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**Informal Cooperation among Competition
Agencies on Specific Cases**

**Contribution
by
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The views expressed are those of the author and do not necessarily reflect the views of
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Introduction

1. Nowadays due to the process of globalization and liberalization of trade, people all over the world are facing new challenges. That is also relevant for competition authorities. Competition authorities face some problems, which can be effectively resolved with joint efforts. The example of such challenge is transboundary investigations. In addition, it is always important to gain and follow the best experience in competition legislation and enforcement. Under those circumstances effective cooperation between competition authorities becomes crucial for development of competition legislation and enhancing enforcement practice.

2. International cooperation with foreign competition authorities and international organizations is one of key area of activity of the Federal Antimonopoly Service of the Russian Federation (hereinafter – the FAS Russia).

3. International cooperation of the FAS Russia has different directions: region of Eurasian economic area, competition authorities of Commonwealth of Independent States (CIS) and other foreign competition authorities of Europe, Asia-Pacific Region, Middle East, North and South Americas.

4. Cooperation between competition authorities is exercised in different forms: exchange of non-confidential and confidential and information, signing agreements and memorandums of understanding, holding consultations, conferences, bilateral meetings, establishing Working groups on the key markets, etc.

Cooperation within the framework of Eurasian economic integration

5. One of the key perspectives of international cooperation of the FAS Russia is cooperation with competition authorities of Eurasian economic area (Republic of Belarus and Republic of Kazakhstan) and Eurasian Economic Commission (EEC).

6. Since 2006 the Republic of Belarus, Republic of Kazakhstan and Russian Federation initiated the process of integration in all economic spheres, including competition policy. During the period of 2006-2013 the legal framework for cooperation between competition authorities of EEA was established. The main legislative act in this regard is the Agreement on Common Principles and Rules of Competition (9, December, 2010).

7. Today the priority of the FAS Russia's activity in this sphere is development of Agreement on the Protection of Confidential information and Liability for its Disclosure in the Exercise of the European Economic Commission (EEC) its Powers of Monitoring the Compliance of the Common Rules of Competition. The development of this Agreement is a key for transfer to EEC the power to investigate cases of violations of competition legislation on transboundary markets.

8. During the recent years the experts of executive authorities of Member-Countries of EEA has been actively involved in the process of development of the Treaty of Eurasian Economic Union (hereinafter – the Treaty). The Treaty determines international legal status, organizational

frameworks, objectives and methods of functioning. Moreover, the Treaty enshrines the basic principles of EEU activity – the main of which is that activity of EEU should fully meet national interests of all the Member-Countries. The FAS Russia takes an active part in the discussion of several sections of the Treaty: “Competition policy”, “Public and Municipal Procurements”, “Energy”, “Transport”, “Natural monopolies”, etc.

9. In addition, meetings of the heads of antimonopoly authorities of the Member-Countries of EEA and the Member of the Collegium (Minister) for competition and antimonopoly regulation of (EEC) Nurlan Aldabergenov became traditional. These meetings aim at discussing the most important topics of antimonopoly regulation and cooperation. Such meetings took place in July, 2013 and January, 2014.

10. In 2013 on the basis of EEC the Advisory Board on Competition was created aiming at further coordination and cooperation. At the same time a number of joint working groups were created (for example, joint working group on compliance of prohibition on anti-competitive agreements, joint working group on compliance of prohibition on abuse of dominant position, etc.) The participants of joint working groups are representatives of competition authorities of EEA countries and representatives of EEC.

Cooperation within CIS countries

11. Russian Federation belongs to several regional groupings. The main of them are Commonwealth of Independent States (CIS). With regard to competition policy in the framework of CIS Interstate Council for Antimonopoly Policy (ICAP) is functioning. As a part of ICAP activity the Headquarters for Joint Investigations of the Violations of the Antimonopoly Legislation in the CIS Countries (hereinafter referred as the Headquarters) was established.

12. **The ICAP** is the basic platform for interaction of the antimonopoly authorities of the CIS Countries. It was established in 1993 aiming at coordinating of formation by the Member-Countries of the CIS of the legal and organizational basis for the purposes of prevention, restriction and suppression of anticompetitive practices and unfair competition within the CIS Economic Area. The legal framework for the activity of the ICAP were established by Treaty on Implementation of the Coordinated Antimonopoly Policy dated December, 23, 1993.

13. The field of the issues discussed by the ICAP covers all spheres of the competition authorities’ activities of the CIS Countries. In the future, the interaction of the CIS Countries may become the basis for the formation of the supranational regulation system of competition relations in the transboundary markets within the CIS, an analogue of the European model of regulation.

14. Nowadays, the ICAP includes representatives of 10 CIS Member-Countries –the Republic of Azerbaijan, the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, the Russian Federation, the Republic of Tajikistan, the Republic of Uzbekistan and Ukraine.

15. Sessions of the Council are held regularly – at least twice a year, and, as a rule, in the capitals of the CIS Member-Countries by turns. On January 25, 2000, in Moscow, the new Treaty on Implementation of the Coordinated Antimonopoly Policy (hereinafter referred as the Treaty) was signed at the meeting of the Council of the Heads of the CIS Governments.

16. To achieve the effective cooperation which would stimulate even deeper integration of the CIS Member-Countries the ICAP Members adopted the Regulation on Cooperation of the States in Suppression of the Monopolistic Activity and the Unfair Competition (hereinafter referred as the Regulation) which forms an integral part of the Treaty.

17. The Regulation provides for mechanisms of cooperation of the CIS antimonopoly authorities in investigations of violations of the antimonopoly legislation, of participation in terminating transnational anticompetitive practices and of protection of domestic producers at international and domestic markets.

18. Within the framework of its operations and following the decisions adopted in the course of its sessions, the ICAP performed the analysis of the antimonopoly legislation of the CIS Countries in order to develop the common approaches to the harmonization.

19. At the ICAP sessions, the Participants exchange opinions on recent developments in their national antimonopoly legislation and on the overall economic situation with the subsequent information exchange on the most interesting cases currently considered.

In the course of its activity, the ICAP has achieved the following results:

- decrease of antimonopoly law infringements on the international markets of the CIS Countries;
- development of competition both in the domestic markets and in external economic activities;
- elimination of barriers in the movement of goods and services within the CIS Economic Area

20. In 2013 the ICAP celebrated the 20th Anniversary of its formation. The work carried out by the ICAP has reached a qualitatively new level. To increase the interaction between the antimonopoly authorities of the CIS Countries, the participants of the ICAP made the decision to conduct joint investigations of anticompetitive practices in the CIS transboundary markets.

21. For this purpose, the **Headquarters for Joint Investigations of the Violations of the Antimonopoly Legislation in the CIS Countries** was established in 2006. In the framework of the Headquarters' activity, the Member-Countries started to conduct on the voluntary basis joint monitoring (investigations) of anticompetitive practice of companies performing on the territories of different CIS Countries.

22. The sessions of the Headquarters resulted in choosing the markets, the successful functioning of which provides the infrastructure, which is the basis for the CIS Common Economic Area and the social and economic well-being of those Countries.

23. In the previous years, the Headquarters considered the markets of air transportation, telecommunications, and retail. Nowadays the pharmaceutical market, the oil and oil products market and the grain market are in the purview of the Headquarters.

24. The market of air transportation within the CIS was selected at an initial stage as an example of a transboundary market. Simultaneous inspections of the airlines by the competition authorities of the CIS Countries were started in June 2007.

25. As a result of the investigation, the CIS Countries prepared the Report on the State of Competition in the Air Transportation Markets in the CIS Countries (hereinafter referred as the Report).

26. The Headquarters carefully examined and analyzed the international experience in the protection of competition in the air transportation markets, particularly the experience of the European Union, the most typical cases on violations of the antimonopoly legislation in the market of air transportation and airport services and the intergovernmental agreements on air communication in the CIS Countries. As a result of the investigation, the Countries elaborated the recommendations for the competition development at the air transportation market, including the proposals to maintain a non-discriminatory access to the natural monopolies' services and to develop competition in potentially competitive segments of this market related to the market of air transportation. The implementation of such proposals has been one of the instruments of the development of the air transportation market in the CIS Countries. As a result in the period 2008-2013 air transportation in the CIS countries increased 2.3 times.

27. The Report was considered and adopted by Council of the Heads of the CIS Countries in May, 2014. It received a positive evaluation.

28. In addition, another priority market selected for investigations was the market of telecommunications. In 2008, the antimonopoly authorities of the CIS Countries, through the Headquarters, analyzed the state of competition on the telecommunications market. Based on the analysis, the Headquarters prepared the Report proposing possible measures towards developing competition and conducting antimonopoly investigations of roaming services. The Report was presented to and approved by the Council of the Heads of the Governments of the CIS Countries in 2010.

29. In the first six months of 2010, the antimonopoly authorities of the Republic of Kazakhstan and the Russian Federation initiated 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 three companies abused their market dominance, while the Agency of the Republic of Kazakhstan for Competition Protection arrived to the same conclusions with regard to several Kazakh companies.

30. 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.

31. As for the cases investigated by the FAS Russia, the Russian operators reduced their rates in December 2010 by two - four times. In 2012, prices continued going down but without involvement of the antimonopoly authorities.

32. As a consequence of the investigation, the mobile operators had agreed to reduce the rates in inter-operator agreements among them and with other CIS operators. In the past three years, the voice call rates reduced by up to 9 times, SMS – by threefold, and data transmission – by 44 times. Reducing the rates for roaming telecommunications services led to a manifold increase of the overall number of outgoing and incoming calls, SMS-messages, and a growth of data transmission traffic. For instance, the volume of services increased on average: voice calls – twofold, SMS-messages – by 1.44 times, and the Internet data transmission - by 10 times. The share of the CIS in the overall volume of international roaming services went up by 40%. In total, the operators' income increased by 20%.

33. Moreover, on the regular basis Member-Countries perform exchange of information about the facts of starting investigations of violations of competition legislation. This allows to detect potential objects for monitoring by the Headquarters. This activity could result in formulation of recommendations for solving the existing problems.

34. It is worth noting that over the years of its existence the Headquarters has established itself as an efficient body able to detect and investigate violations of the antimonopoly legislation in the transboundary markets within the CIS. This contributes to a deeper economic integration and to the elimination of barriers of the movement of goods and services in the CIS Economic Area.

International Working groups

35. The FAS Russia always takes active part in international forums and meetings. The FAS Russia participates in BRICS International Competition Conference, meetings of International Competition Network (ICN), meetings of the Competition Committee of the Organization for Economic Cooperation and Development (OECD) and meetings of the Intergovernmental Group of Experts on Competition Law and Policy UNCTAD.

36. The FAS Russia jointly with other competition authorities initiated creation of two Working groups on the competition issues on the key markets: The International Working Group on Investigating Issues on Pricing at the Oil Product Markets and Methods of their Functioning (together with Federal Competition Authority of Austria), the Working Group for Research on the Competition Issues in the Pharmaceutical Sector (together with Italian Competition Authority) and International Working Group for Research of Competition Issues in the Market of International Telecommunications (Roaming) (together with Turkish Competition Authority).

37. The International Working Group on Investigating Issues on Pricing at the Oil Product Markets and Methods of their Functioning (hereinafter – Oil Working Group) was created at the initiative of the FAS Russia and the Austrian Federal Competition Authority in October 2011. The Oil Working Group is co-chaired by Mr. Anatoly Golomolzin, the Deputy Head of the

Federal Antimonopoly Service, and Dr. Theodor Thanner, the General Director of the Austrian Federal Competition Authority. The objectives of the Oil Working Group are to assist formation of pricing indices reflecting fair prices to oil and oil products formed in the market conditions and to ensure competitive pricing within the framework of organized forms of trade with oil and oil products.

38. The organizers of the Oil Working Group determined its main tasks, as follows:

- exchange of experience and approaches to enforcement of competition law at the oil product markets;
- research of the pricing issues, including correlation of world prices at the international oil market and internal markets;
- exchange of experience in the field of regulation within the framework of organized forms of trade with oil and oil products (coordination of operations of tender participants).

39. The Oil Working Group operates through consultation and exchange of information among its members in and out of its meetings, through the organization of meetings with representatives of the public authorities, businesses, etc. Activity of the Oil Working Group results in preparation of concrete suggestions for national governments on competition development on oil market.

40. At the end of 2013 as a result of discussions on the meetings of the Oil Working Group the electronic platform on exchange of information about infringements of competition on oil markets began to function (representatives of more than 20 countries participated in its creation). Information about methods of market monitoring, market structures and experience of investigating concrete cases are accumulated on this e-platform. Today the access to the information on the platform is limited and open only to representatives of competition authorities. In future it is planning to make this information available for all the persons interested in, including citizens and business.

41. The Working Group for Research on the Competition Issues in the Pharmaceutical Sector was created at January, 2012 jointly on the initiative of the FAS Russia and Italian Competition Authority.

The key aim of the Working Group is to promote development of competition environment in the pharmaceutical market and to ensure the availability of medicines to the population.

Objectives of the Working Group are the following:

1. Sharing experience in and approaches to antimonopoly law enforcement in the pharmaceutical market;
2. Coordinating activity of the Competition Authorities (members of the Group) during investigation of the antimonopoly law infringement.

42. Interaction within the frameworks of the Working Group is performed in the forms of consultations; meetings with representatives of respective state authorities, business and other relevant parties; exchange of information; coordination of activity of the Competition Authorities

(members of the Group) during investigation of the antimonopoly law infringement.

43. International Working Group for Research of Competition Issues in the Market of International Telecommunications (Roaming) (hereinafter referred as the “Working Group on Roaming”) has been created on the basis of the Headquarters for Joint Investigations of Violations of the Antimonopoly Law of the CIS Member-States, in accordance with the agreement reached between the Federal Antimonopoly Service (the FAS Russia) and the Turkish Competition Authority during the 36th session of the Interstate Council for Antimonopoly Policy (ICAP) (June 2012, Baku, Azerbaijan).

44. The Working Group is chaired by Anatoly Golomolzin, the Deputy Head of the FAS Russia and a representative of the Turkish Competition Authority. The participants of the Working Group of Roaming are Azerbaijan Republic, Republic of Kazakhstan, Republic of Belarus and Ukraine, The aim of the Working group on Roaming is to law high subscriber and interconnect tariffs in roaming.

45. The first session of the Working Group on roaming was held within the framework of the International Event “The Competition Day in Russia” on September 12, 2012, in the city of Kazan, Russia. The second meeting have been held in Istanbul, Turkey, in April, 2014. During the sessions the participants determined the following main tasks of the Working Group:

1. to assess the state of the long-distance services market of each country-member of the working group, as well as to write a description of the traffic transmission schemes which will comply with national legislations at the rendering of the international telecommunication services, and to identify current rates for traffic termination at networks of a foreign telecom provider.
2. to study the current situation with pricing for the roaming services:
 - A. to generalize information on current rates for roaming services to subscribers of each country-member of the working group when staying on the territory of each country-member of the working group (rates, billing procedures, that is, per zone, for each host network, a pricing unit);
 - B. to generalize information on the existing order of mutual settlements with providers of each of the members which have significant market power, including:
 - the current level of rates and other terms of mutual settlements of service providers within the framework of the roaming agreements;
 - the amount of traffic paid for to a roaming partner (monthly) for the first half of 2012;
 - to evaluate the measures taken by the service providers of each country-member of the working group in order to reduce rates on mutual settlements: to consider offers to reduce rates, if they were sent; to consider the responses of partnering service providers, if they were sent.
3. to assess whether service providers of the working group’s members violate national competition legislation shall be made.

46. The 3rd meeting of the Working Group on Roaming is planning to take place in September, 2014 in St. Petersburg, Russian Federation, in the framework of the annual international event “Russian Competition Day”.

47. At present, the FAS Russia is under the process of negotiation with BRICS countries on the subject of establishing of joint Working Groups on specific sectors.

Other mechanisms of cooperation

48. To fasten international relations and to discuss the key problems of competition policy and enforcement the FAS Russia holds the annual international event “**Russian Competition Day**”, which heads of foreign competition authorities and international organizations attend. As a part of this event, a number of round tables and discussions on the most important topics of antimonopoly legislation and enforcement take place, on which participants have an opportunity to exchange view and experiences and to discuss possible ways of solutions of the main problems.

49. Annually the FAS Russia organizes training workshops and **study visits** for representatives of foreign competition authorities in the Training-and-Recourse Centre of the FAS Russia in Kazan city. The aim of such events, in addition to exchanging experience on methodological and practical aspects of national competition policy and enforcement, is to open an informal dialogue between representatives. In 2012-2013 training workshops were devoted to such important topics as competition on the market of payment cards, electricity markets and fighting against cartels.

50. The FAS Russia pursues a policy of active **bilateral cooperation** with foreign competition authorities. Within the framework of bilateral cooperation the FAS Russia signed 50 Memorandums of Understanding and Agreements with various competition authorities. Through these documents competition authorities are able to exchange experience in competition law and enforcement with the help of holding consultations and meetings. They are also aimed at training and strengthening professional skills of staff. Bilateral documents establishing exchange of the texts of competition regulations, activities reports, and non-confidential information as ways of cooperation between competition authorities.

51. In accordance with bilateral documents the FAS Russia addresses and receives **requests of information** to/from foreign competition authorities concerning specific development of legislation and its enforcement. The most frequently this tool is used in the framework of CIS countries.

52. Moreover, in the framework of bilateral cooperation the FAS Russia hold **consultations and negotiations** with foreign competition authorities while investigating transboundary cases. Such consultations took place in the investigating the cartel cases with Competition authorities of Norway and Vietnam.

53. In 2011-2012 several negotiations between experts of the FAS Russia and Directorate General on Competition of European Commission (hereinafter - DG Comp) concerning

experience of investigating cases on the market of payment systems, pharmaceutical market and automobile market were held. During such consultations experts exchange information on methodology of investigations, non-confidential documents and materials. DG Comp shared the texts of some specific cases investigated for the purposes of the possible use of these materials in the investigation process by the FAS Russia. Nowadays the FAS Russia and DG Comp initiated joint investigation on the case concerning ocean (sea)-borne container liner shipping. Within this investigation the FAS Russia and the DG Comp hold joint consultations.

54. Texts of Memorandums and Agreements provide condition for arrangements of **training sessions**, seminars, workshops related to competition law. Such events are very common in the FAS Russia's activity. In 2013 representatives of the Central office and Regional offices of the FAS Russia were trained in competition authorities in Hungary, Sweden, Estonia, Bulgaria, Finland, the Czech Republic and the Directorate general of European Commission. Representatives of foreign competition authorities attend the Central Office of the FAS Russia aiming at learning the experience and methods of work of the Service.

International cooperation in specific cases investigated

56. The FAS Russia cooperates with foreign competition authorities while investigating cases on the formal basis. The most frequently used method of cooperation is information requests. The possibility of non-confidential information exchange is set in various bilateral and multilateral agreements between the FAS Russia with foreign competition authorities.

57. In October 2012, the FAS Russia initiated proceedings in the relation of a number of the Russian import companies of fish to Russia on signs of violation of the Law on Protection of Competition (a cartel by the market-sharing). The results of checks carried out by the FAS Russia during the period from March to June, 2012 in relation to the companies delivering the Norwegian salmon and trout to the Russian Federation formed the basis for initiation of proceedings. During checks it was established that for the purpose of implementation of the estimated anti-competitive agreement the companies distributed among themselves the Norwegian producers of fish, and later initiated the conclusion of the "Agreement on Strategic Partnership" with them. According to such Agreements the Norwegian producers, except for "exclusive authorized partners," lost the right to deliver fish for distribution in the territory of the Russian Federation for five years.

58. Now investigation is finished. The Commission of the FAS Russia found guilty a number of Russian fish companies on the subject of sharing market. The FAS Russia prescribed the companies to eliminate violations of antimonopoly legislation. For obtaining more detailed information consultations with representatives of the Competitive Authority of Norway and a number of the Norwegian companies were held.

59. The similar fish cartel case (on supply of pangasius from Vietnam to the market of the Russian Federation) the FAS Russia investigated with active support of Competition Authority of Vietnam. the case was initiated against number of Russian companies and the 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 between themselves the volumes of purchasing pangasius.

60. In 2012 within the frameworks Memorandum of Understanding On Cooperation between the FAS Russia and Directorate General on Competition of the European Commission (hereinafter - DG Comp) the FAS Russia has received the letter requesting information from the “IRKUT” Corporation as if previously the IRKUT corporation didn’t respond to the DG Comp inquiry. Receiving this information for DG Comp was very important because of merger transaction examination by United Technologies Corporation (UTC) the Goodrich Corporation (Goodrich). The Company UTC wanted to acquire Goodrich company.

61. Taking into consideration the fact that «IRKUT » corporation is a key player in the aerospace sector on the market, DG Comp had to take into account the IRKUT when examining this transaction. The FAS Russia requested this information and sent it to DG Comp. Formal investigatory assistance requests is contained in bilateral-competition agreements of the FAS Russia (MoU with DG Comp, MOU with the Italian Competition Authority, etc.).

62. Another example is the investigation by the FAS Russia of the case on violating antimonopoly legislation (vertical agreement) against “Trading House” “BelAZ”, CJSC (Russia), “Company BELAZKOMPLEKT PLUS” (Russia), CJSC, and “Belarusian Autoworks” (BELAZ), OJSC (Belarus). Within the framework of the Agreement on Common Principles and Competition Rules of 9th December 2010, which is a multilateral agreement with participation of Russia, Belarus, and Kazakhstan, the FAS Russia requested information on the Belorussian company from the competition authority of Belarus which facilitated the process of taking the decision on the case.

Conclusion remarks

63. Due to the fact that one of the priorities of the FAS Russia’s activity in recent years has been international cooperation in cartel investigation. In the process of investigating of specific cases, we identified a number of problems that need to be resolved for improving the efficiency of cooperation and reaching practical results, because we consider cartels to be the most damaging and serious violation of competition legislation.

64. First of all, the challenge the FAS Russia supposes to be of most importance is difficulties in exchange of confidential information between authorities. This problem consists of the aspect of the lack of trust between authorities and issues of legal technique. Fruitful informal cooperation could hardly transform into formal exchange of confidential information because of the absence of the “new level” agreements. Moreover, effective mechanism of protection of confidential information from disclosure on the territory of foreign country doesn’t exist at international level.

65. Another problem of international cooperation in investigating specific cases is the existence of differences in the legislation of different countries, which complicates the process of joint investigations: differences in notification procedures, differences in basic definitions, establishing in national laws, and different sanction for the same violation under different jurisdictions.

66. In addition to the issues of legal framework, there are many unresolved challenges concerning notification and serving of documents to foreign defendants and their translation, fine imposition on a foreign legal entity, procedure of joint inspections or inspections by request from the antimonopoly authority if business entities located in foreign countries.

67. The FAS Russia considers that the challenges mentioned above have a global scale and affect not only the activity of Russian competition authority but the activity of all the competition authorities. In the context of the global solution of such problems the FAS Russia suggests to initiate process of formulation and signing the international convention on fighting against them.