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Interaction Between Competition and Industrial Policies

Contribution

The Russian Federation

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In the Russian Federation, goals of antimonopoly policy include development and protection of competition and prevention of market monopolization. These goals are especially important as they create conditions for the growth of competitiveness of domestic producers and the economy as a whole.

FAS Russia takes part in coordination of regulatory and legal documents related to the issues of the functioning of industries. Many sectoral strategies are developed by responsible ministries with the involvement of FAS Russia, including Strategy for Development of the Construction Industry and Housing and Communal Services until 2030, Strategy for Development of the Agro-Industrial and Fisheries Complexes until 2030, Program for Development of Russian Coal Industry until 2035, Roadmap for Strategy for Development of the Automotive Industry until 2025.

The implementation of industrial policy and antimonopoly policy in the Russian Federation takes into account recent changes in the economy, including realities of digitalization, consequences of the COVID-19 pandemic, as well as the need for sustainable environmental development. For instance, FAS Russia was actively involved in the preparation of such documents as strategic direction of the digital transformation of the manufacturing industry and concept for the development of the production and use of electric vehicles.

In addition, FAS Russia keeps regular interaction with various executive authorities. For instance, FAS Russia and Ministry of Industry and Trade conduct joint monitoring of prices for building materials and metal products. In case of price rise, an analysis of its causes is carried out, and based on the results corresponding measures are taken.

FAS Russia pays great attention to creating a pro-competitive environment in many industries in order to stabilize prices, prevent shortages of goods, and support businesses, including SMEs.

As one of the measures to stimulate competition and create a pro-competitive environment, FAS Russia sees the development of exchange trading. The Exchange

Committee of FAS Russia operates on a regular basis and has different sectorial sub-committees (oil and petroleum products, mineral fertilizers, coal and others). Meetings of the Exchange Committee involve direct participation of representatives of FAS Russia, Federal Tax Service of Russia, Bank of Russia, large industry companies, independent market participants, infrastructure organizations (stock exchanges) and expert organizations.

In more detail, as part of the work of the Sub-committee on Mineral Fertilizers of the Exchange Committee of FAS Russia, regular meetings are held with the participation of representatives of mineral fertilizer manufacturers and St. Petersburg International Mercantile Exchange (SPIMEX), measures are taken to develop and improve organized (exchange) trading, and systematic work is carried out to increase the liquidity of trading, as well as solving problems that impede the sale of volumes of mineral fertilizers necessary for the formation of representative indicators of exchange prices for this group of goods.

Currently, in pursuance of the Paragraphs 11 and 35 of the Decree of the Government of the Russian Federation of December 23, 2022 No. 4140-r "On Approval of the Action Plan (Roadmap) for the Development of Organized (Exchange) Trading in Certain Commodity Markets for 2023-2025" (hereinafter – the Decree No. 4140-r), FAS Russia together with interested federal executive bodies is working on the issue of stimulating organized (exchange) trade of mineral fertilizers.

As part of the work of the Sub-committee on Chemical and Petrochemical Products of the Exchange Committee of FAS Russia, active work is also being carried out to bring certain petrochemical products to the exchange.

In pursuance of the Decree No. 4140-r, Order of the Government of the Russian Federation of September 2, 2021 No. 2424-r "On Approval of the National Plan (Roadmap) for the Development of Competition in the Russian Federation for 2021-2025", Order of the Government of the Russian Federation of June 1, 2021 No. 1447-r "On Approval of the Action Plan for the Implementation of the Energy Strategy of the Russian Federation until 2035", FAS Russia is developing a corresponding joint order of FAS Russia, Ministry of Energy of Russia and Ministry of Industry and Trade of Russia.

FAS Russia also pays special attention to the agro-industrial sector. One of the main challenges faced by the Russian Federation in the domestic market of agricultural raw materials and food is the increase in prices for these products, which was

associated with the impact of the COVID-19 pandemic on the global food market. This trend predetermined the agrarian policy pursued by the Government of the Russian Federation in the medium term.

In order to develop measures for prompt response to existing challenges in the food markets, by decision of the Government of the Russian Federation, an Interdepartmental Working Group for Monitoring and Rapid Response to Changes in Consumer Prices for Socially Significant Goods and Situational Groups was established under the Coordination Center of the Government of the Russian Federation, which included representatives of FAS Russia. In particular, within the framework of these groups, measures were developed aimed at stabilizing prices in the markets of white sugar and sunflower oil.

FAS Russia, within the framework of its powers, ensured compliance by the state authorities of the constituent entities of the Russian Federation, whose competence included the provision of industrial and agricultural subsidies, with the Federal Law of July 26, 2006 No. 135-FZ "On Protection of Competition" (hereinafter – the Law on Protection of Competition) that prohibits actions (inaction) restricting competition when adopting regional legal acts regulating the provision of such subsidies.

Moreover, it is worth highlighting the measures of customs and tariff regulation of the agricultural sector. Representatives of FAS Russia are members of the Subcommittee of the Government Commission for Economic Development and Integration, whose competence includes the preparation of proposals for the Government of the Russian Federation on customs-tariff and non-tariff regulation in the field of foreign trade. Within the framework of these sub-committee, with the participation of FAS Russia, a number of measures were prepared for customs-tariff and non-tariff regulation in the markets of agricultural raw materials and food products, such as introduction of "floating" export duties on grain and sunflower oil to reduce the impact of world prices on the domestic market, introduction of temporary requirements on the export of certain types of agricultural raw materials and food in order to stabilize prices for these goods in the domestic market and provide processing enterprises with raw materials.

In order to ensure fair, transparent and equal conditions for market activity, FAS Russia aims to prevent violations of antimonopoly legislation and does not seek to punish as many market participants as possible.

Thus, FAS Russia widely uses the methods of "soft law" and supports the development of self-regulation market mechanisms. Effectiveness of warnings is constantly confirmed in practice as this mechanism contributes to the prompt elimination of violations of the antimonopoly legislation allowing the company to avoid administrative liability if the violation is terminated. Self-assessment by business of their performance standards minimizes the participation of the state in the market regulation and has a positive impact on the development of competition.

Self-regulation of markets is also inseparably associated with the introduction of antimonopoly compliance mechanism, which undoubtedly is one of the most effective ways to prevent violations as it contributes to increasing the level of lawfulness of the activities of business entities, creates additional incentives for them to take measures to prevent violations, and is necessary to reduce the risks of negative consequences for the business entities itself.

Along with that, in order to ensure self-regulation of business and creation of fair, open and conscientious rules for competitive interaction, FAS Russia published codes of good practices, for example, for retail and pharmaceutical industry, and issued legal guidelines for the automotive, fertilizers and construction industries, as well as for marketplaces and digital platforms.

In order to ensure development of competition in different sectors of the economy, FAS Russia introduces competition principles to various sectorial legal acts (for instance, Water Code, Forest Code, legislation in the field of fishery, power industry, finance, etc).

It is worthwhile noting that the Law on Protection of Competition does not contain any sectorial exemptions. However, according to the provisions of the Article 13, the Government of the Russian Federation has the right to determine the cases of permissibility of agreements and concerted practices meeting the conditions stated in the Paragraphs 1 and 2 of the Part 1 of the present Article (improvement of production, sale of goods or stimulation of technical, economic progress or raising of competitive capacity of the domestic goods in the world market; obtaining by consumers of benefits (advantages), which are proportionate to the benefits (advantages) obtained by the economic entities as a result of actions (inaction), agreements and concerted practices, transactions, other actions) (general exemptions).

FAS Russia is also responsible for tariff regulation. On the one hand, it ensures that the interests of producers, consumers and the government are observed, thereby

actively participating in industrial policy, and, on the other hand, it does not allow tariffs to be set at a non-competitive level.

When considering cases on violation of antimonopoly legislation or M&As with involvement of industrial companies, FAS Russia takes into account all peculiarities and features of the given industry.

Examples provided below illustrate that FAS Russia is using a balanced approach between goals of competition and industrial policies.

Siemens/Alstom and Alstom/Bombardier

Siemens manufactures all types of railway transport, including locomotives and ICE trains for high-speed railways in Germany, connecting major cities, as well as city trams and security and signaling systems. Alstom S.A. is one of the world leaders (along with Siemens and Bombardier) in the production of power equipment and railway transport. With revenues of €8 billion in 2017–2018, both companies are leaders in rail safety systems.

The planned merger of the railway engineering divisions was announced in September 2017. It was assumed that the merged company would be called Siemens-Alstom and its annual revenue was supposed to be €15.3 billion.

FAS Russia developed remedies and possible further steps to monitor their implementation for this transaction, which were largely based on consultations conducted on the basis of waivers with the foreign antimonopoly authorities, especially considering that the markets affected by the transaction overlapped in many jurisdictions and included the rolling stock manufacturing and assembly market, as well as the railway signaling system manufacturing and installation market. These remedies also envisaged the use of a "trustee" mechanism in the implementation of technology transfer.

In February 2019, the European Commission blocked the merger and decided that the significant technological potential that Siemens/Alstom could form, as well as its access to huge data sources related to unique technologies for the production of rolling stock and signaling systems, were critical for other market participants. In connection with that, the application from the merging parties was withdrawn from antimonopoly authorities including FAS Russia.

In 2020, Alstom again attempted to merge with a competitor, this time with the Canadian company Bombardier. Completion of this transaction developed the

provisions of the memorandum signed in February 2020 between Alstom S.A., Bombardier Inc. and Caisse de depot et placement du Quebec on the acquisition by Alstom S.A. of a 100 % stake in Bombardier Transportation Inc.

FAS Russia tentatively determined that the Alstom/Bombardier merger could potentially limit competition only in the rolling stock assembly market (especially intercity trains) and that there were no overlaps in the signaling systems market.

In order to make the most optimal decision, FAS Russia held consultations on the basis of waivers with foreign colleagues, and owing to minor overlaps of companies' activities, FAS Russia approved the merger unconditionally.

Bayer/Monsanto

In 2017-2018, FAS Russia has considered Bayer/Monsanto merger, which affected markets for goods used by agricultural producers, including agricultural crops (seeds), certain crop protection products, as well as digital offerings for agriculture.

FAS Russia has applied new methodological approaches to identify potential anticompetitive effects of the merger both in the Russian and global markets, and has concluded that the merger creates substantial risks of competition restriction, which should be leveled in the course of the merger review.

Thus, for approving the merger FAS Russia had to develop remedies that would address the given concerns and create pro-competitive conditions for competition development in the industry. The remedies included provisions for transfer to Russian companies of the molecular means of selection and germplasm needed to create new varieties and hybrids, as well as for the creation of a plant biotechnology research centre in the Russian Federation, which will provide practical training for specialists in the field of accelerated breeding with the involvement of highly qualified specialists with significant experience in this field.

In order to develop competition in the digital farming markets, remedies also contained 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 collected by Bayer after it commercializes its software products in 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.