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**Investigative techniques and digital tools in a modern enforcement world**

**Contribution**

***The FAS Russia***

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## *Investigative techniques and digital tools in a modern enforcement world*

### *The FAS Russia*

#### **Introduction**

Nowadays we are living in a transforming economy with increasing influence of technologies and innovations, which requires us to be flexible and adaptive. In response to these challenges, it is necessary to constantly review regulatory approaches and introduce digital tools into the work of both international institutions and organizations, as well as governmental authorities.

In the context of active digitalization of the economy, antimonopoly authorities as regulators and supervisory authorities should also be on trend, and the FAS Russia is not an exception.

The powers of the FAS Russia include antimonopoly control, control over advertising, foreign direct investments, public procurement, as well as control in the field of trade and tariff regulation. This synergy of the authority's powers helps us to solve complex problems of competition development and choose the most rational way to respond to existing challenges, promote innovations, support businesses and for sure, protect consumers. Due to majority of functions, the FAS Russia is struggling to introduce digital tools into its daily activities, and into all areas that it regulates.

This work is carried out through two key pillars: firstly, legislation is changed and adapted, and secondly, digital tools are developed and implemented into work.

#### **Improvement of antimonopoly legislation in the digital era in Russia**

Currently all over the world, we can see increasing number of cases related to the use of special programs and information technologies by participants in digital markets. Big data has become a huge factor in cases of abuse of dominance by tech giants and global mergers and acquisitions. Like competition regulators around the globe, the FAS Russia reviewed the cases against Google concerning the pre-installation of compulsory applications<sup>1</sup>, Microsoft antivirus case<sup>2</sup>, Apple on parental control<sup>3</sup>, Google<sup>4</sup> and Apple<sup>5</sup>

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<sup>1</sup> <https://www.reuters.com/article/idUSKBN0LO0RJ/>

<sup>2</sup> [https://one.oecd.org/document/DAF/COMP/AR\(2018\)26/en/pdf](https://one.oecd.org/document/DAF/COMP/AR(2018)26/en/pdf)

<sup>3</sup> <https://bricscompetition.org/ru/news/apple-complied-with-russias-fas-order-on-restrictions-in-app-store>

<sup>4</sup> <https://www.bloomberg.com/news/articles/2017-04-17/google-settles-russian-antitrust-case-on-android-phones>

<sup>5</sup> <https://www.bricscompetition.org/news/russias-fas-suspects-apple-of-violating-antitrust-rules>

in terms of their payment systems, Google on blocking YouTube accounts<sup>6</sup>, Booking.com on abuse of dominant position in the accommodation facilities market<sup>7</sup> and others.

The FAS Russia strives to adapt to digital realities by both improving enforcement practices and modernizing antimonopoly legislation.

In September 2023, the fifth antimonopoly package (the so-called “digital” package) came into force, amending the Federal Law of July 26, 2006 No. 135-FZ “On Protection of Competition” (hereinafter “Law on Protection of Competition”) and the Code of Administrative Offences of the Russian Federation in order to adapt the application of antimonopoly rules to the realities of digitalization and globalization. The amendments reflected in the “digital package” are aimed at improving antimonopoly regulation of digital markets, including in terms of suppressing abuse of dominant position, state control over economic concentration and prevention of anticompetitive agreements.

The concepts of “network effect” and “digital platform” have been introduced into the Law on Protection of Competition.

The Law on Protection of Competition was also supplemented with an article under which economic entities owning a digital platform are prohibited from actions qualified as abuse of a dominant position, if a number of conditions are present in the aggregate.

These conditions include:

- the network effect makes it possible to exert a decisive influence on the general conditions of circulation of goods in the commodity market or to eliminate other economic entities from this market or make it difficult for other economic entities to access it;
- the share of transactions between sellers and buyers through a digital platform exceeds thirty-five percent of the total volume of transactions on the relevant commodity market;
- the revenue of such business entity for the last calendar year exceeds two billion rubles (approx. 22 million USD).

In addition, the amendments introduced by the fifth antimonopoly package establish as an additional aggravating circumstance for committing the offense the use of a program that allows for automated decision-making without human intervention.

The amended Law introduces a new basis on which transactions with stocks (shares), property of commercial organizations, rights in relation to commercial

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<sup>6</sup><https://www.pymnts.com/cpi-posts/google-faces-fines-in-russia-for-violating-antitrust-rules-on-youtube/>

<sup>7</sup> <https://www.bricscompetition.org/news/fas-fined-bookingcom-13-billion-rubles>

organizations have to be made with the prior consent of the antimonopoly authority – if the transaction price exceeds seven billion rubles (approx. 77 million USD).

The new development will allow to take into account the real value of a target company operating in the digital market (for example, a startup), since traditional criteria based on the amount of annual revenue of participants of transactions and the value of their assets may not reflect the real impact on the economic terms of the transaction.

A novelty in Russian antimonopoly legislation is the expansion of the institution of an expert review, which implies the introduction of options for appointing and conducting an expert review during: an examination of applications for consent to the performance of a transaction (to another activity subject to state control); an examination of a case regarding a violation of antitrust legislation; supervision of the performance of remedies (“trustee” functions). An expert review institute is of special relevance for cases and mergers that occur in digital markets.

Today, the FAS Russia is already discussing how to respond to emerging challenges and has intensified the development of new amendments to the antimonopoly legislation, namely the 6th antimonopoly package. Some amendments are planned to be related to special antimonopoly regulation measures for non-transactional platforms (social networks, search services, video hosting) and to development of criteria for such platforms.

### **Innovative digital tools in antimonopoly enforcement**

The introduction of digital technologies, big data analysis to the work of the FAS Russia allows for a noticeable increase in the efficiency of many processes, creating a level playing field for business and objective control over tariffs and prices for citizens.

#### *Digital tools in price monitoring*

The FAS Russia pays close attention to price monitoring in respect of any food and non-food products in order to reduce price pressure on consumers and increase the quality and quantity of products available to consumers. It is necessary to analyze constantly pricing in socially significant markets, while using advanced monitoring tools and innovative computer programs.

In 2024, the FAS Russia together with the Treasury of Russia ensured the launch of a special Dashboard for petrol, diesel, LPG, fuel oil, coal and bitumen. The list of goods is planned to be expanded in the future. This helps to monitor prices for these goods in “online mode” being assured that consumers are provided with a wide range of goods at affordable price.

Besides, the FAS Russia together with the Federal Tax Service's administrative data launched a platform and the “Honest Mark” digital goods labelling project. These tools allow monitoring the prices of consumer basket goods, socially important medicines, as well as obtaining data on the volume of products sold.

#### *Detecting anticompetitive agreements*

It is necessary to continue to implement innovative monitoring tools, including when combating cartel agreements. Fair competition stimulates enterprises, companies, and businesses to implement the most modern methods of work and optimize their costs. The most effective of them come out on top, and pricing corresponds to the economy from the point of view of the interests of both the producer and the buyer.

Bid rigging is currently the most common form of cartels in the Russian Federation, 85 % of all cartels is bid rigging. In total, in 2024, the FAS Russia initiated 315 cases of bid rigging and issued 245 decisions on violation of antimonopoly legislation. The leading industries in terms of the number of violations are construction and road sectors, supply of medicines and medical products, passenger transport, real estate market and social catering.

One of the proficient modern digital tool facilitating combating cartels and bid rigging, one can name a State Information System “Anticartel” (hereinafter – SIS “Anticartel”), introduced by the FAS Russia. The law on the creation of SIS “Anticartel” was adopted in the first reading by the State Duma of the Russian Federation in January 2025.

The objective if the SIS “Anticartel” is to automate the process of collecting evidence and promptly identify indicators of an increased risk of bid rigging, preventing unfair practices in tenders and, as a result, creating more transparent conditions for bona fide businesses when participating in procurement procedures. The SIS “Anticartel” is integrated into the systems of other authorities and companies, including closed databases. It allows to analyze on a daily basis information on transactions and other activities using elements of artificial intelligence, search for links between companies and indicate signs of a cartel in automatic mode broken down by regions, industries, customers with participation on an interactive map of the Russian Federation. The first phase of the SIS “Anticartel” is now in action, which is based on analyzing 100% of tenders and introducing a risk-based method. Speaking about statistics, in recent years, we have seen a trend towards an increase in the number of cartels uncovered using digital tools: if in 2019 there were only 13, then from 2022 there are about 100 cases annually.

Currently the FAS Russia is working on the creation of the second phase of the project, which involves analysis of information using elements of artificial intelligence based on a large language model, namely the formation of risks based on disclosed cartels, analysis of behavioral scenarios and open data on commodity prices.

#### *Digitalization of economic concentration control*

Economic concentration control is one of the key aspects of antimonopoly regulation. On the one hand, it requires a thorough analysis of the transaction and its impact on competition, and on the other hand, it implies prompt decision-making in order to prevent a decrease in economic activity and a negative impact on the investment climate.

Thus, in order to optimize permitting activities, the FAS Russia developed a mechanism for transferring the approval of economic concentration transactions into electronic form through the portal of state services. This mechanism was launched in 2023 and allows applicants to track the stage and timing of the application review in real time in their personal accounts, and increases the decision-making process and transparency of the procedure.

#### *Digitalization of tariff regulation*

The FAS Russia conducts ongoing monitoring of the dynamics of changes in exchange and over-the-counter price indices for various goods, including oil products, forest resources, coal, petrochemical products, mineral fertilizers, metals, and gas. The goal of digitalization of tariff regulation is fixed in the National Plan for the development of competition for 2021-2025 adopted in accordance with the Decree of the President of the Russian Federation “On the main directions of the state policy for the development of competition”. Digitalization of tariff regulation measures not only eliminate paper document flow, but also unify all tariff decisions. They automate and speed up processes related to tariff regulation, gain access to information from subjects of electricity markets, housing and communal services and government authorities, and simplify access to information.

In order to improve the processes and methods of establishing tariffs, the Federal State Information System “Tariff” has been created. The System ensures the automation of the information interaction between the FAS Russia, the executive authorities of the constituent entities of the Russian Federation in the field of state regulation of tariffs, regulated and expert organizations as part of the processes of establishing tariffs. The use of the system is aimed at ensuring transparency and increasing the efficiency of the process of state regulation of tariffs, as well as reducing the terms of decision-making in this sphere. The use of the system will lead to the implementation of the following advantages:

- possibility of calculating the tariff based on existing methods, using means and methods that are used in the FAS Russia and regional tariff regulation authorities;
- possibility of checking data and identifying errors before transferring materials to the tariff regulation authorities;
- reduction of temporary and material costs for the preparation of materials and interaction with tariff regulation authorities.

It is expected that in 2026, the document management will be completely transferred into the electronic form to establish tariffs in the housing and utilities sector.

### **Soft law, advocacy and international cooperation**

It is worth noting that the FAS Russia pays much attention to apply strict antimonopoly measures and use soft law tools promoting self-regulation of digital industry.

In 2022, the FAS Russia and major IT companies signed the Principles of Interaction of Digital Market Participants<sup>8</sup>. The document is aimed at creating an institution of self-regulation. Market participants voluntarily undertook a commitment not to engage in unfair practices towards consumers or competitors.

Companies such as Avito, Wildberries, Ozon, Yandex, as well as other major Russian digital platforms (aggregators) have joined the principles.

The document is aimed at creating an institution of self-regulation, when market participants voluntarily do not carry out unfair practices in relation to consumers or competitors. It includes rules of dispute resolution based on self-regulation principles.

The document includes the following principles:

- reasonable openness of digital platforms and ensuring free access to information about how search results are ranked;
- neutrality of attitude towards various market parties, including competitors;
- ensuring the independence of platform users when interacting with her;
- avoidance of broad and ambiguous language in the rules of operation of digital platforms;
- ensuring the rights of platform users, including by considering their requests and providing them with complete answers.

At the international level, in June 2023, at the regular meeting of the Interstate Council on Antimonopoly Policy, Model principles and standards for the activities

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<sup>8</sup> <https://www.bricscompetition.org/news/fas-and-major-it-companies-signed-principles-of-interaction-on-digital-markets>

of participants in digital markets of the CIS member states<sup>9</sup>, developed on the basis of Russian positive experience, were approved. In July 2024, similar document was approved in general within the BRICS space.

The provisions of the Principles of Interaction between Participants in Digital Markets have been further developed in the form of the Standards of Interaction between Marketplaces and Suppliers, which specify the general provisions in relation to online commerce involving marketplaces.

In addition, representatives of marketplaces, intellectual property rights holders and the FAS Russia developed a set of good practices for interaction between marketplaces and rights holders and sellers to prevent the sale of counterfeit goods<sup>10</sup>. The application of such practices will make it possible to increase the efficiency of suppression of counterfeit goods sales and protect intellectual rights on online platforms, as well as consumers' rights. The list of practices provides for the possibility for the right holder to make a control purchase and subsequent expertise if he suspects that counterfeit products are being sold on the marketplace. If the counterfeit is confirmed, a particular product may be withdrawn from sale. In 2024, more than 2 million cards of unoriginal goods have been blocked.

The issues of digitalization and, in particular, the impact of AI on competition are also being actively discussed within the CIS and BRICS countries.

Continuous dialogue between regulators, business and academic community is a key step towards developing an integrated approach to regulating AI technologies and studying their impact at both national and international levels. Joint development of mechanisms to suppress anticompetitive practices in digital markets, including in the field of artificial intelligence, is a common task for the entire global community.

Since the formation of the Interstate Council for Antimonopoly Policy in CIS countries in 1993, the FAS Russia has been discussing the topic of digital regulation within the CIS and working together in the area of law enforcement. Currently CIS antimonopoly regulators carry out active work to prepare a joint study on AI issues, taking into account the importance of international experience in analyzing the introduction and application of AI in the activities of competition authorities, the impact of its tools, dynamic pricing, and information technology on the state of competition on commodity markets in CIS member states. The study on the impact of artificial intelligence on competition in the markets of CIS member states and its use in the activities of competition authorities

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<sup>9</sup> <https://en.fas.gov.ru/press-center/news/detail.html?id=55774>

<sup>10</sup> <https://www.rcca.com.ru/files/news/17072023/document.pdf?-3>



was launched at the 58th meeting of the Interstate Council for Antimonopoly Policy of CIS countries (April 2025, Moscow, Russian Federation), dedicated to the 35th anniversary of antimonopoly regulation in the Russian Federation. A report will be prepared based on the results of the said study conducted jointly with the Regional Commonwealth in the field of communications.

Within the BRICS, the issues of antimonopoly regulation in digital sphere have been actively discussed since the first BRICS Competition Conference in 2009 in Kazan (Russian Federation). There is a BRICS Working Group for Research of Competition Issues in Digital Markets, co-chaired by the competition authorities of Brazil and Russia. Within the framework of this Working Group. In 2019, BRICS Working Group for Research of Competition Issues in Digital Markets prepared the first report of the BRICS competition authorities on regulating competition in the digital economy<sup>11</sup>. This was primarily an overview document. It contained a general picture of theories and approaches in the study of digital markets, analysis of national legislations of the BRICS countries, description of landmark cases and decisions on economic concentration transactions. The result of its adoption was the prioritization of regulation of digital markets as one of the key areas of competition policy of the BRICS countries, understanding that such markets are global in nature and that it is necessary to deepen cooperation between BRICS competition authorities, including practical cooperation in case-handling.

In 2023, BRICS Working Group for Research of Competition Issues in Digital Markets released the second report of the BRICS competition authorities on regulating competition in the digital economy was issued in 2023<sup>12</sup>. The second report pays special attention to economic concentration transactions and the approaches developed for them. The document also describes how market power is defined, metrics for measuring it that apply uniquely to individual markets, reflects algorithm practices, multilateralization of platforms, zero pricing, and defines the role of innovation.

Currently BRICS Working Group for Research of Competition Issues in Digital Markets is holding active discussions regarding the use of artificial intelligence by companies and its implementation in the activities of regulators. Particular emphasis is placed on the need to analyze the impact of AI on the market environment, namely whether there is a threat of high barriers to new market entrants, whether competition among existing players is maintained, and what can be done to curb antitrust violations in the new environment. Taking into account the pressing relevance of the matter and the commitment

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<sup>11</sup>[https://cdn.cade.gov.br/Portal/Not%C3%ADcias/2019/Cade%20lan%C3%A7a%20relat%C3%B3rio%20sobre%20economia%20digital%20em%20reuni%C3%A3o%20do%20BRICS\\_\\_brics\\_report.pdf](https://cdn.cade.gov.br/Portal/Not%C3%ADcias/2019/Cade%20lan%C3%A7a%20relat%C3%B3rio%20sobre%20economia%20digital%20em%20reuni%C3%A3o%20do%20BRICS__brics_report.pdf)

<sup>12</sup><https://cdn.cade.gov.br/Portal/assuntos/noticias/2024/BRICS%20Digital%20Economy.pdf>

of the BRICS competition authorities to enhance cooperation in this field and share experience, the FAS Russia proposed to prepare a Joint Statement of BRICS Competition Authorities on Consolidating Efforts to Develop Competition in the Context of the Spread of Artificial Intelligence. Currently this proposal is under discussions.

Finally, the transnational and global nature of digital markets requires wider and deeper cooperation between competition authorities in different countries at all stages of law enforcement: from suspicion of infringement and collection of evidence to issuing decisions and monitoring their implementation. It is important to promote cooperation between competition authorities in this area, including within the framework of international organizations such as the UN Conference on Trade and Development, in order to develop new global approaches to antitrust regulation of digital markets and, no less importantly, support developing countries, young and small competition authorities dealing with competition issues in global digital markets.