

## THE FEDERATION OF RUSSIA

(1998)

### Introduction

1. The Ministry of the Russian Federation for Antimonopoly Policy and Support of Entrepreneurship (MAP Russia) was established in 1998. The Ministry succeeded the former State Antimonopoly Committee of the Russian Federation, the Federal Service for Regulation of Natural Monopolies in the Field of Communication, the Federal Service for Regulation of Natural Monopolies in the Field of Transportation, and the State Committee of the Russian Federation for Support and Development of Small Business.

2. The functions and powers of the Ministry are defined:

- in the sphere of carrying out state policy in development of competition and goods markets and prevention, restriction, elimination of monopolistic activity and unfair competition - by the Law of the Russian Federation “On Competition and Limitation of Monopolistic Activity on the Goods Markets”( adopted in 1991, amendments introduced in 1995, 1998);
- in the sphere of state regulation and control over natural monopoly entities’ activity in the field of communications and transportation - by the Federal Law “On Natural Monopolies” (adopted in 1995);
- in the sphere of state support of small business - by the Federal Law “On State Support of Small Business in the Russian Federation” (adopted in 1995);
- in the sphere of regulation of relations on creating and operation of stock-exchanges, stock-exchange sales and providing legal guarantees for the stock-exchange activity - by the Law of the Russian Federation “On Stock-Exchanges and Sales” (adopted in 1992);
- in the sphere of regulation of relations occurring in the process of production, allocation and distribution of advertising on the markets of goods, works and services in the Russian Federation - by the Federal Law “On Advertising” (adopted in 1995);
- in the sphere of consumer rights protection – by the Federal Law “On Consumer Rights Protection (adopted in 1992, the version of the Federal law of 09.01.96).

3. Since August 1998 the realisation of market reforms in the Russian Federation, including implementation of competition policy, has taken place under conditions of economic crisis, caused by a significant decline in world prices for energy as well as by the world financial crisis. This period is characterised by devaluation of the Ruble, resulting in a four-fold increase in the Ruble - U.S. dollar exchange rate, the increase in the prices of imported and some domestic goods by two or three times, a significant decrease in the volume of imports, an increase in non-payment of obligations, a worsening of the budget and banking crisis and a strengthening of regional separatism within the country. These crises

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presented new challenges to the implementation of state competition policy and required new directions in competition enforcement

4. This report contains a review of the recent changes in Russian competition law, information on the scope of enforcement practices, examples of typical competition cases considered by the antimonopoly bodies and an outline of prospective activity of the antimonopoly authorities.

### **I. Changes in Competition Policy**

#### ***1. Changes in Competition Legislation in 1998***

5. The legislation regulating the state policy of development of competition and support of small business underwent significant changes in 1998, as follows:

6. The Federal Law “On Introduction of Addenda to the Russian Federation Law On Competition and the Limitation of Monopolistic Activities on Goods Markets” (06.05.98 N 70-FZ) was adopted. The Law defines the concept of “affiliated persons” and clarifies the concept of “group of persons.” In particular, it expanded the criteria by which physical and legal persons are considered to belong to the same “group of persons.” In addition, the substantive standards applying to Articles 17 and 18 (control over mergers and acquisitions) were expanded in certain respects, certain procedures for the creation of commercial and non-commercial organisations were specified and the liability of the staff of commercial and non-commercial organisations and of individuals for violation of the Law was specified.

7. New legal acts and other normative documents that directly concern realisation of competition policy were adopted, including:

8. Federal Law “On Licensing of Certain Kinds of Activity” (25.09.98 No 158-FZ) defined the kinds of activities subject to licensing by government bodies, the powers of licensing bodies and the procedures for licensing, as well as procedures for elimination and voiding of licenses. The adoption of this law provides for regulation of the issuance of licenses, and prevents licensing bodies from unlawfully expanding the sphere of licensing or otherwise restricting competition and creating entry barriers through licensing procedures.

9. Federal Law “On Measures for Protection Economic Interests of the Russian Federation in Foreign Trade” (14.04.98 No 63FZ) is an important step toward the full participation of Russia in world trade. It stipulates conditions for the implementation of special protection measures, antidumping remedies or measures of compensation relating to international trade, including the requirement for a conclusion by a federal body of executive power in the field of antimonopoly policy on the effects of the above measures on competition on the domestic market.

10. Federal Law of the Russian Federation “On a Common Tax upon the Fixed Income for Certain Kinds of Activity” (31.07.98, No148FZ) simplifies taxation procedures for small enterprises. The effect of the Law is both to increase the volume of tax payments in the sphere of small entrepreneurship and to simplify the procedures for making these payments.

11. The Decree of the President of the Russian Federation “On Measures for Elimination of Administrative Barriers while Developing Entrepreneurship” (29.06.98, No730) imposes certain duties upon bodies of state power of the Russian Federation and bodies of local administration to eliminate administrative barriers to the development of small business in the country.

12. The Decree of the Government of the Russian Federation “On Measures for the State Antimonopoly Policy, Demonopolisation of Economies and Promotion of Competition on the Goods Markets of the Russian Federation in 1998-2000” (21.02.98, No239) The Decree envisages measures on improvement of legal and normative bases, forms and methods of antimonopoly regulation and control, prevention of creation of new monopolistic structures, providing equal opportunities for economic activity on goods markets, improvement in state regulation and control of the activity of natural monopolies, as well as elaboration and realisation of regional and branch programs of demonopolisation and competition development.

13. The Decree of the Government of the Russian Federation “On Approval of the Statute on the Ministry of the Russian Federation for Antimonopoly Policy and Support of Entrepreneurship” (12.07.99 N 793) defines the tasks and functions of the Ministry for Antimonopoly Policy, its rights and the rights of the Minister and procedures for its collegial ruling bodies, and provides for the organisation of the Ministry’s activity.

14. It should be specially noted that the Federal Law “On Defence of Competition on Financial Services Market” (23.06.99 N 117-FZ) has been adopted. The Law sets principles, norms and procedures for antimonopoly regulation in the banking and insurance spheres and on securities markets. It expands the application of antimonopoly rules to financial markets. The Law articulates legal norms that will enable antimonopoly Authorities to define anti-competitive consequences of transactions in financial markets, and on this basis to take decisions that will prevent unreasonable economic concentration in the markets for financial services.

15. Finally, the process of creation of a comprehensive legal system for state regulation of natural monopolies in the communication and transportation sectors has continued (Decrees of the Russian Federation Government, Ministerial normative acts).

## **2. *Other Relevant Measures***

16. The Ministry has engaged in active co-ordination with the legal system and legal authorities on antimonopoly enforcement. Measures on strengthening co-ordination with the Supreme Court of Arbitrage of the Russian Federation on solving disputes related to the application of antimonopoly legislation were undertaken. In March 1998 the Presidium of the Supreme Court of Arbitrage of the Russian Federation recommended to the arbitration courts a “Review on the Practice of Solving Disputes, Related to the Application of the Antimonopoly Legislation”, and in December 1998 it recommended a “Review on the Practice of Solving Disputes, Related to the Application of the Law on Advertising.” An Agreement on co-operation was signed with the Ministry of Justice of the Russian Federation with the aim of strengthening protection of common economic and legal areas and overcoming administrative barriers.

17. Antimonopoly authorities have been working to eliminate activities undertaken by bodies of executive power of the regions of the Russian Federation and local administration that restrict competition, including the establishment of unlawful and anticompetitive taxes and fees. These unlawful actions were the result of the absence of precise tax regulations in federal legislation, and had a negative influence not only upon the fiscal responsibilities of local governments, but also upon the creation of a competitive environment, creating administrative barriers and restricting entrepreneurship.

18. The Tax Code of the Russian Federation (hereinafter to be referred as the Code) adopted on 31.07.98 provides regulations for the process of tax collecting. Article 3 of the Code provides that “taxes and takings cannot be of a discriminatory nature, having different application depending upon political, ideological, ethnic, confessional or other differences among taxpayers. It is not admissible to set

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differentiated rates of taxes and takings or tax privileges depending on the form of property, citizenship of individuals or the place or origin of the capital.” The Code stipulates that taxes and takings should have an economic ground and cannot be arbitrary; forbidden are taxes and takings restricting constitutional rights of citizens. For the purpose of development of competition and protection of a common economic area an important provision is set out in the Article 3 of the Code, prohibiting the establishment of taxes and takings that violate a common economic area of the Russian Federation, and, in particular, that restrict directly or indirectly free movement of goods (works, services) or money within the territory of the Russian Federation or that restrict or prevent legal activity of the taxpayer in some other way.

### **3. *Proposals of the Government related to the changes in legislation***

19. With the aim of improving the legal basis for carrying out antimonopoly policy, for state regulation of natural monopolies in the transport and communications sectors, for the support of entrepreneurship and for exercising state consumer policy and control over advertising activity, MAP Russia jointly with correspondent federal bodies of executive power has drafted and proposed a number of legal acts. In particular, the following draft acts are being prepared for submission to the Government of the Russian Federation (or have already been introduced to the State Duma of the Russian Federation):

20. Federal Draft Law “On Introduction of Amendments to the Law of the Russian Federation On Competition and Restriction of Monopolistic Activity on the Goods Markets” specifies the definition of “excessively high price”, introduces a definition of state aid and articulates relevant evidence of agreements of economic entities that restrict competition. In addition it defines conditions upon which certain restrictive agreements could be considered legal. The draft law introduces new articles on state control over agreements (concerted actions), on antimonopoly aspects of tenders, on performing works, and on rendering services for the state ; it specifies conditions for rejecting applications of economic entities and strengthens sanctions for violation of the antimonopoly legislation.

21. Federal Draft Law “On Introduction of Amendments to the Federal Law On Natural Monopolies” elaborates certain definitions used in the law, provides for introduction of norms defining regulation of local natural monopolies and specifies procedures for the state regulation of the natural monopolies.

22. Federal Draft Law “On Introduction of Amendments into the Federal Law On State Support of Small Business in the Russian Federation” specifies procedures for elaboration and adoption of the federal program of entrepreneurship support.

23. Federal Draft Law “On Introduction of Amendments into the Federal Law On Federal Railroad Transport” provides for harmonisation of the Federal Law “On Federal Railroad Transport” with the norms of the Federal Law “On Natural Monopolies”.

24. Federal Draft Law “On Introduction of Amendments to the Federal Law On Licensing of Certain Types of Activity” provides for changes in the list of activities subject to licensing.

25. Federal Draft Law “On Introduction of Amendments to the Law of the Russian Federation On Commodity Exchanges and Exchange Trade” provides for harmonisation of the Law on exchanges with provisions of the Civil Code of the Russian Federation, expanding the sphere of state regulation of future and option exchange transactions.

## II. Implementation of Competition Policy

### 1. *Actions directed to prevention of anti-competitive practices, including abuse of dominant position and collusion*

#### *Abuse of dominant position*

26. In 1998 the practice of prevention and elimination of monopolistic behaviour of economic entities was greatly expanded. The central body of MAP Russia and its Regional Offices investigated more than 1880 applications relating to possible violation of Article 5 (abuse of a dominant position by an economic entity) of the Law of the Russian Federation “On Competition and Restriction of Monopolistic Activity on the Goods Markets.” Violations were proved in 1058 cases, most of which were eliminated. 484 cases were resolved by an administrative order. The most numerous applications alleging abuse of dominance by economic entities were related to the actions of energy and heat supplying organisations (25 percent), electric-power supply (17 percent), transport (12.7 percent), and gas supply (6.7 percent). The share of alleged abuses relating to the imposition of non-profitable terms of an agreement increased from 33 percent in 1997 to 40 percent in 1998.

27. The case of AOOT “Chelyabinskoyr Avaipredpriyatie” against Cheliyabinsk Regional Antimonopoly authority, in the air transport sector, is a vivid example of a mistaken decision by the court of the first instance and the court of appeal. The courts ruled that the antimonopoly body has no right under the current legislation to oblige an economic entity to make an agreement, whereas under the Article 12 of the Law “On competition ...” the antimonopoly body has the right to give mandatory prescriptions to economic entities to make agreements in cases when the refusal on the part of the economic entity to make such an agreement leads to a restriction of competition. Part I, Article 5 of the Law “On Competition ...” provides for the prohibition of actions of an economic entity having a dominant position which result or may result in restriction of competition, including ungrounded refusal to make an agreement. The fact of dominance of Cheliyabinsk Aviaenterprise was proved by the Regional Office at the stage of investigating the case undertaken by the Commission of Cheliyabinsk Antimonopoly Office.

28. The Novosibirsk Regional Office, MAP Russia initiated a case against OAO “Sibirgasservice.” The essence of the violation was as follows: when making an agreement on supply of natural gas with an individual private enterprise, “Contrast”, the joint-stock company proposed before beginning the gas supply an ungrounded demand to invest 50 bln. Rubles into the development of the gas pipeline network and to transfer certain off-site infrastructure built by the consumer to OAO “Sibirgasservice” without compensation. In addition, the joint-stock company gave to the “Contrast” enterprise ungrounded terms of reference for connecting to the gas network. The demands of OAO “Sibirgasservice” were violations of p.1 Article 5 of the Law of the Russian Federation “On Competition...”. The above violations were eliminated in the process of the investigation by the Commission of Novosibirsk Regional Office, MAP Russia. The parties to the agreement resolved the dispute in compliance with the requirements of antimonopoly legislation.

#### *Restrictive agreements*

29. The discovery of restrictive agreements (concerted actions) is often difficult due to the fact that most of them are made orally. The main problems when investigating anti-competitive agreements are as follows:

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- In case of horizontal agreements – the proof that existing parallel actions of economic entities are not a result of their individual economic policy, but a result of the agreement made;
- in case of vertical agreements – the proof of anticompetitive effects;
- in case of agreements within a group of persons – determining the level of economic independence of the relevant economic entities that are parties to the agreement.

30. In 1998 there were relatively few cases involving violations of Article 6 of the Law of the Russian Federation “On Competition ...” – agreements restricting competition. The qualitative distribution of agreements (by kinds and types) remained stable. The small number of these cases resulted both from objective difficulties in exposing and proving them, and from imperfections in the current normative-methodological base of control over these agreements. Specifically, in 1998 33 allegations of violation Article 6 were investigated, 24 violations were proven, and of these 17 required suits. 15 decisions were taken; in 2 cases the procedure was voluntarily terminated. None of the prescriptions of MAP Russia in these cases was appealed to court.

31. In February, 1998 MAP Russia received an application from GUP “VO “Technopromexport” alleging a violation of antimonopoly legislation by OAO “Energomashinostroitel'naya Corporation”, which operated on the market of energy equipment. The analysis of the documents submitted revealed concerted actions among OAO “Energomashinostroitel'naya Corporation” and a number of large producers of energy equipment, occupying dominant positions on the markets of steam turbine supply, hydraulic turbines and other energy equipment. Concerted actions were undertaken with the aim to force GUP “VO “Technopromexport” out of the market for supply of energy equipment, including export supply, and in other respects restricted competition in these markets. MAP Russia concluded that the actions of OAO “Energomashinostroitel'naya corporation” contradicted Article 6 and issued a prescription eliminating the violation.

### **2. State control over reorganisation of commercial organisations and their associations; implementation of antimonopoly legislation relating to acquisition of shares in the foundation capital of commercial organisations.**

32. In 1998 antimonopoly bodies investigated 7039 applications and notifications under Article 17 (control over creation, merger, reorganisation, liquidation of economic entities) and Article 18 (state control over acquisition of stocks and shares of participation) of the Law “On Competition...”. In 98 cases the transactions were not permitted.

33. The Chelyabinsk Regional Office refused permission for a reorganisation in a form of a combination of a municipal unitary enterprise “KomKhoz” and a municipal unitary enterprise “Zhiltrest” (Chebarkul town, Chelyabinsk Region). Five organisations were acting on the market of house utilities services in the town of Chebarkul. Two of them, “KomKhoz” and “Zhiltrest”, rendered services in the planting of greenery, other improvements, waste removal and sanitary cleaning of the town. The municipal reorganisation order provided for the rendering of these services only by “KomKhoz”, and would have resulted in a market share for “KomKhoz” of 70 percent. The Regional Department concluded that this transaction would lead to the monopolisation of the house-utilities market segment of the town Chebarkul and the creation of a dominant position by “Zhiltrest”, and refused to grant it permission under the Law “On Competition...”.

34. The largest number of notifications under the Article 17 of the Law “On Competition ...” – more than half – related to the creation of commercial organisations. In addition, in 1998 authorisations were

issued for the creation, merger and ownership of 299 associations of commercial organisations in the form of unions and associations.

35. The practice of conditioning approvals of applications under Article 18 of the Law upon certain behavioural requirements aimed at preventing restrictions of competition is continuing. As a rule, these requirements concern the provision of non-discriminative access to a market to other economic entities and the regular provision to antimonopoly Authorities of information on market policies, including changes in prices. These behavioural requirements are important remedies in the prevention of illegal economic concentration. For example, an investigation was conducted of a Union of sugar producers in June, 1998. The participants in this Union were 64 of the 95 sugar processing enterprises in Russia. In the process of issuing permission for creation of the Union a number of restrictions were defined. No violations of the antimonopoly legislation by the Union have been reported.

36. The trade-union of mechanics of Moscow railroads appealed a finding by the antimonopoly Authority of a violation of the Law by the Ministry of Railroad Transport of Russia (MPS). MPS Russia created "Refservice MPS" company by the merger of seven refrigerator carriage depots without obtaining an agreement of the antimonopoly body as stipulated by legislation. The Commission issued a prescription to stop the violation of point 1 Article 17 of the Law "On Competition..." made when creating "Refservice MPS" company. The prescription required the demonopolisation of the market of refrigerator transfers. To execute this decision MPS Russia appealed to the federal antimonopoly body for consent to reorganise SUE "Refservice MPS", excluding from it two refrigerator van depots. The appeal was satisfied. Thus, at present, there are several economic entities competing on the refrigerator transfer market.

37. In May 1998 MAP Russia gave permission for the acquisition by ZAO "LogoVAZ" and the participants of one and the same group of persons, 30 percent of the voting shares of OAO "Aviacompaniya "Transaero". Later the permission was nullified as the result of an MAP Russia investigation. The investigation revealed that ZAO "LogoVAZ" provided MAP Russia with inaccurate information regarding the participants in its group of persons when submitting the application, which information was of decisive significance in the decision on the case. It was established by the investigation that this group of persons with its full complement, including foreign (offshore) companies, owned in total 60 percent of shares of OAO "Aviacompaniya "Transaero", which made it possible to exert significant influence upon the market of air transportation. After the merger the group of persons ZAO "LogoVAZ" occupied a dominant position on the market of air transportation and undertook a number of joint actions in respect to OAO "Aviacompaniya "Trasaero." Ultimately, after certain lawsuits in Arbitrage court in which the unlawful influence was disclosed, this anticompetitive horizontal concentration was eliminated. This investigation was carried out jointly with the General Office of Public Prosecutor of the Russian Federation, Accounts Chamber of the Federal Council of the Russian Federation and the Ministry of Finance of the Russian Federation.

38. In 1998 foreign investors submitted 593 applications and notifications of mergers and acquisitions. When carrying out control over economic concentration in compliance with the Articles 17 and 18 of the Law, antimonopoly bodies rather often face the situation when large blocks of shares of Russian enterprises are acquired by off-shore companies, which claim to lack sufficient internal resources for realisation of investment programs in the Russian Federation. Given that Russian legislation does not provide for control of the finances of these acquirers, and there are no restrictions against acquiring shares when internal resources are insufficient, the goal of attracting a strategic investor, as opposed to an outright acquisition, is not often realised. In any case, it is difficult to exercise control over acquirers and to prevent possible negative consequences of such transactions (for example, "Assi Domen AB" company – OAO "Segezhabumprom").

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39. For example, an analysis of the market of communications services, carried out in 1998 by antimonopoly bodies, revealed an active process of purchases of shares held by unknown off-shore companies by large foreign companies, banks and transnational corporations. These transactions had the effect of excluding Russian shareholders from regional telecommunications markets. The practice involved the purchase of shares of regional communication enterprises by small joint-stock companies and in small packages by a large number of “daughter” firms, registered in off-shore zones (Cyprus, Bagamian, Seishel, Virgin and Caiman Islands), as well as by unknown firms of the USA, England and Ireland. Ultimately these small packages were acquired by much larger foreign companies, which ultimately owned large packages of shares.

40. In the period under review there was a tendency for an increase in cases involving acquisition of the rights to define terms of business activity of an economic entity not grounded on participation in the capital of the economic entity. In most cases such appeals were submitted by oil companies, engaged in structural reorganisation of management of daughter societies (Oil Company “YUKOS”, Oil Company “Sibneft”, ZAO “Rosprom”, etc.).

41. The number of cases investigated by antimonopoly bodies regarding the notification requirements of Articles 17 and 18 of the Law “On Competition...” has increased significantly. Most of these cases involved suits against founders of commercial organisations, as well as physical persons, who failed to submit timely notifications, did not submit required notifications of creation of a commercial organisation, or failed to notify interlocking directorates.

42. Analysis of legal practice under the Articles of 17 and 18 showed that decisions adopted by antimonopoly bodies as a result of the investigations of applications and notifications that were appealed to court were in most cases upheld.

43. In the Russian Federation the largest corporate structures created in the process of economic concentration are financial-industrial groups, established under the Federal Law “On Financial-Industrial Groups.” In 1998 there were 12 investigations of these transactions, including two involving international entities, under the antimonopoly law. This antimonopoly control makes it possible to avoid creation of monopolistic structures under the aegis of financial-industrial groups, avoiding the negative consequences for competition that would result from their activity on the domestic market of the Russian Federation.

### **3. *State control over acts and actions of the bodies of executive power, restricting competition. State control against unfair competition.***

#### *Administrative barriers*

44. In 1998 the work on prevention of anticompetitive actions of bodies of executive power was continued. The norms regulating such control are stipulated by Articles 7 and 8 of the Law “On Competition...”. By their actions, bodies of executive power of the subjects of the Russian Federation and bodies of local administration sometimes erect barriers to commercial activity of economic entities, provide ungrounded privileges to certain economic entities, impose bans on the sale and movement of goods and introduce the practice of illegal licensing. Markets most often affected by these actions are markets for alcohol, food stuffs and raw materials (timber, grain, oil seeds, etc.).

45. In 1998 antimonopoly bodies investigated more than 1700 acts of bodies of executive power of different levels that allegedly restricted competition, resulting in 749 cases. With the aim of preventing a situation of regional separatism, a practice of preliminary agreement of normative acts, prepared on the local level, was introduced.

*Unfair trade practices*

46. Protection from unfair competition is provided by Article 10 of the Law “On Competition...”. Among the most prevalent violations of this article are non-sanctioned usage of another’s intellectual property when selling goods (38 percent of the total number of cases in 1998), discrediting of a rival in a form of dissemination of false, inaccurate or distorted information (29 percent) and misleading of consumers (21 percent). It continues to be difficult to investigate allegations of unfair competition relating to deliberate usage of trade marks of foreign companies, well-known abroad but not introduced in Russia, with the aim of acquiring property or creating of market entry barriers.

47. In general, violations of the Law of the Russian Federation “On Competition...” and measures taken for their prevention in 1998 are characterised by the following data:

Articles of the Law “On Competition...”	Number of facts investigated	Number of cases sued	Number of taken decisions
Total	5988	3272	2506
including:			
Article 5 (Abuse of dominant position)	1881	484	314
Article 6 (Agreements which restrict competition)	35	19	16
Article 7, 8 (Acts, actions, agreements of federal bodies of executive power which restrict competition)	1737	749	519
Article 10 (Unfair competition)	391	177	125
Article 17 (Control over establishment, merger, reorganisation and liquidation of economic entities)	965	945	796
Article 18 (Control over acquisition of stocks and shares)	908	869	720

### **III. The contribution of the Competition Authority to the development and implementation of regulatory reform and of trade, industrial and other policies**

#### ***1. Regulation of natural monopolies***

48. Issues relating to the regulation of the basic industrial infrastructure sectors in the sphere of natural monopoly in the federal, interregional, regional and local markets retain their paramount importance for the economy.

49. MAP Russia’s experience in natural monopoly markets substantiates the need for special control where market forces are believed to be inadequate and where promotion of a competitive environment is either impossible or inefficient. To meet this need, the Federal Law “On Natural Monopolies” was adopted in 1995, in which the spheres of natural monopolies, the procedures for state regulation and the competencies of the bodies authorised to carry out state regulation were established. The major national business undertakings on the federal and the regional levels fall under the jurisdiction of this Law, such as: RAO “EES”, RAO “Gazprom”, AK “Transneft”, AK “Transnefteproduct”, enterprises of railroad transport, river and seaports, airports, and other undertakings forming the basis of the industrial infrastructure in federal, regional and local markets.

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50. Where the activities of natural monopolies result in the restriction of competition or prejudice other agents' interests, the enterprises responsible are liable to sanctions in accordance with the Law "On Competition." It should be emphasised that there exists no duplication of competencies between the antimonopoly authorities and the bodies of natural monopoly control. Competencies are distributed between them following the criteria of differentiation between two types of legal relations, and not by subjects of control. At the initial stage of application of the Law "On Natural Monopolies", a number of natural monopoly entities made attempts to contest, in particular in courts, the legality of applying to them the antimonopoly law dispositions. The Presidium of the High Arbitration Court of the Russian Federation in its "Review of dispute settlement practice relating to anti-monopoly legislation application" of 30.03.98 provided the appropriate disposition of the issue.

51. Participation of MAP Russia and natural monopoly control authority representatives, jointly with other control and law-enforcement bodies, in inspections of natural monopoly entities make it possible to undertake a complex appraisal of their activities and to specify the ways of resolving the problems identified, including those beyond the scope of the anti-monopoly legislation. In particular, experts of the antimonopoly authority and of the Federal Energy Commission took part in the inspections of RAO "EES of Russia" and GK "Rosenergoatom" by the Chief Control Department of the apparatus of the President of the Russian Federation, the Control and Audit Department of the Ministry of Finance of Russia, Account Chamber, and the General Office of Public Prosecutor.

52. Among effective measures in preventing monopolistic activities in natural monopoly sectors are: streamlining of the control of the natural monopoly sectors, and application of competition policy as an instrument of acquisition of resources by natural monopolies.

53. One of the ways to achieve transparency of activities of the natural monopoly undertakings under regulation is to ensure clear differentiation between natural monopoly and potentially free-competition types of activities in course of both separate monitoring and control and property transformation. Improvement of the natural monopoly law should be directed not only toward a better system of price control over natural monopolies but also toward the development of competition in the free-competition sectors that are linked with the natural monopolies. This requires introducing relevant amendments into the legislation, and into the sectoral acts in particular.

54. One problem of state and local control of natural monopolies is the lack of a unified approach to local natural monopolies among the Russian Federation subjects and municipal authorities. Accordingly, cases of considerable variation of tariffs applied to similar consumer groups have been registered, which not only tends to generate certain social tensions but also creates unequal business conditions, in violation of the anti-monopoly law. The dispositions of the Federal Law "On Natural Monopolies" refer only to the undertakings on the federal level. The absence of legislation controlling monopolies also fosters the growth of the anti-monopoly law infringements. Therefore, creating a legal base for control, on regional and local levels, of such activities as, for instance, power, gas, heat, water supply and sewage is of vital importance.

55. Draft Amendments to the Federal Law "On Natural Monopolies" have been recently developed by MAP Russia, in which the spheres of activity of natural monopolies are more clearly specified and unified principles of regulation of natural monopolies on federal, regional and local levels established. The adoption of the Amendments to the Federal Law "On Natural Monopolies" would serve to provide a unified approach to the control of the natural monopoly entities on all levels and to establish forms of legal control of local natural monopolies, including those in housing services and utilities, and would divide competencies of the federal executive bodies, the authorities of the RF subjects, and the local government bodies involved in control of local natural monopolies. This would permit a clearer definition of the spheres of activity in which state control and regulation are actually needed, and would avoid obstacles to necessary structural reforms and market development in potentially free-competition sectors.

56. The Federal Service of Russia on Natural Monopolies Regulation in Telecommunications - FSEMS of Russia (FSEMS was eliminated in September, 1998 and its functions were delegated to the MAP of Russia) has developed a package of departmental acts and decisions of the Government that are now at the stage of implementation. During the years 1997-1998 efforts were undertaken to establish the Register of natural monopoly entities in telecommunications, which now includes 270 enterprises that provide electronic communication and postal services to general public (the volume of services by these companies amounts to 80 percent of the total volume of this type of services in Russia). These enterprises are liable to state regulation and control. For the first time in Russia, a uniform system of state control of telecommunication service tariffs has been established and the rules of access to communication networks have been developed. In addition, policies for the support of competition have been established, including those that apply to mobile telephone communication.

57. In mid-1998 a new list of telecommunication services subject to control was established and means of further improvement of state control in this area formulated, endorsed by the Government of the Russian Federation Decree "On the improvement of state regulation of prices (tariffs) of communication services" (N1559 of 28.12.98). Thereby, not only a more stable demand for communication services was assured but the growth in volume of electronic communications services was achieved in 1998, as compared with 1997. This allowed the telecommunication companies to timely and fully effect payments due to the public budgets at all levels and to develop communication networks without recourse to state finance.

58. In the railroad sector, as the result of actions aimed at stricter control of activity of natural monopolies in rail shipments and at streamlining pricing mechanisms, the reduction in tariffs of rail freight in 1998, compared to 1997, averaged 19 percent, in contrast to a corresponding increase in industrial producers' prices for the same period of 23 percent. The steady reduction in rail freight tariffs was effected primarily through lowering railroads' operational costs and carrying out a structural reform in the sector. For example, tariffs for shipment of agricultural products, fish and fish products within the state were reduced by 50 percent.

59. Finally, in 1998 work on improving control of prices in such natural monopoly sectors as river and seaports, airports and transport terminals was begun.

## **2. *Competition aspects of external economic activity***

60. In 1998 actions were taken to tighten anti-monopoly control of foreign operations through the Government Commission on foreign trade and customs tariff policy, as a result of pleas by Russian producers for the introduction of protective measures and change of import tariffs. There were a total of 42 requests for the amendment of import duties on various industrial and agricultural goods and on medicaments and other goods for medical needs, and for introduction of protective measures against mass import of fish and fish products, confectionary, poultry, agricultural products from Ukraine, illuminating goods, starch and starch treacle, raw and white sugar, as well as on implementation of compensation measures relating to agricultural products.

61. In 1998 within the framework of the State Commission on WTO, the consideration of trade issues was conducted with MAP Russia participation. In particular, the following issues were reviewed: preparation of initial proposals for the talks on trade in services; negotiations on tariffs; and development of proposals for the elaboration of the Russian position on joining TRIPS. Proposals for the Russian position at negotiations with WTO were submitted on the following issues: access of foreign suppliers to the Russian markets of advertising, distribution, banking, and horizontal services; on issues of industrial property rights (TRIPS); on trade barriers in trade (TBT); and on standardisation, were submitted. The

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antimonopoly authority took active part in considering matters relating to the anti-dumping investigations on steel rolled products opened in the USA, Canada and Indonesia.

62. Large-scale international co-operation took place in 1998 in the domains of antimonopoly and consumer protection policy, the major aim of which was to promote the integration of Russia into the world economic environment and to ensure compatibility of Russian legislation with international regulations and norms. A major two-year programme of technical assistance to Russia by EU was successfully completed. Valuable business contacts with OECD, UNCTAD and APEC were maintained. This co-operation favoured the exchange of information on vital issues of competition policy and permitted access to international know-how for the purpose of developing Russia's own legislation and methodology in this field.

### 3. *Development of small business*

63. The support of small and medium business enterprise is regarded as a major mission of state policy. From the point view of competition policy, the development of small business enterprise is an important factor in the creation of a competitive environment, especially in goods markets characterised by low entry barriers. The number of small enterprises in Russia in 1998 was growing slowly but steadily. However, in the recent years the number of persons employed in small business has been declining. 18 percent of the Russian population, including the temporarily employed and family members, is in various ways engaged in small business activities.

64. One of the central issues of state support and promotion of small business was the development of the Federal Programme of State Support of Small Enterprise in Russia for the years 1998-1999, enacted by the Decree of the Government of the RF (N 697 of July 3, 1998). 42 regional programs of support to small business are being realised in the subjects of the Russian Federation. 21 Agreements on joint activity in the field of small business have been made with the bodies of executive power of the subjects of the Russian Federation.

65. The development of an integral infrastructure of small business support is one of the priorities in supporting small business enterprise. On the regional level there have been established and are in operation: 80 funds of small business support; 91 chambers of commerce; 88 agencies for support of small business and business centres; 38 techno-parks; 54 business incubators; 55 leasing companies; 110 associations and employers' unions; 13 handicraft chambers; 98 business training centres; two centres of legal and economic security; 1 centre of ecology. In 1998 a set of catalogues of investment projects for small enterprises in 38 subjects of the Russian Federation was made.

66. In the area of integration within the CIS and of the international co-operation, activity was focused on attraction of additional financial, material and intellectual resources for the implementation of regional programmes, foreign know-how utilisation, and promotion of the products and services of small enterprises to foreign markets. The Russian Federation has been admitted as an observer to the OECD Working Group on Small Business of the OECD Committee on Science, Technology and Industry. Within the scope of the TACIS Programme, the Agreement on the project of mono-cities' restructuring was also signed. Analytical materials on issues of statistical analyses of small business dynamics and on participation by small enterprises in public orders, and the Catalogue of information sources on small business in Russia, have been developed by MAP jointly with the Resource Centre. A programme of support to credit unions in chosen regions of Russia has been developed.

**III. Resources of the Competition Authority**

**1. The annual budget**

67. For the year 1997 (as of the date of 01.01.97) the budget of the Competition Authority (at the time, GAK ) was 34696,7 mln. Roubles (\$ 6.6 mln) (in non-denominated Roubles). In 1998 the budget amounted to 39317,0 thousand denominated Roubles (\$ 6.6 mln).

**2. Personnel**

68. By the end of 1998 the number of employees was 2024 (440 persons in the central body of the Ministry, 1584 persons in regional offices), including:

- Control of anti-monopoly legislation observance	1020
- Control of legislation on advertisement observance	104

**IV. Reference to new reports and publications**

69. For the preparation of this Report, the following new research reports and reviews and publications on competition and economic policy were used:

Report “On Competition Policy in the Russian Federation” (1997 - Ist half year 1999).

Interaction of firms in goods markets in the Russian transitional economy. Rosanova N.M., Moscow, TEIS, 1998.

Vertical restrictions in Russian economy. Avdasheva S., Rosanova N., Popovskaya E., Moscow, TEIS, 1998.

Analysis of goods markets in the Russian transitional economy. Avdasheva S., Rosanova N., Moscow, TEIS, 1998.

Factor of transactional costs in theory and in practice of the Russian reforms. Edited by Tambovtzev V.L., M., TEIS, 1998.

Papers of the seminar “ Research of goods’ markets and of competition therein”, Moscow, December, 1998.

Works of the Fund “Bureau of economic analyses”.