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Contribution

By

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2015 is the year of the 25th Anniversary of antimonopoly regulation in the Russian Federation. During this period Russian competition authority – Federal antimonopoly service (the FAS Russia) has been a subject of a number of transformation of its functions, place in public administration’ structure as well as methods of competition enforcement and advocacy. Antimonopoly legislation has also developed significantly. However, during this years the FAS Russia has exercised its activity based on the principles of openness, effectiveness and enhancing consumers’ well-being.

Nowadays the FAS Russia is a powerful authority of antimonopoly control represented by the Central Office and 84 Regional Offices which have their own functions and competences. The FAS Russia as well as its Regional Offices are independent in decision-making. In the structure of public authorities the FAS Russia is reporting to the Government of the Russian Federation.

The FAS Russia is constantly developing methods and tools of competition enforcement. On the federal level it concerns a number of “non-classical” functions allows to react quickly to the appearance of anti-competitive practices in many sectors: trade, commodity exchanges, advertising, activity of public authorities in all the economic spheres, including security and defense, natural monopolies and financial markets. All these spheres are core for effective market functioning and creation of competitive environment. The FAS Russia is not limited with exercising functions on control and supervision over compliance with legislation; it actively participates in development of sectoral and functional policies on many markets, promoting their pro-competitive orientation.

At the same time, the FAS Russia recognizes the high importance of the communication in the modern world and makes the best efforts possible to make communication with all the stakeholders efficient. It is very important not only to promote and advocate competition principles through media but also to receive the feedback from citizens and business. This is a crucial resource of the public opinion about activity of the authority. In this regard, the FAS Russia develops communication strategies in relation to business community and citizens, actively uses mass-media and other digital communication resources, expands its presence on the Internet.

Competition legislation in the Russian Federation

In the period of establishing of market economy in the Russian Federation the basis of competition legislation was the Constitution of the Russian Federation and the Civil Code of the Russian Federation. The core changes in this sphere took place in 2006 with adoption of the Federal law dated 26 July 2006 No. 135-FZ “On Protection of Competition” (hereinafter – Law on Protection of Competition) and a number of amendments to the Federal law dated 30 December 2001 No. 195-FZ “Code of the Russian Federation on administrative violations” (hereinafter – Code on administrative violations).

During the period of its existence, the FAS Russia has developed complex amendments to the Law on Protection of Competition. We call them “antimonopoly packages” Thus, in 2009 the “second antimonopoly package” was adopted, in 2012 “the third antimonopoly package” came into force. Nowadays the FAS Russia developed “the fourth antimonopoly package” of amendments to competition legislation. It was approved by the Government of the Russian Federation and passed the first hearing in the lower chamber of Russian Parliament – the State Duma of the Russian Federation.

Law on Protection of Competition besides classical provisions of antimonopoly legislation on abuse of dominance, anticompetitive agreements, unfair competition, includes a number of specific features.

The FAS Russia exercises its powers in relation to public authorities in the form of control over their compliance with antimonopoly legislation. Article 15 of the Law on Protection of Competition prohibits public authorities to pass acts and (or) exercise actions lack of action) which lead or can lead to prevention, restriction, elimination of competition. In particular, among others, the following is forbidden: introduction of restrictions concerning creation of economic entities in any sphere of activity, establishing anticompetitive requirements to goods or economic entities, imposition of bans or introduction of restrictions concerning free movement of products, providing priority access to information for an economic entity and other actions.

Moreover, public authorities are prohibited to perform as economic entity. The only exception is State Atomic Energy Corporation “Rosatom” which performs as economic entity as a regulator in the sphere of atomic energy. This exception is established in the Federal law dated 1.12.2007 No. 317-FZ “On State Atomic Energy Corporation “Rosatom”.

Competition-restrictive agreements between public authorities or with economic entities are also prohibited if they lead or can lead to prevention, restriction or elimination of competition, in particular, to increase, decrease or maintaining of prices (tariffs); economically, technologically or in any other way unjustified establishment of different prices (tariffs) for the same commodity; restriction of entry into a goods market (exit from a goods market) or removal of economic entities from it (Article 16 of Law on Protection of Competition).

Violation of the mentioned provisions of antimonopoly legislation of the Russian Federation by public officials lead to imposing fines or disqualification for 3 years.

The FAS Russia controls the compliance with competitive neutrality principle in the course of public procurement and tenders. The actions that lead can lead to prevention, restriction or elimination of competition in the course of tender are prohibited, including: coordination of activities of the participants of tenders by the tenders' organizers or customers; creation of preferential conditions for participation in the tender to one or several Participants, including by means of access to information, unless is determined otherwise by the Federal Law; violation of the order of procedure of estimation of a winner or winners of the tender; participation of the tender's organizers or of the tender's customers and (or) employees of the tender's organizers or employees of the tender's customers in the tender.

Law on Protection of Competition defines proceeding of granting of state and municipal preferences and provides the exhaustive list of the purposes for use of state preferences.

Besides the Law on Protection of Competition,¹ the FAS Russia is empowered to control over compliance with Law on Federal Contract System², Law on Trade³, and Law on Electric Power Sector⁴ etc.

Institutional design of Russian competition authority

As a result of transformations, mentioned above, the FAS Russia today has a number of competences, which gives a synergetic effect in practice, despite of its

¹ Federal law dated 26.07.2006 No. 135-FZ "On Protection of Competition"

² Federal law dated 05.04.2013 No. 44-FZ "On contracting system in the sphere of "

³ Federal law dated 28.12.2009 No. 381-FZ "On Principles of State Regulation of Trade Activity in the Russian Federation"

⁴ Federal law dated 26.03.2003 N 35-FZ "On Electric Power Sector"

quantity and, from the first glance, relative mismatch. They design an effective base for creation of competitive economy. By the beginning of IV quarter of 2014 the FAS Russia exercises the following functions:

- State regulation over compliance of economic entities with the competition law;
- Control over observing competition rules by the authorities, including control over state preferences (state aid);
- Control over public procurement, including the sphere of defense and security;
- Control over natural monopolies' activity (excluding tariff regulation);
- Control over allocation of property, resources, rights on a competitive basis stipulated in the sectoral legislation;
- Control over advertising law compliance;
- Control over trade legislation compliance;
- Control over foreign investments in strategic industries;
- Control over unfair competition;
- Control over compliance with competition rules in the sphere of intellectual property;
- Specific control functions in defense industries and electricity sector.

The wide range of competences of the FAS Russia allows to react quickly to the appearance of anti-competitive practices in many sectors: trade, commodity exchanges, advertising, activity of public authorities in all the economic spheres, including security and defense, natural monopolies and financial markets. All these spheres are core for effective market functioning and creation of competitive environment.

The FAS Russia is not limited with exercising functions on control and supervision over compliance with legislation; it actively participates in development of sectoral and functional policies on many markets, promoting their pro-competitive orientation.

As for the decision-making process, the FAS Russia is the only authority in Russia empowered with control over compliance with antimonopoly legislation in all the economic spheres without any exceptions. The FAS Russia is an authority of the "full range", responsible for dealing with complaints and appeals, collection of evidences, decision making, issuing notifications and prescriptions, control over execution of previously issued prescriptions, imposing administrative sanctions,

protection of state interests on the cases of violation of the antimonopoly legislation in courts.

In the process of expanding of functions of the FAS Russia, the internal structure of the authority also needs to change. At present, the FAS Russia's structure consists of sectoral and functional divisions. Depending on the priorities of the activity, new departments are created in the structure of the FAS Russia. For example, in 2008 fighting against cartels was proclaimed as one of the most important activity of the competition authority. Aiming at execution of this function in the most effective way, a new structural department was created – Anti-cartel Department.

Nowadays the process of competition development in the Russian Federation goes very fast. The Government of the Russian Federation adopts new policy documents specifying this process. In 2012 Plan of actions (“road map”) “Competition development and improvement of antimonopoly practice” was adopted . The subject of the “Road map” is activities in the framework of so-called national entrepreneurial initiative, and have a special importance for competition development. The list of activities of the “road map” includes that ones which could influence the institutional design of the authority. For example, implementing a settlement system in regard to decisions of Regional Offices; realization of a pilot project on distant consideration of cases of violations of the antimonopoly legislation.

In the framework of execution of this document a special attention was paid to competition development and stimulation of pro-competition activity of regional authorities of the Russian Federation. With this aim the FAS Russia created “white and black books” of pro-competitive and anti-competitive regional practices. Relatively, the White book includes the best practices of regional and municipal authorities, the Black book – the worst practices of anti-competitive nature. These “White and Black books” are publicly available in the Internet. Publication of such a data helps to reduce the number of violations of the antimonopoly legislation by public authorities and stimulates their pro-competitive activity. “White and Black books” is an important activity of competition authorities connected with competition advocacy. It helps Regional offices of the FAS Russia to unify enforcement practice and to disseminate examples of the most interesting pro-competitive initiatives.

One of the major tools of implementation of the best practices of competition development in the regions of the Russian Federation, is elaboration of the

Standard of Competition Development in the regions of the Russian Federation. The Standard was developed with participation of the FAS Russia and Ministry of economic development of the Russian Federation and adopted by the Government of the Russian Federation. In 2014 the Standard was incorporated in a number of regions. It is planning to implement the Standard in all the Russian regions in 2015. This is a document which describes new work of regional governments on development of competition should be done: how to set priorities and goals of development, how to elaborate indicators of development, how to organize and institutionalize cooperation with the main stakeholders.

One of the tools of implementing regional competition policy is agreements on cooperation signed between higher regional authorities and the FAS Russia. These agreements aim at creation of conditions for competition development on commodities markets. Agreements assign mutual consultations, working meetings, workshops and information exchange aiming at elimination of administrative barriers and effective functioning of commodities' markets. Moreover, Agreements assign cooperation in the sphere of public procurement contracts for public and municipal needs, also in the sphere of control over activity of natural monopolies. By October, 2014 the FAS Russia has signed 29 such agreements.

Such agreements are signed with a number of federal executive authorities. A part of them allows only the exchange of information and participation in specific events while some of agreements clearly define mechanisms of cooperation in the process of execution of some functions (for example, agreements with the Ministry of Internal Affairs of the Russian Federation, Investigative Committee of the Russian Federation define the order of joint actions in conducting down raids, investigation of cartels and other dangerous violations).

Today the FAS Russia is an active partner in international cooperation. International cooperation with foreign competition authorities is one of the priorities of the current development of the FAS Russia. Increasing number of bilateral and multilateral agreements and memorandums nowadays goes into the sphere of practical cooperation. The FAS Russia conducted a number of international investigations on the facts of violation of the antimonopoly legislation along with foreign competition authorities. For example, the FAS Russia investigated the fish cartel case (on supply of pangasius from Vietnam to the market of the Russian Federation) with active support of Competition Authority of Vietnam. The case was initiated against number of Russian companies and the "Association of Production and Trade Enterprises on Fish Market" Non-Commercial Organization (the Association) upon signs prohibited coordination of

economic activities of market agents. The FAS Russia suspects that the Association coordinated such activities of economic entities – competitors, which resulted in dividing the market among themselves the volumes of purchasing pangasius. The similar case was considered related to a number of salmon suppliers from Norway.

Moreover, nowadays the FAS Russia is an initiator of development and signing of International Convention “On Fighting against Cartels”.

This way of development of the FAS Russia was pointed out by the journal Global Competition Review which outlined: “Since its inception a decade ago, it has become a major presence on the global competition enforcement landscape and a partner in growing number of complex international investigations” .

The high valuation of the Russian competition authority proves that despite of a wide range of functions and limited resources, the FAS Russia could reach that condition when “non-classical” functions are not an excessive burden but make a synergetic effect. The process of development of institutional structure of the FAS Russia has an evolutionary nature, it changes and adapts facing new challenges of economic environment and tasks of public administration, taking in mind previous developments and achievements. Competition authority gains new functions, leaving the excessive ones. All the new functions are considered to be one more step towards effective authority’s activity. The Head of the FAS Russia during the Plenary session in the framework of annual international event “Russian Competition Day” (September 8, 2014, St. Petersburg, Russian Federation) said: “for Russia and for major part of large countries in transition from socialistic methods to market economy it is necessary to have a powerful integrated authority which could face the attacks of conservative structures which don’t want competition. For this purpose we should be powerful and strong, should have a wide range of functions, all the arrows should fly to one goal and this goal should be competition development in practice”.

The powers and structure of the FAS Russia are changing not only under the influence of economic challenges, but also according with reforming the structure of the Russian government as a whole. Thus, the last example of the functional changes of the competition authority, became the delegation of power of the disbanded Federal Service for Defense Contracts (Rosoboronzakaz) in a part of pricing control in the markets of defense products and control tendering procedures for conclusion contracts on supply of products for the defense and security needs.

Recently, clarifying of powers and terms of reference of the competition authority have launched intensive public debate. Moreover variety of expert' opinions is very wide – from creation of the “indiscrete antimonopoly authority” under classical functions (abuse of dominance, cartels and mergers) to further expanding the powers by joining the tariff regulator (The Federal Tariff Service).

Competition advocacy methods

In the modern world information becomes the resource so important it has never been before. For effective functioning, it is necessary for every company to gain, maintain, analyze and exchange information to be competitive and face recognition in the minds of their consumers. Today the same is relevant for public authorities, which are required to be open, transparent and clear evaluated. It also concerns the competition policy and competition authorities that deal with claims from legal entities and citizens which expect from competition authority openness and effectiveness. It is very important for them to find any information needed for address claim to the competition authority and gain an adequate response. That is why communication in competition authorities is one of the key functions.

It is also important to promote and advocate competition among business and citizens aiming at information of all the stakeholders about key principles and importance of competition as well as changes in national competition legislation.

The FAS Russia developed and adopted communication policy in accordance with which the authority has a number of stakeholders with which the specific communication strategies are developed: international society, other national public authorities, business community and citizens.

Communication with business community and citizens

The FAS Russia has different ways of competition advocacy to business, among them are:

- System of public assessment;
- Operation of the number of Expert Councils on various aspects of competition enforcement under the FAS Russia in order to ensure close communication;
- Close cooperation with Non-commercial Partnership “Supporting Competition” and “Supporting Competition in CIS Countries”;

- Conduction of workshops and conferences to popularize and explain the necessity of observance of competition legislation;
- Reception Office of the FAS Russia.

All these ways have a double importance for the FAS Russia. From the one hand, it is crucial to inform business about activity, decision-making policy of the FAS Russia as well as changes in antimonopoly legislations. On the other hand, meetings with business and creation of advisory bodies allow the Russian competition authority to get feedback from business community concerning initiatives of the FAS Russia and understand the level of clearness of activity of the FAS Russia to business. All these actions help the FAS Russia to improve its activity and develop communication strategy.

One of the helpful instruments is the system of public assessment. At the FAS Russia and its Regional Offices the expert and the public advisory boards which unite both representatives of public organizations and ordinary citizens exist. Annually an independent organization is carrying out an interview of citizens and business structures, including telephone interviews, regarding their satisfaction with the FAS Russia's performance (professionalism of the antimonopoly authority's staff, efficiency and availability of providing information by the FAS Russia).

The FAS Russia created the Council for Competition the members of which are the representatives of the most authoritative non-commercial associations and business associations, such as the all-Russian public organization of small and medium business "SUPPORT of RUSSIA", the Russian Union of Industrialists and Businessmen, the Chamber of Commerce and Industry of the Russian Federation, the all-Russian public organization "Business Russia", the Union of Public Associations "International Confederation of Societies of Consumers", and others. The Council carries out the monitoring of the FAS Russia's performance, draws up recommendations on the improvement of antimonopoly law and practice of suppression of its violations. Similar councils are formed under the regional offices of the FAS Russia. This is the way the key representatives of business community could participate in decision-making process and make the legislative activity of the FAS Russia as open and transparent as possible.

There are also 27 Advisory Councils on the key markets at the FAS Russia (for example, the Advisory Council on Competition Development on the Markets of Oil and Oil Products, the Advisory Council on Competition Development on the Agro-Industrial Complex, etc.). The structure of the Advisory Councils includes

participants of the markets, representatives of non-commercial associations and controlling authorities. Such practice allows the FAS Russia to estimate objectively a situation in the relevant markets and increases transparency of decisions made by the FAS Russia.

Legislative initiatives and enforcement of the FAS Russia are assessed within the frameworks of interaction with the Non-Commercial Partnership “Supporting of Competition Development” (hereinafter – the Partnership). It should be mentioned that “The Second and the Third Antimonopoly Packages” were drafted with participation of the Partnership. On December 23, 2009 the Non-commercial Partnership “Supporting Competition in the CIS Countries” was created. The Partnership combines leading competition lawyers and economists and creates a new model of interaction between the professional community and competition authorities in the CIS countries.

Since 2011 the assessment of the FAS Russia’s performance in the form of questioning is carried out by the Association of Corporate Lawyers (ACL) within which respondents – members of ACL estimate transparency of the FAS Russia’s performance, consecutive constructive open dialogue with business community and professional legal community, activity of the authority on explanation of questions of the antimonopoly law enforcement, activity of the Advisory Councils, the organization of activity of public reception offices.

Media advocacy

Within the structure of the FAS Russia has a special department is a Public Relations Department which is responsible for media activity of the authority.

Aiming at developing clearness, transparency and openness of the authority, the FAS Russia has a special strategy of presenting the authority in the media. For that purposes the FAS Russia has a huge number of tools: developing of the official web-site in Russian and English www.fas.gov.ru (www.en.fas.gov.ru), working with TV, radio and printed media, creation of accounts in social networks (Facebook, Livejournal, Twitter). The FAS Russia has its own YouTube channel, a special web-page «Anticartel» and e-journal «Russian competition law and economics» (the digest of this journal is in English too). Moreover, the FAS Russia publishes books, brochures and booklets on the relevant topics of its responsibility.

For several years the FAS Russia has worked with social media aiming at competition advocacy and informal but effective cooperation with citizens via Internet. For example, more than 2,5 years ago the FAS Russia created the Twitter

account in two languages (@rus_fas и @FAS_RF). All the main news with the links to official press releases are translated there, press secretaries provide for live tweet-broadcasting and photo reports from public events. The broadcasting is welcomed to be completed by any user, so a person who is not able to participate in an event, has an objective image of the event before official press releases or paper articles are published.

Moreover, officers of the FAS Russia could immediately react on all the messages addressing to @rus_fas account. That is why Twitter account is a tool of bilateral communication and it helps citizens to have a quick reply on all the questions. The last year citizens and media representatives have get a chance to address questions for press conferences of our Head or his deputies or other events via Twitter account. It means that, being in different parts of our country and not participating in the event personally, they can get an answer on their questions.

As a result, effective work with citizens and informative messages have allowed us to attract attention of almost 70 000 users. They discuss amendments, inform about violations and follow the latest news in the field of competition policy along with us.

We take care about the opinion of citizens and business structures, that is why the FAS Russia are on-line almost every day of the year. As Twitter account is the most popular account of the FAS Russia, we use it to promote authority's accounts in other social networks.

On a daily basis Public Relations Department monitors mass media on the question of mentioning of the FAS Russia in the news and articles. It is important to know public reaction to any authority's message, case decision or suggestion on the development of product markets. Such monitoring allows us to take into account the opinion of mass media and business, to keep a close watch on negative publications in mass media and react them operatively. It also helps us to make correct decisions while planning the future activity. The Head of the FAS Russia and his deputies look through the results of this monitoring every day.

19. Information obtained via media is allowed to use as an evidence in the court, but only with confirming case materials at hand, obtained via the inspections. At the moment the decision of the FAS Russia is appealed in the court concerning the case against the administration of the Kemerovo region, Russian Railways, the operators of rolling stock: Federal Freight Company, Independent Transportation Company, The First Freight Company, "NefteTransServis", "TC "Novotrans", "SibUgleMetTrans", "RG-Trans", "ZapSib-TransServis", SUEK, New

Transportation Company, "Mechel-Trans", "TTransGroup AS", "RVD-Service", "Eurosib SPb - Transportation Systems", "Ferrotrans", "Transit - Plus" Company. The FAS Russia uses the media material for proving the existence of the anticompetitive agreement between companies, which led to sharing the market by the territory, volume of sales, consumers, and to limiting the entry to the market and elimination of economic entities from the market. For example, the article "The plan of coal loading is not fulfilled in Kuzbas region", published on the website about good traffic and logistic, is used.

Conclusion

The FAS Russia pays much attention to ways and means of enhancing effectiveness of its activity. The main tool in this regard is development of competition legislation, its amendment in accordance with the best international practices and needs of Russian economy. Moreover, Russian competition authority is always in the process of review and enhancing of its functions and organizational structure as on the federal as on the regional levels.

Moreover, the FAS Russian understands importance of competition advocacy and does all possible efforts to make communication with all the stakeholders effective and efficient. It is important not only popularize and advocate competition principles but gain a feedback from business and citizens. Public opinion is also crucial for our activity.

In the process of preparation of amendments to competition legislation the FAS Russia discusses its initiatives with business community, considers their proposals and opinions. Moreover, proposals of business very often are included in the list of initiatives of the FAS Russia, which presents for consideration of the Government of the Russian Federation.

Media activity for the FAS Russia is not only the way to inform people and gain a feedback but also a channel for collecting evidences for case investigation.

Openness, cooperation and effectiveness are core principles of the FAS Russia. Ways and means of enhancing effectiveness of competition enforcement and advocacy play an important role in their implementation.