
Intergovernmental Group of Experts on Competition Law and Policy

18th SESSION

10-12 July 2019

Room XVII, Palais des Nations, Geneva

Thursday - 11 July, 2019

Competition Issues in the Digital Economy

Contribution by The Russian Federation

This material has been reproduced in the language and form as it was provided. The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.

Competition issues in the digital economy

July 11, 2019, Geneva, Switzerland

Legislation

The Russian government pays special attention to the digitalisation of the global economy and the growing influence of transnational corporations on competition in national markets. Several program documents exist in order to develop digital economy.

The Decree of the President of the Russian Federation the "Strategy for the Development of the Information Society in the Russian Federation for 2017-2030" stipulated the main directions of the policy development.

In 2017, the Russian government approved the main policy document devoted to the development of digital economy - National Program "Digital Economy in the Russian Federation". The Program consists of six projects, which are "Legal Regulation of Digital Environment", "Digital Infrastructure", "Personnel for Digital Economy", "Digital Security", "Digital Technologies" and "Digital Public Administration".

The Russian President also signed Resolution No. 618 approving the National Competition Development Plan for 2018–2020. The Resolution and National Plan determine the principles of interaction between state and society, implying intolerance to incidents of unfair competition, cartels and abuse of monopolistic position. As a fundamental principle of state competition policy, the Resolution defines the improvement of antimonopoly regulation in the digital economy.

Apart from that, in 2017 the FAS introduced the draft "fifth antimonopoly package" that includes important digital provisions.

The draft Fifth Antimonopoly Package

In 2017, the FAS prepared the draft amendments to competition legislation which would introduce the "digital provisions" into the Law on Protection of Competition (hereinafter – "the fifth antimonopoly package").

It includes provisions on introduction of new definitions of "trustee", definition of "price algorithms", empowering the FAS to impose provision of non-discriminated access to data as a remedy, introduction of data ownership as a criteria for market analysis, etc.

Technologies (primarily digital technologies), information, digital and information platforms, and intellectual property form the basis of the modern market system.

Information and technologies can be spread and used among economic agents as part of legitimate cooperation or with intent to prevent, restrict or eliminate competition.

In practice, the intensive development of information technologies apart from benefits also leads to the creation of "advanced" anticompetitive practices.

In some spheres, new digital companies dominate exercising significant influence on the real sector of economy.

The FAS can provide more and more examples of how the structure of modern markets is changing.

Evaluating the market position of a certain company, competition authorities have to take into account such phenomenon of the IT sector of the economy as direct and indirect network effects.

Direct network effects result in increased demand for a product as a consequence of an increase in the number of users. Such effects can serve as a serious obstacle to market entry. Achievement of a certain level of demand, a certain number of customers, comparable to the network effect achieved by a competitor becomes the condition for entering the market.

Indirect network effects, also referred to as network externalities, result in increasing demand for products and applications that come in addition to the core product.

In order to align with the evolving social relations in the digital economy, it is necessary to update antimonopoly legislation.

The draft law considers introduction of the additional criteria to the Law on Protection of Competition that allow to designate owners of digital platforms as dominant players if such a digital platform has a share of more than 35 percent in the market of substitute services delivered using digital platforms related to ensuring interaction between economic entities - sellers and buyers, and if network effects based on the number of users of the digital platform, give such an economic entity the opportunity to exercise a dominant influence on the general conditions for the commodity circulation in the relevant market and (or) to eliminate other economic entities from this market, and (or) to impede access of other economic entities to this market.

At the same time, in order to support the development of new projects based on the use of digital platforms, the draft law proposes to institute a rule stating that the owner of a digital platform, or several similar (substitutable) digital platforms, whose revenues for the last calendar year did not exceed 400 million rubles cannot be designated as dominant player.

In order to implement the proposed provisions, the draft law also defines the digital platform as an infrastructure located in the Internet, which is used to organize and provide interaction between sellers and buyers.

It is also proposed to define the concept of "network effect" - the dependence of the consumer value of goods on the number of consumers of the same group (direct network effect) or the change in the value of the goods for one group of consumers with

a decrease or increase in the number of consumers in another group at the same time (indirect network effect).

Under conditions of the modern "digital" markets, approaches to controlling transactions of economic concentration should change as traditional criteria based on the amount availed or operations and value of their assets may not reflect the real impact on the economic conditions of a transaction carried out as part of economic concentration and related to the regulation of intellectual property rights.

Considering the above, a new condition should be introduced in the first place to control transactions of economic concentration - if the volume of the transaction exceeds seven billion rubles.

Taking account of successful foreign practice, it is proposed to specify in the Law on Protection of Competition the rules for involving trustee for the purpose of monitoring and facilitating the execution of a ruling issued under economic concentration, which includes the transfer of rights to intellectual property and technology.

Besides the fifth antimonopoly package, the FAS Russia is developing economy using other tools. For example, the FAS Russia is one of the first competition authorities to use the principle of competitive neutrality.

Competitive neutrality means the leveling of any competitive advantages that may have the public sector compared to the private one.

Currently, the FAS Russia is conducting an active policy of competitive neutrality. A global and important point here is to limit the creation of unitary enterprises in competitive markets.

Besides, the FAS Russia is working on the development and implementation of an automated program to identify cartels, the so-called Big Digital Cat web-service. Using this program the authority can exercise control over auctions and identify anticompetitive agreements. The program will work on the basis of procurement information system and other data sources (media, open information sources, etc.).

Considering the digitization of the economy, the FAS Russia is also discussing the possibility of receiving applications for economic concentration deals only in electronic form. Such petitions and notifications will be submitted through the official website of the FAS Russia.

Enforcement

Abuse of dominance

It is useful to highlight in this regard that the FAS has an extensive enforcement experience in relation to big technological companies. One of the examples could be dealing with creation of discriminating conditions by Microsoft.

In 2017, in accordance with the statement of the company Kaspersky Lab, the FAS considered the case on the violation of antimonopoly legislation against Microsoft Corporation. Practices of the Microsoft Corporation aimed at providing benefits to its own antivirus application and encouraging users to abandon third-party antivirus applications were reviewed.

Circumstances and commodity markets that had not previously been subject to review by the antimonopoly authority were examined.

In the course of case consideration, the multilateral market of operating systems for stationary devices (computers and laptops) of end users, trial versions of operating systems for stationary devices (computers and laptops) for adaptation of third-party application software was analyzed. The analysis found that Microsoft Corporation, having a dominant position in this multilateral commodity market, has an impact on related commodity software application markets, as it owns the operating system (Microsoft Windows) for which the application software is created.

FAS issued two warnings to Microsoft Corporation regarding the termination of actions (inaction) that contain signs of violation of the antimonopoly legislation (abuse of dominant position – Article 10, and unfair competition – Article 14 of the Law on Protection of Competition).

In consequence of the execution of warnings, Microsoft Corporation made the necessary adjustments to the "Antimalware Platform Requirements". This document regulates the interaction between Microsoft Corporation and independent vendors of antivirus software. Moreover, Microsoft Corporation eliminated all calls for the abandonment of third-party software.

Execution of the requirements of the FAS created equal conditions for developers of antivirus products across not only the Russian Federation, but also other territories where Microsoft Corporation is present, thereby ensuring effective competition in the global information technology market.

In this regard, it is necessary to mention one more case. On 18 February 2015, FAS Russia has received a complaint from Yandex company indicating the presence of antitrust law violations in Google actions.

FAS Russia Commission (hereafter – Commission) has discovered that Google corporation has more than 50% market share of pre-installed application stores localized for redistribution on Russian markets and according to Part 1 Article 5 of the Law on Protection of Competition has a dominant position on the market. The Commission also takes note of the fact that Google owns the rights to Android OS, which strengthens its dominant position.

During the proceedings, violation of Part 1 Article 10 of the Law on Protection of Competition was detected in Google actions. In order to access Google Play app store Google contractors should follow certain Google restrictive requirements. According to

this provision, actions of an economic entity occupying a dominant position, which result or can result in prevention, restriction or elimination of competition, are prohibited.

Since the Commission found that Google corporation actions, which is currently occupying a dominant position on the market of pre-installed app stores for Android OS localized for distribution on the territory of the Russian Federation, lead to restriction of competition on the adjacent product markets (app stores), the acts of this company should be considered under Part 1 Article 10 of the Law on Protection of Competition.

On 18 December 2015, FAS Russia has found Google Inc. and Google Ireland Ltd. violated the antimonopoly legislation and issued a determination to eliminate a violation of the Federal Law “On Protection of Competition”. The FAS Russia’s decision and prescription were approved by court and entered into force on August 17, 2016, which include the following provisions:

- Google must adjust its contracts with mobile devices vendors, that is exclude anticompetitive requirements from the contracts that restrict installing applications and services of other vendors.
- Google must inform mobile phone users using Android OS about deactivating pre-installed Google applications, possibility to change the search engine in Google Chrome browser, to install another search widgets and other applications similar to those included in the GMS package, as well as about possibility to change icon locations in the screen in the form of a notice appeared on the screens of their mobile devices.

Due to the fact of abuse of dominant position, the case of administrative offence of Article 14.31 of the Code of Administrative Offences of the Russian Federation was considered, and on August 11, 2016 Google Inc was imposed a fine of 438.067.400,39 rubles.

As it had been mentioned previously, the trend of producing and distributing mobile devices together with the software pre-installed on them is global.

In 2017, the FAS reached a settlement with Google, under the terms of which Google agrees to stop the requirements of exclusivity of its applications on Android devices in Russia, cease practices which restrict the preinstallation of any competing search engines and applications (including on the home screen by default), encourage to preinstall Google search as the only search engine.

In accordance with the settlement, for devices that are currently in circulation in the Russian Federation, Google developed an active “window of choice”, which provides the user with the opportunity to choose a search engine “by default”.

It should be noted that the results of the implementation of the settlement confirm the FAS assumption about consumers' passive behavior regarding installation of applications by themselves if applications of a certain functionality are already installed on the device: since the consumer has been visually offered the choice of search engine

(since the settlement came into force two years ago), the share of the Russian developers in the market of search engines has grown from 37% to 49% on Android mobile devices.

Cartels

Another important aspect for legislative novels is pricing algorithms that analyze markets and adjust prices. In conditions when companies use similar algorithms to optimize relationships with competitors, one should talk about the formation of cartels.

The FAS experience in this filed can be described through the case against LG.

On June 28, 2017, the FAS initiated a case against LG Electronics RUS LLC.

On February 21, 2017, an unscheduled on-site inspection of LG Electronics RUS LLC was conducted, during which correspondence of employees and managers of LG Electronics RUS LLC with LG smartphones resellers was discovered, indicating coordination of their activities by LG Electronics RUS LLC.

On February 26, 2018, the FAS recognized that LG Electronics RUS violated Part 5 of Article 11 of the Law on Protection of Competition¹.

LG Electronics RUS in the period from 28.11.2014 to 15.02.2017 coordinated the economic activities of resellers of LG smartphones².

Coordination of economic activities of resellers was carried out by LG Electronics RUS LLC with the use of special software — price algorithms — developed by both the company and other organizations. In addition, illegal coordination included the following elements:

- the establishment of recommended retail prices for LG smartphones, which were published on the website on the Internet at <http://www.lg.com/ru> and communicated to resellers;

- the impact of LG Electronics RUS on resellers in order to comply with the recommended retail prices;

- application of sanctions to resellers who did not comply with recommended retail prices (termination of shipments).

As part of this case, the illegal practice of coordinating the economic activities of Russian smartphones resellers, which was carried out by LG Electronics RUS using special software, was examined and stopped. 02.26.2018 LG Electronics RUS announced that it has stopped illegal activities to coordinate the economic activities of LG resellers.

¹ <http://en.fas.gov.ru/press-center/news/detail.html?id=52813>

² Models: L90 – D410, G4s – H736, G3s – D724, Magna – H502, H502F, G4 – H818, G4c – H522y, Spirit – H422, Nexus 5 – D821, G3 – D855, K5 – X220DS, K7 – X210DS, K8 –K350E, Class – H650E, K10 LTE – K430ds, X Power – K220DS, G5 SE – H845

Also LG Electronics RUS reported that it had developed and implemented a new compliance policy in the company.

A fine in the amount of 2 500 000 rubles was imposed on LG Electronics RUS³. The circumstances mitigating administrative liability were voluntary termination of unlawful conduct prior to opening the antimonopoly case and assisting the FAS in the investigation. The aggravating circumstance was the duration of the violation – it lasted more than a year.

In addition, the managers of LG Electronics RUS who were directly involved in illegal coordination were brought to administrative responsibility. Fines were subsequently paid by them.

The draft law proposes to define the concept of "pricing algorithms" as a software designed to monitor prices on the commodity market, calculate prices for goods, set prices for goods and (or) monitor prices for goods or take actions when bidding.

In accordance with Resolution No. 618, other plans to reform the competition law are the following :

- limiting the creation of unitary enterprises in competitive markets;
- prohibition of the acquisition by the state of shares of business entities operating in commodity markets in a competitive environment;
- determination of the procedure for the application of the antimonopoly legislation to actions and agreements on the use of intellectual property;
- exclusion of the possibility of classifying business entities operating in competitive areas of activity as subjects of natural monopolies;
- securing the rights of the consumer council for the implementation of public control over the activities of natural monopolies, companies with state participation and regulated organizations when making decisions on tariffs, as well as when approving investment programs and monitoring their implementation;
- determination of the basis of state regulation of prices (tariffs) using as a priority method comparable markets and a long-term (at least five years) regulatory period, as well as securing a single procedure for pre-trial settlement of disputes related to the establishment and (or) use of regulated prices (tariffs) ;
- unification of bidding procedures within electronic auctions;
- improvement of tariff legislation;
- development of an automated system for identifying and proving cartels.

Besides, the FAS Russia has experience in price coordination. In 2016, a case was initiated against the group of companies Apple on the grounds of violation of Part 5,

³ <http://en.fas.gov.ru/press-center/news/detail.html?id=53101>

Article 11 ("coordination of economic activities of economic entities") of the Law "On Protection of Competition". Commencement of the case was driven by the appeal of a citizen in October 2015 on the establishment of the same prices for new models of smartphones Apple iPhone 6s and iPhone 6s Plus by 16 major resellers.

Investigation that was carried out by the Federal Antimonopoly Service of Russia in 2016 using information obtained from resellers showed that since the start of official sales of the Apple iPhone 5s, iPhone 5c, iPhone 6, iPhone 6 Plus, iPhone 6s and iPhone 6s Plus in Russia, most resellers fixed and maintained the same prices for these products during nearly 3 months. At the same time, the prices that were set coincided with prices from press releases and price lists published and distributed by LLC "Apple Rus" employees from e-mail addresses in the apple.com domain.

The decision regarding LLC "Apple Rus" was made in 2017. As part of the case, the illegal practice of coordinating the economic activities by Russian smartphone resellers that was carried out by a Russian subsidiary of the Apple group, was considered and stopped. During the consideration of the case, prices for Apple's smartphones significantly decreased, LLC "Apple Rus" developed and implemented a new compliance policy in the company as well as paid fine.

Merger control

In 2017-2018, the FAS has considered the merger between "Bayer AG" (Germany) and "Monsanto Company" (USA) and concluded a review of it in two phases: the competition analysis and the imposition of conditions on the merging company (7 November 2017) and the final approval of the merger (20 April 2018).

This merger affects the markets for the products used by agricultural producers including agricultural crops (seeds), certain crop protection products, in particular nonselective herbicides, as well as digital offerings for agriculture.

Both Bayer and Monsanto are vertically integrated full-cycle agrotechnology companies active in agrotechnology research and development as well as in the distribution and marketing of their products to agricultural producers.

The first phase of the review corresponded to the FAS decision to impose conditions on the merging company. The conditions put forward on November 7, 2017, contained requirements to "Bayer AG" aimed at creating conditions for the development of potential competition from Russian companies.

In the course of this merger review, the FAS organized a series of consultations with the relevant federal authorities, as well as scientific and business communities, and foreign competition authorities. The FAS also met the parties of the merger in order to discuss the possible negative effects the merger could have on competition as well as remedies helping to eliminate them.

Considering that technological transformations, including digitalization worldwide, have become key to understanding competitive dynamics in the agricultural

sector, the FAS has applied new methodological approaches to identify potential anticompetitive effects of the merger both in the Russian and global markets developed in cooperation with reputable academic institutions.

The FAS has conducted market analysis for the factors of agricultural production relevant to the merger review including emerging market integrated agrotechnological solutions that has been recently formed in a process of ongoing systemic technological and business transformations within the agricultural sector.

All these markets were analysed by the FAS in the context of increasing globalization of the world economy and integration of agricultural production into the global food value chains. This required the FAS to assess not only 'horizontal' relations between the market competitors but also 'vertical' interactions between different segments of the global food value chains.

In the context of the accelerating pace of innovation in the agrotechnology sector, the FAS assessed not only the merging parties' market shares but also the most probable scenarios for market transformation including changes in their competitive structure and dynamics in the short and medium term perspectives.

These changes are caused by an ongoing systemic shift in the agrotechnology markets that requires from companies if they want to be globally competitive to provide integrated (packaged) solutions to farmers which includes customized seeds, targeted crop protection solutions, as well as digital solutions based on big data analysis (with regards to soil, climate and other agronomic parameters) collected and processed within the digital farming platforms.

Moreover, due to a high degree of globalization of Russian agricultural production both in terms of export of agricultural products and importation of factors of production, the abovementioned global systemic transformations in the agricultural sector are transmitted to the Russian market.

In assessing the impact of the transaction on competition in the Russian market, the FAS based on the assumption that the combined company possesses strong capacities including big genetic data; latest technologies for accelerated genetic selection allowing the development of biotechnology seeds with predicted characteristics not subject to regulatory restrictions aimed at the control of cultivation of genetically modified organisms; as well as big data and algorithms for digital farming. All this may allow the combined company to increase its market power in a technologically changing environment quickly and effectively. This may possibly lead to a fast increase in the combined company's market share up to reaching a dominant position in the affected markets dependent on the abovementioned technological changes; as well as to creation of high entry barriers for market player lacking some of those technological and data capacities at once.

The FAS has concluded that the merger can cause the following anticompetitive effects:

- creating new and increasing existing barriers to entry in relevant markets (including those generated by introduction of closed digital agronomic platforms to the Russian market);

- enhancing incentives for anticompetitive agreements and concerned practices (considering already high level of concentration in this sector, the merger might substantially reduce a number of market players having all necessary technical and data capacities to effectively compete in the new technological and economic environment);

- increasing possibility of abuse of market power (combining innovative technologies, data, and platform solutions will allow the combined company to rapidly increase its market share up to a dominant position in a short term perspective).

Hence, the FAS has concluded that the merger creates substantial risks of restriction of competition, and those risks should be leveled in the course of the merger review.

The requirements contained in conditions imposed by the FAS on Bayer AG provide for the transfer to Russian companies of the molecular means of selection and germplasm needed to create new varieties and hybrids, with which the combined company has a strong position in the Russian market.

In addition, in order to develop competition in the digital farming markets, the prescription of the FAS also contains obligations to provide Russian companies engaged in the development of agricultural software and applications with non-discriminatory access to digital farming platforms, including access to historical data related to the Russian Federation, as well as to the data that will be collected by Bayer AG after it commercializes its software products on the territory of the Russian Federation. Access to such data is a key factor for the development and implementation by Russian companies of their IT-developments in the field of precision farming.

The obligations of Bayer AG also imply the creation of a plant biotechnology research centre in the Russian Federation, which will provide practical training for Russian specialists in the field of accelerated breeding with the involvement of highly qualified specialists with significant experience in this field.

On April, 2018, the FAS made a decision to approve the merger⁴.

Considering the global nature of this transaction (the transaction is being considered in more than thirty jurisdictions), in preparing its decision, the FAS actively cooperated with foreign competition authorities using waivers, which allow competition authorities to exchange confidential information, with the purpose of developing common approaches and synchronizing requirements for participants in the transaction.

Taking into account the fact that in order to monitor the fulfilment by Bayer AG of the requirements contained in the FAS prescription, as well as that special knowledge in

⁴ <https://br.fas.gov.ru/ca/upravlenie-kontrolya-agropromyshlennogo-kompleksa/ia-28184-18/>

the field of selection and IT technologies is required to efficiently transfer molecular breeding tools and germplasm, a mechanism which is new for Russian practice was used entailing the involvement of a third-party organization in the process, on the basis of which the Technology Transfer Centre was established.

In order to protect the interests of market participants, the draft fifth antimonopoly package proposes to determine additional consequences of failure to comply with the ruling of the competition authority issued as part of monitoring economic concentration and associated with the use and transfer of intellectual property rights.

Thus, it is proposed to establish that in case of non-compliance with the ruling of the competition authority, if such non-compliance leads or can lead to the prevention, restriction or elimination of competition, the competition authority has the right to:

- 1) file a claim in court for the exemption to use in the territory of the Russian Federation in the interests of competition development the results of intellectual activity and equivalent means of personalization belonging to the person to whom the ruling was issued if the ruling was related to the exercise by such person of the exclusive rights to the results of intellectual activity and equivalent means of personalization, under conditions of the ruling;

- 2) file a claim in court with the request to prohibit (restrict) the turnover in the territory of the Russian Federation by the person to whom the ruling was issued, of goods produced using the results of intellectual activity, the exercise of exclusive rights to which is associated with the implementation of this ruling.

Adoption of the draft law will make it possible to ensure the effectiveness of antimonopoly compliance in the context of modern "digital" markets, increase the protection of the rights and interests of bona fide participants in such markets from possible manifestations of monopolistic activity, and create legal mechanisms to counter market power abuse by "digital monopolies".

Another important example is Uber/Yandex.Taxi deal. In 2017, the FAS Russia approved the merger (joint venture) of Uber and Yandex.Taxi.

The FAS Russia conducted an analysis of the market of services for rendering information interaction between passengers and taxi drivers (the market of taxi aggregators), as well as hold a number of meetings with participants of the Russian markets of taxi and taxi aggregators.

A survey of market participants showed that administrative barriers to entry are characterized as easily overcome.

Given the fact that the market of taxi aggregators is sufficiently young and significant changes and modernization take place in this market all the time, the FAS Russia concluded that currently there are no dominating organizations but Yandex and Uber have signs of dominance that may arise in the future.

In order to improve the conditions for the development of competition in the market for taxi aggregators and related markets, the FAS Russia issued an order to Yandex, Uber and their joint venture to implement actions aimed at optimizing the relationship between aggregators, taxi drivers and passengers. In particular, companies are required to provide the most complete and accessible information to users about a legal entity that carries out transportation with the preservation of the history of trips; do not impose a ban on partners, drivers and passengers to work with other taxis aggregators.

As part of the merger, the FAS Russia consulted with the competition authorities of Kazakhstan and Belarus based on the waivers received from the companies.

International Cooperation

In its work, the FAS draws on the advanced experience of foreign competition authorities and global institutions, strives to harmonise national antimonopoly legislation with the best world practices; and relishes the opportunity for international cooperation while investigating cases against transnational corporations.

Effective international cooperation with foreign competition authorities and international organizations is one of the priorities of the FAS.

Most effectively the FAS cooperates with competition authorities within the framework of BRICS, the Eurasian Economic Union and the Commonwealth of Independent States.

In 2017-2018, the FAS together with other CIS competition authorities drafted a Report on Competition Policy Development in the Digital Economy. The report contains institutional changes in digital economy (the regulation of legal relations in the digital economy, main tendencies of institutional changes, international practice), as well as competition policy overview, which includes new challenges for antimonopoly regulation in the digital economy, the analysis of international practice, the implementation of antimonopoly legislation in CIS member states and important incentives.

In the Report the CIS competition authorities came to a conclusion that in the nearest time states may face the lack of mechanisms to protect competition on the most significant, including socially significant, markets. They should take measures in the nearest time to improve the antimonopoly legislation, including:

- the ability to suppress restrictions of competition in areas related to the implementation of exclusive rights to the results of intellectual activity and equated to them means of individualization

- the ability to suppress restrictions of competition by persons who are not residents of the state and (or) carrying out activities outside the territory of the state;

- additional tools for market analysis, in particular, the establishment of a dominant position taking into account the specifics of digital markets;

additional instruments that provide a full and comprehensive consideration of transactions taking into account the features of market functioning in the digital economy;

enforcement mechanisms to provide competition conditions ratable with the detected offense, taking into account the peculiarities of the digital markets functioning, as well as the aspects of globalization of markets.

The draft Report was submitted to the CIS Executive Committee on July 18, 2018 and was approved by the CIS Economic Council on December 7, 2018.

The FAS also participates in forming of the digital agenda within the association of five major emerging national economies: Brazil, Russia, India, China and South Africa (BRICS).

In accordance with the provisions of the Memorandum of understanding in the competition policy field signed by the heads of the competition authorities of the BRICS countries on May 19, 2016 in St. Petersburg, BRICS Working Groups on pharmaceutical sector, global food chains, automobile markets and digital economy are carried out on a regular basis.

The BRICS Working Group for Research of Competition Issues in the Digital Markets held the first session in São Paulo (Brazil) in October 2018 and is currently preparing the report on competition in the digital realities, which the BRICS competition authorities are planning to present during the VI BRICS Competition Conference in Moscow on September 16-19, 2019.

Moreover, the FAS is co-chairing the International Working Group on Research of Competition Issues in the ICT Sector (ICT Working Group), which was formed upon a FAS initiative together with the Turkish Competition Authority in 2012. At that period, it was the “International Working Group for Research of Competition Issues in the Market of International Telecommunications (Roaming)”. Representatives of competition authorities and sectoral regulators from more than 30 countries took part in the meetings of the Working Group. The major objective was to enhance transparency and competition in telecommunications markets in the countries involved in the Working Group activities, and to reduce tariffs in roaming.

Thus, by the end of 2016 the objectives of the Working Group were reached successfully, and at the 7th session of the Working Group its members decided to expand the scope of activities of the Roaming Working Group to develop competition in the field of information and communications technology (ICT).

The expediency of expanding the activities of the Working Group was related to the wave of international cases against transnational digital companies violating the antimonopoly law. To increase enforcement efficiency at both national and international levels it is necessary to eliminate the gaps in the competition law related to “digital” market analysis, improving efficiency of cooperation between the antimonopoly bodies throughout the world, particularly cross-border investigations etc.

Under the modern conditions of dynamically developing markets in the digital economy, it is essential to consider the current convergence processes. In particular, convergence between telephony, data transfer, TV and radio broadcasting and OTT services. In these conditions, on the one hand, the government policy should be consistent and built up on the new basic principles, such as the principle of technological neutrality or the principle of network neutrality. On the other hand, government policy should be flexible – the basic principles should be developed in line with the procedures of coordinating common understanding of the essence and directions of developing new markets with the use of new technologies.