between the trade mark of the Petitioners and the label used by the Respondent. Such use of the trade mark acquired by the respondent evokes associations with the internationally acclaimed Swiss manufacturer of watches and jewelry – “Vacheron & Constantin”. Leather accessories marked “VASHERON” also have the “Genève” label associated with the country of origin of the products of “Vacheron & Constantin”.

32. FAS concluded that choosing this verbal label for individualizing the products and commercializing the goods with a label similar to the trade mark of the Petitioners under such circumstances is aimed at using the reputation and popularity of the trade mark, affiliation of its consumers to high social status. This similarity could have incurred demand redistribution from other producers of goods similar to the goods of the Respondent – its competitors, to the benefit of the goods of the Respondent, while the above goods may not have the intrinsic qualities of the goods of the Petitioners and are not related to achievements in the quality and reputation of the mark typical for “Vacheron & Constantin” goods, so company’s advantages on the market cannot be recognized justified.

### **Competition development**

33. The FAS Russia supposes deregulation of certain industries to be necessary if on such markets could be created competitive conditions for all the participants of the market. In this situation the state regulation of prices on such markets becomes inefficient.

34. An example is a state regulation of fixed line phone services in Russia. Nowadays the prices for state-regulated fixed line phone services become higher than for not-regulated (competitive) cellular services. These two types of phone services operate in close cooperation and cellular services are able to replace fixed-line services in many cases, experts notice that competition exist between fixed-line operators and mobile operators. Under these circumstances the FAS Russia considers it is appropriate to initiate the process of creation of free competitive market of phone operators (both fixed-line and cellular). Moreover deregulation on this market will help fixed-line operators to develop and modernize in accordance with the current market demand. In this regard the FAS Russia suggests to set up a pilot deregulation of fixed-line services in several regions of Russia.

35. In the modern world communication services are one of the most essential for consumers. In this regard it is interesting to consider the roaming case investigated jointly by the FAS Russia and the Agency of the Republic of Kazakhstan for Competition Protection. In the beginning of 2010, the antimonopoly bodies of Kazakhstan and Russia started investigations on the markets of roaming services. The investigations were completed in October 2010; on the basis of the findings the FAS Russia found that MTS OJSC, VimpelCom OJSC, and MegaFon OJSC abused their market dominance, while the Agency of the Republic of Kazakhstan for Competition Protection arrived to the same conclusions with regard to GSM Kazakhstan LLP, Kazakhtelecom OJSC, Mobile Telecom-Service LLP, and KaR-Tel LLP.

36. In the frameworks of an investigation in relation to cellular communication operators the antimonopoly agencies of the Russian Federation and the Republic of Kazakhstan coordinated their enforcement activity; among them were a regular information exchange, coordination of timelines of raids. In one of raids carried out by the Kazakhstan competition authority the representatives of the FAS Russia took part. The Commissions’ sessions on consideration of two cases were hold synchronically. Decisions were issued at the same day and time.

37. It is worth mentioning that long before issuing a decision the operators of cellular communication in Russian and Kazakhstan admitted guilt and started to eliminate violations. At the end, instructions issued by the antimonopoly authorities were implemented in corpora.

38. The result received shows high effectiveness of application of concerted measures of antimonopoly enforcement.

39. Following up the outcome of the cases initiated by the FAS Russia and the Agency of the Republic of Kazakhstan for Competition Protection, the operators agreed to reduce the rates in inter-operator agreements between themselves and with other CIS operators.

40. Moreover, the FAS Russia supports the process of deregulation of the railway market. Until recently, only one rail carrier “Russian Railway Company” (JSC) was operated on this market (both passenger and freight services). Since 2006 the process of creation of independent companies has started on the market of commutation rail services. From 2003 due to the process of deregulation of rail freight carrier operators it was possible to attract investments and renew rolling stock. During this period more than 300 000 new freights were built and more than 600 bln. Rub (approximately 14 mln. EUR) were attracted as investments to the sector.

41. Market of passenger operations is also in the process of deregulation since 2000. In 2013 the pilot project was launched concerning “dynamic price setting” on rail tickets in sleeping coaches, lounge cars, luxurious trains. It means that carrier company is able to change prices on these types of trains (vans) by itself depending on demand (season, weekly or daily), booking pattern and other factors. Now this system is operating on 32 roots and involves more than 150 trains. During the period of the 1<sup>st</sup> half of 2014 the total increase of passengers using these types of carriage have amounted 10% in comparison with 2013.

## **Conclusion**

41. The FAS Russia is committed to the idea of competition policy serving the process of enhancing of consumers’ welfare. Establishing free competitive market is core for setting fare prices on necessary goods and supply these goods according to the demand on them. Preventing and sanctioning anti-competitive practices is that the FAS Russia stands for and exercises supervision over.

42. Despite of the fact that competition and consumer policies in Russian Federation are setting by the different authorities, enhancing consumers’ welfare is the key principle for the whole system of state regulation of economy in Russia. Differentiation of competition and consumer policy does not create any misunderstanding between them. On the contrary, lack of coordination and agreement of policies allows authorities to provide independent policy with respect to each other. In practice key decisions of the FAS Russia concerning violations of the competition legislation, which could damage consumers’ interests, was supported by the Federal Service for Supervision of Consumer Rights Protection and Human Welfare as well as the process of deregulation of key industries.