

**THE RUSSIAN FEDERATION**

*(in 2002)*

**Introduction**

1. Economy development of the Russian Federation within the last four years is characterized by the solid growth of the basic macro-economical indicators. GNP's growth is fixed, industrial production, investment activity index. Bank's of Russian reserves has increased. The State debt's indexes have been optimized. All of this contributed into the national currency rate exchange stabilization, allowed to slow down inflation processes, decrease of percentage in economics, that was favourable in respect to financing industry sector and agriculture, support of liquidity of financial and credit sector. Official statistics also fixes the increase of direct foreign investments. The referenced processes promote for the competition development in Russia, formation of quality stock list of consumers' market of the country, influence on the increase of a paying capacity (solvency) of population.

2. MAP Russia conducts the state policy and control with respect to prevention, restriction and suppression of monopolistic activities, unfair competition on commodity and financial markets; entrepreneurial support; ensuring control of compliance with the legislation of the Russian Federation on consumers' protection rights, on advertisement and within it's competence legislation on natural monopolies on respect of communication and commodity exchanges. These tasks implementation is to provide effective operation of the Russian commodity and financial markets, balance of producers' and consumers' interests protection, promote for the solid economy development in general. Currently MAP Russia is in charge of 75 Regional Offices acting in 88 subjects of the Russian Federation. The competence of 11 Regional Offices extends for the territories of two and more subjects of the Russian Federation. Regional Offices are governed only by MAP Russia providing for the unity of the legal regulation of the issues related to competition within the territory of the Russian Federation.

3. The traditional functions immanent for practically all antimonopoly authorities of the world are among the most essential in the policy of MAP Russia. These functions include: suppression of abuses by the companies dominating on market, prohibition of anti competitive agreements (conceited practice) of economic entities and economic concentration control on a market. The state control over the economic concentration is one of the most important conditions for the normal operation of market economy and is mostly aimed at prevention of excess economic concentration in one entity, definition of types economic concentration resulting in adverse effect for both the separate sector, region and the national economy in general. Besides, the primary tasks of antimonopoly control are to reveal and to suppress in an expeditious manner the acts adopted and actions undertaken by the authorities: the federal bodies of executive power, bodies of executive power of the subjects of the Russian Federation and local self governments restricting competition as well as legal mechanisms improvement for elimination of administrative barriers, increase the liability for the said violations.

4. In 2002 the activity of MAP Russian and it's Regional Offices was conducted in line with the targets and tasks as prescribed by the Letter of the President of the Russian Federation to the Federal Assembly for 2002, major provisions of the Program for the Outlook of the Social Economic Development of the Russian Federation for the Medium Term (2002-2004 years) and Initiatives, provided by the Draft

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Legislation Implementation Plan of the Government of the Russian Federation in 2002, and also the Draft Legislation Implementation Plan of the Government of the Russian Federation for year 2002. The measures of control for observation of the provisions of antimonopoly legislation on commodity markets adopted by MAP Russia and its Regional Offices, were aimed at creation of the environment for the fair, non –discriminative competition. Promoting for the effective allocation of resources and solid economic development.

5. The Report contains an overview of major changes of applicable antimonopoly legislation in Russia, information on the scope of implementation of antimonopoly legislation, model cases examined by the antimonopoly bodies with respect to most typical and prevailing violations of antimonopoly legislation and the outlook for the antimonopoly authorities activity.

### **I. Change in Competition Policy**

#### ***1. Change of Competition Legislation***

6. A substantial volume of work was done in respect of improvement of antimonopoly legislation, systematic ensuring antimonopoly bodies activity. Major trends of this work included the following; elaboration of draft legislation within the scope of competition law, improvement of applicable legislation, aimed, among other purposes, at bringing this law in line with economic realities, as well as liquidating the gaps and contradictions.

7. The important result of the Ministry's work in respect of improvement of legal frameworks in 2002 was the adoption of the Federal Law of 09.10.2002 № 122-FZ «On Introduction of Amendments to the RSFRR Law “On Competition and Restriction of Monopolistic Activity on Commodity Markets” (hereinafter – the “Competition Law”), providing for:

- change of targets and trend of Competition Law in general and in respect of some separate provisions of the Competition law, it's interrelation with the fundamental principals of competition law, fixed by the articles 8, 34, 74 of the Constitution of the Russian Federation;
- enforcing the control over the acts and actions restricting competition adopted by the Federal Executive Bodies, State Executive Bodies of the Subjects of the Russian Federation, local authorities, other bodies or organizations entrusted with functions of the authority of the above mentioned bodies, providing for the extending the scope of application of antimonopoly legislation;
- introduction of principally new definition for monopolistically high price, facilitating proof possibility for such kind of violation;
- creating of a new effective notification and suppression system of creating discriminative conditions of business: specified a conceptual apparatus, antimonopoly bodies authorized to issue mandatory for implementation orders to comply with the economic, technical, informational and other requirements ensuring discrimination liquidation of economic entities;
- introducing controlling functions for the public procurement tenders;

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- introduction of prior public control over conclusion of anticompetitive agreements between economic entities, notably , aimed at conducting anticompetitive price policy, setting up barriers to entry into the market of new competitors;
- increase of thresholds of an aggregate value of assets belonging to economic entities in cases of mandatory approval of transactions and other actions of economic entities by antimonopoly bodies in compliance with the articles 17, 18 of Competition Law;
- optimization of economic concentration system of antimonopoly control envisaging from one part, adoption of measures for non-admission of unjustified emergence or strengthening of dominating position of economic entities on commodity and financial services markets, linked to restriction of competition. And conducting a policy of support of a justified competition, ensuring stability of Russian enterprises and competitiveness of its' production on a global market.
- A new Administrative Code of the Russian Federation entered into force since July 1, 2002, extending and providing for more severe liability measures, for antimonopoly legislation violation inclusive.
- 2002 was the year of new conditions formation for natural monopoly sector operation of the national economy, that poses additional tasks for the public competition policy. A package of draft legislation on railway transportation reform was adopted, legally defined trends for competition development in electro energetic sector, elaborated draft development Concept of gas market. Reconstruction of natural monopoly sectors is designed for the transition from ineffective and barely transparent system of the state regulation of price formation and financial policy in this sector to market mechanisms of ensuring competition of designated enterprises and balance of interest among the producers and consumers.

### ***2. Proposals of the Government of the Russian Federation on the Amendment of the Legislation***

8. In order to develop the legal grounds of antimonopoly policy, state regulation of activities of natural monopolies' subjects, state support of entrepreneurship, control over advertising activities, MAP Russia jointly with the relevant federal bodies of executive power are elaborating on preparation of a number of draft laws. In particular, in 2002 MAP Russia submitted to the Government of the Russian Federation for further submission to the State Duma the following draft legal acts:

- the draft federal law "On the Introduction of Changes and Additions to the Federal Law "On Protection of Competition on Financial Services Market" mainly oriented at improvement of antimonopoly control over the activities of the financial organizations holding dominant position on the financial services market, as well as the development of contest methods of selection of financial organizations assigned to provide financial services;
- the draft federal law "On the Introduction of Changes and Additions to the Article 178 of the Criminal Code of the Russian Federation". The introduced amendments relate to the clarification of constituent elements of the crimes and methods of punishment for the monopolistic activities and restriction of competition and provide for the increased fines and their differentiation depending on the amount of damage caused to the Russian economy;

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- the draft federal law "On the Self-Regulated Organizations" aimed at the implementation of the unified state policy of protection of interests of subjects of entrepreneurial and other professional activities, strengthening their liability to consumers with regards to the produced goods (works, services) and decrease of the budget expenses connected with the state regulation and control over activities of self-regulated organizations. The draft law determines the basics of self-regulation, general principles of organization of self-regulation in the Russian Federation, legal, economic and financial basics of the self-organization of the market participants and state guarantees for its implementation;
- the draft federal law "On Credit Cooperation" aimed at provision of legal regulation of issues of creation and activities of credit cooperatives and development of credit cooperation. The draft law to a large extent eliminates the gaps existing in the valid legislation and creates the legal grounds for the creation and activities of credit cooperatives mainly oriented at servicing of small goods' manufacturers and citizens;
- the draft federal law "On the Insurance of the Natural Persons' Deposits in the Banks of the Russian Federation" which is aimed at protection of rights and interests of bank's clients, strengthening trust to the banking system and encouragement of savings of citizens in the banking system of the Russian Federation;
- the draft federal law "On State Aid" which determines the means for provision of state aid and will enable to eliminate unequal access of market participants to the budgetary resources. Assurance of equal competition conditions will be also supported by the efficient application of antimonopoly legal norms enabling to exclude the provision by the bodies of the executive power of the subjects of the Russian Federation and bodies of self-government of beneficial regimes to a separate market participants.

9. The draft law "On the Introduction of Changes and Additions to the Federal Law "On Advertising" is currently being in reconciliation stage. This draft law is aimed at consumers protection from the advertisement means distributed through the TV-shops networks (in distance trade) and obligating the advertisers to indicate in their advertisements information on the factual location of a seller (manufacturer) of goods for the proposed possible submission of claims connected with quality of goods being sold. There are also in reconciliation stage draft law "On the Introduction of Changes and Additions to the Article 46 of the Federal Law "On Narcotics and Psychotropic Substances" and to the Articles 6.13 and 28.3 of the RF Code of Administrative Offences" providing for the procedure of hindrance by antimonopoly bodies spread of illegal advertising and propaganda of narcotics and psychotropic substances and bringing the violators to administrative liability.

10. Within the frames of implementation of the Program of Restructuring of Natural Monopolies on the railroad transport the draft federal law "On the Introduction of Changes and Additions to the Federal Law "On Natural Monopolies" was elaborated, that provides for a definition of the natural monopoly' sector in the field of the railroad transportation subject to the state regulation in the field of public use railroad transportation. Besides, MAP Russia participated in elaboration of the following draft laws: "On the Special Issues of Regulation and Disposal of Property of the Railroad Transport", "On the Introduction of Changes and Additions to the Federal Law "On Railroad Transport of the Russian Federation" (in the part of creation of legal grounds for the implementation of structural reformation of the federal railroad transport), "On the Introduction of Changes and Additions to the Federal Law "Transportation Charter of the Railroads of the Russian Federation" (in the part of improvement of the terms and conditions of carriages, increase of the liability measures for breaching the conditions of carriage agreements, and also in the part of the preparation of legal grounds for the structural reformation of the railroad transport).

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11. MAP Russia took an active part in the preparation of the draft federal law "On the Introduction of Changes and Additions to the Federal Law "On Natural Monopolies" that provides for clarification of fields of activities relating to natural monopolies in the field of the electric energy and the draft laws "On Electric Energy", "On the Introduction of Changes and Additions to the Federal Law "On State Regulation of Tariffs for Electric and Heat Energy in the Russian Federation" (in the part of improvement of pricing mechanisms and regulation in transitional situation for transfer to competitive market), "On the Introduction of Changes and Additions into the Civil Code of the Russian Federation" (in the part of inclusion of competition relations into the sphere of electric energy).

12. MAP Russia took an active part in the preparation of the draft federal law "On Hard Currency Regulation and Hard Currency Control" aimed at assurance of implementation of the unified state policy in the field of hard currency regulation and also stableness of the Russian currency and domestic hard currency market as factors of progressive development of the national economy and international economic cooperation.

### **3. *Other Relevant Measures***

13. Further to implementation of the Presidential Decree No. 849 of 13 May 2000 "On the Authorized Representative of the President of the Russian Federation in the Federal District", based on the results for the first semester and for the whole year as per each federal district, MAP Russia was provided with the information on the activities of local antimonopoly bodies connected with assurance of the unified legal regulation, detection of acts and actions of the bodies of executive power of the subjects of the Russian Federation and the bodies of self-government restricting the competition.

14. The subject "On Increase of Work of the Antimonopoly Bodies for Suppression of Anticompetitive Acts and Actions of the Federal Bodies of Executive Power, Bodies of Executive Power of the Subjects of the Russian Federation and Bodies of Local Self-Government" was discussed at the collective meeting at MAP Russia attended by the representatives of the President's Administration of the Russian Federation, Governmental Establishment of the Russian Federation, authorized representatives of the President of the Russian Federation in the federal district, the Federation Council of the Federal Assembly of the Russian Federation, the federal bodies of the executive power, the Regional Offices and other organizations, that was held on 17 December 2002.

## **II. Implementation of Competition Policy**

### **1. *Measures Aimed at Interception of Anticompetitive Practice, Including Abuse of Dominant Position and Alliances***

15. In the year 2002 antimonopoly bodies received 3,459 applications connected with abuse by market participants of their dominant position on commodities market. More than two thirds of the applications were connected with abuse of dominant position on the markets of basic branches of economy, such as electric and heat energy market, gas, oil and oil products, communications services, railroad transport, maritime and river transport and activities of maritime and river port terminals, automobile and air transport and activities of airports. More than a half of them refers to abuse of dominant position from the part of natural monopolies in the sphere of electric and heat energy, 20% are in the sphere of communications. The number of applications on violations of the Article 5 (abuse by market participants of dominant position) grew also in the spheres of gas, maritime and river transport and activities of maritime and river port terminals, in the sphere of automobile transport, which indicates that level of monopolistic activities in these fields does not decrease.

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16. The most common violations of the Article 5 are, as in the last year, imposing of disadvantageous contractual terms and conditions and violation of the established pricing procedures. The number of applications connected with extraction of goods from the market in order to preserve deficit, establishment of encumbrances to access to the market, setting monopoly low prices, increased. The number of applications connected with setting monopoly high prices decreased.

17. The year 2002 was the first year that can be characterized by decrease of the quantity of detected and suppressed facts of monopolistic activities of market participants. On one hand, this fact might indicate on some turning point in behaviour of market participants and gradual transition of the Russian market to civilized relations and fair competition, on the other hand, it results from the change of legislation (particularly, terminological vocabulary, re-qualification of number of actions) and unfinished process of creation of new methodical and methodological basis. Upon the detected facts of violations of the Article 5 of the Law “On Competition” in 2002 there were 829 cases initiated, which is by 4% less then it was in 2001, there were 430 prescriptions issued by antimonopoly authorities, of which 82% were executed or are in a stage of execution.

18. MAP Russia initiated proceedings against OJSC “International Airport Sheremetevo” for the facts of violation of the Article 5 of the Law “On Competition” by the way of imposing on “Sheremetevo-Cargo” of disadvantageous and not applicable to the subject of the agreement terms and conditions, unjustified demand on transferring financial assets, creation of discriminative conditions putting the latter in unequal position in comparison to other market participants. Upon the results of consideration of the case, the Commission of MAP Russia issued a prescription to stop presenting to “Sheremetevo-Cargo” of unjustified demand on transferring financial assets for the rendering of services which were not request by it, presenting of unjustified demands on payment by air carriers of additional duties for servicing their aircrafts with attraction of “Sheremetevo-Cargo” and to provide to “Sheremetevo-Cargo” access to the apron and issue voucher for the right to drive automobile transportation and provide services to aircrafts. The prescription is currently in the stage of execution.

19. Upon the application of ZAO “Nizhny Novgorod Volga – Petroleum” the Nizhegorodsky Regional Office initiated proceedings against OOO<sup>1</sup> PKF “Leopard” for the facts of violation of the Article 5 of the Law “On Competition” by the way of charging unjustified high amount rates for the provision of services on transmission of electric energy through networks owned by OOO PKF “Leopard” and violation of pricing procedures established normative acts. In accordance with the Article 4 of the Federal Law “On Natural Monopolies” the services on transmission of electric energy relate to the regulated kinds of activities. The Article 12 of the Federal Law “On State Regulation of Tariffs for Electric and Heat Energy” determines that the amounts of payment for the provision of services on transmission of electric energy through networks are to be established by the regional energy commissions. Therefore, OOO PKF “Leopard” was seeking payments for its services on electric energy transmission from its sub-subscribers based on tariffs unapproved by the regulating authorities. The prescription to stop the violation of the antimonopoly legislation was issued to OOO PKF “Leopard” and executed.

20. Milk suppliers SPK “Orshinsky”, Collective Farm “Danilovskoye” and the Agricultural Department of the Administration of Kalininsk District applied to Tvyer Regional Office regarding the abuse by OAO<sup>2</sup> “Tvyer’moloko” of its dominant position. OAO “Tvyer’moloko” unilaterally set price for milk sufficiently lower then previously existing and imposed its own conditions on the suppliers by paying for the purchased milk according to the unilaterally set prices. The Commission for consideration of cases of violation of antimonopoly legislation recognized actions of OAO “Tvyer’moloko” as violating the point

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<sup>1</sup> OOO – Limited Liability Company

<sup>2</sup> OAO – Open Joint Stock Company

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1 of the Article 5 of the Law “On Competition” and issued the prescription to stop the violation. The prescription was challenged in the arbitration court of Tvyerskaya Region and was left as valid.

21. The following situation took place in 2002 with regard to detecting violations of the Article 6 of the Law “On Competition” (anti-competition agreements). In the year 2002 the amendments made to the Article 6 of the Law “On Competition”, as well as introduction into the Law “On Competition” of the Article 19.1 on bringing notices of agreements between market participants did not succeed in making sufficient impact on the level of detection of violations. The total quantity of applications indicating on violations of the Article 6 is insignificant. According to the statistics, the dynamics of the referred applications is low. Out of 41 applications submitted in 2002, only 15 were connected with anticompetitive agreements in the spheres of electric and heat energy, gas, oil and oil products, railroad and automobile transport, communications. The major part of the applications referred to agreements on establishment (preserving) prices (tariffs), discounts, on restriction of access to the market, on agreements of not competing market participants.

22. The total quantity of cases of violation of the Article 6 of the Law “On Competition” that were initiated in 2002 upon applications and at the sole initiative was 46, which three times exceeded the level of 2001. (The Bryansk Regional Office solely initiated 28 cases, which determined the growth of the total quantity of cases). 26 decisions were taken with 26 prescriptions issued, 21 of which were executed or currently remain in stage of execution, 6 decisions were challenged in courts, 1 decision was abolished by the court.

23. During 2002 the Bryansk Regional Office conducted 6 revisions of activities of market participants operating on the oil products market in Bryansk Region. As a result the following circumstances were detected: in the end of May – beginning of June 2002 market participants operating on the territory of the City of Bryansk and in Bryansk Region abruptly increased to a single level the retail prices for oil products with the purchase price remaining unchanged. The Regional Office initiated proceedings against 26 market participants under the Article 6 of the Law “On Competition” – for coordinated actions of competing market participants owning share on this market exceeding 35%. In relation of 17 of them decisions were taken and prescriptions issued to stop violate the Article 6 in the form of coordinated actions with the other market participants aimed at increasing the retail prices for automobile fuel and resulting in restriction of competition and suppression of consumers’ interests. Based on the results of consideration of the cases the market participants were laid under an obligation to transfer the illegally gained profits in the amount of RUR 40,900 to the federal budget, with RUR 10,900 have already been transferred. Three defendants (IP<sup>3</sup> “Korotenko A.A”, IP “Vambergskaya” and OOO “Prodstroyorg”) filed a claim with the arbitration court. The arbitration court left the decisions of the territorial department in force. The prescriptions currently remain in the stage of execution.

24. In order to maintain control over compliance with the requirements set by antimonopoly legislation, in 2002 Astrakhan Regional Office of MAP Russia conducted revision of OAO Airlines “Astrakhansk Airlines” (OAO Aviakompanya “Astrakhanskiye Avialinii”) holding dominant position on regional market of services of aircraft. Apart from the OAO Airlines “Astrakhansk Airlines” on the noted services market on the route Astrakhan’ – Moscow at the time of revision OAO “Aeroflot – Russian Airlines” and OOO Airlines “Primair” were operating. In the course of revision it was revealed that for the period of 10 - 15 January 2002 the three mentioned companies established the single tariff (for economy class) for passenger transportation on the route Astrakhan’ – Moscow in the amount of RUR 3,410. The increase of tariffs by air carriers happened simultaneously an in a significant amount, with different level of expenses of each air carrier. The noted actions contradicted point 1 of the Article 6 of the Law “On Competition” which prohibits the coordinated actions aimed at establishment of prices (tariffs) of

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<sup>3</sup> IP – Individual Entrepreneur

competing market participants having the aggregate share of a particular market of goods (services) exceeding 35%. The case on violation of antimonopoly legislation was initiated against those airlines. In the course of consideration of the case, the two from three companies declared on decrease of their tariffs. The Commission acknowledged this fact as a voluntary correction of the violation of law and cancelled the case.

### **2. *State Control Over Observance of the Antimonopoly Legislation at Purchases of Shares of Commercial Organizations***

25. The state regulation of economic concentration is one of the main conditions for the functioning of market economy, assurance of its stableness and national security. The main goal of conducting control over economic concentration is to reveal, prevent and suppress the excess concentration of market strength of the separate market participants (group of persons) that are not justified and not supported by a positive economic effect, decreasing the level of competition on a certain market. Results of the economic concentration control show the necessity of continuation in the Russian economy of processes re-distribution of markets between enterprises (groups) possessing a significant or dominant share of private property. In 2002 over 24,000 applications and notifications relating to creation, reorganization and liquidation of enterprises, unions and associations of manufacturers, acquisition of shares (shares of participation) in the charter capitals of enterprises, etc. (articles 17, 18 of the Law on Competition) were considered, which is 14% more then it was in 2001. At the same time, it is worth noting, that in 2002, the quantity of applications and notifications relating to creation, reorganization, liquidation of commercial and non-commercial organizations decreased. That might be a result of the increase twice of the limits of antimonopoly control estimated on the basis of balance value of assets. The increase of the limits of antimonopoly control did not yet make an influence on the quantity of applications and notifications relating to acquisition of shares (shares of participation) in the charter capital and in other cases. In 2002 this process continued to expand, together with the noted growth of activity of foreign investors.

26. The issues of economic concentration control are connected directly with general tendencies of re-distribution of capital in the Russian Federation. During the past years the development of national economy was characterized by the growth of investment activity of the Russian enterprises, the gaining flow of foreign investments, the extended use of tools of capital and securities markets for the long-term investment purposes. Permanent analysis of situation in the field of capital transactions allows to conclude on the irregular distribution of the investment capital in different branches of the Russian economy. The main flow of investments relates to the spheres connected with risk: trade and financial transactions, extractive industry (oil extraction and procession, gas industry), metallurgy, telecommunications. However, in such branches if vast importance as transport, machinery construction, coal industry, the investment activity is irregular and insufficient.

27. The referred disproportions as well as enough low general capitalization of national economy (both in material production sector and finance and credit spheres) facilitate the active inter-branch re-distribution of capital in order to provide the technological unification and decrease of production expenses, increased financial stableness and growth of competition on domestic and international markets. In the last years the antimonopoly bodies were detected increased interest of the materials-intensive and energy-intensive producers (ferrous and non-ferrous metallurgy) to gaining control over the sources of raw materials (for example, coal enterprises) and electric energy. At its turn, the structures of OAO "UES of Russia" (ОАО "ЕЭС России") expresses an active interest to gaining control over enterprises of operating in the sphere of rendering housing utilities services. The same interest is noted from the part of daughter structures of OAO "Gazprom". These examples indicate on the growth of processes of inter-branch re-distribution of capital and growth of vertical integration together with reformation in the field of natural monopolies, including the local ones. There is also an increased interest of the vertically integrated oil companies and a number of enterprises of other branches of economy to diversification of capital in the

fields not directly inter-related with their main business sphere (fishery, agriculture, chemical industry). An explanation of this fact is that the large export-oriented corporate structures with enough level of diversification appeared to be not only the most resistant to economic blows but also able to invest into the enterprises of different industries to have a guaranteed supply with raw materials and distribution channels for production.

28. During implementation of competition policy measures aimed at control over vertical and horizontal integration it is necessary to resist to unjustified formation of vertically integrated structures leading to preservation of the existing economic ties, decrease of economic efficiency over their activities, abandonment of these spheres by small enterprises. At such, it is worth noting that already in a close future the problems of transnational concentration of production and capital will gain great significance. The large transnational corporations conduct their expansion on the Russian market and will make a serious competition to the goods produced by Russian manufacturers on the world markets. In this situation one of the main tools for oppression the transnational competitors is purposeful creation of a number of large corporate structures based on the technologically and corporately connected industrial market participants producing or being able to produce the competitive goods both for domestic and international markets in the shortest terms possible. In connection with this it is worth to consider additionally the question of increase of level of control over economic concentration and change of the whole system with keeping control only in cases of change in shareholding structure making a serious impact on proportion between the powers on certain commodity markets. That will sufficiently serve to the circulation and optimization of capital.

29. Coordination of companies' activities within the limits of reasonable vertical integration enables provision of the following advantages:

- decrease of production expenses growth on the account of the efficient combination, meaning the optimal way of using the resources by strengthening the technological and economic ties from extraction and procession of raw materials for the final production, conduction of the unified financial, industrial, investment and ecological policy;
- achievement of larger exploitation of industrial facilities and more rational use of manpower;
- minimization of damages caused by possible consequences of the unfair economic conduct by creation of an austerity system of control and rational system of corporate governance.

30. In the light of this the biggest problem for control over capital concentration conducted within the frames of antimonopoly policy is the disclosure of practical owners of certain mentioned vertically integrated structures. This factor puts and additional task of creation control mechanism over cross-ownership of capital in different spheres of economy, as well as the extension of international information exchange on this subject.

### **3. *State Control Over Acts and Actions of Bodies of Executive Power and Bodies of Local Self-Government, Restricting Competition***

31. Norms of antimonopoly control over acts and actions, agreements (coordinated actions) of bodies of executive power and bodies of local self-government are provided by the Articles 7 and 8 of the Law "On Competition". Results of work of antimonopoly bodies for 2002 show that as opposed to market participants, bodies of executive power and bodies of local self-government extended their anti-competition activities which remains to be a sufficient brake for development of competitive relations. Anticompetitive activities of bodies of executive power and bodies of local self-government are hinder to

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solve tasks of strengthening the state power, establishment of single economic and legal space, ensuring of the economic freedom of entrepreneurship. Irregularity of economic development of regions, different levels of investment attractiveness and a number of other circumstances should be brought to the reasons for existence of administrative barriers on regional level. This influences regional bodies of executive power and bodies of local self-government to solve economic tasks by illegal introduction of bans for goods circulation, restriction of freedom of entrepreneurship, creation of advantages for market participants of their region, which affects negatively on satisfaction of needs and preservation of single economic space. A number of violations of antimonopoly legislation by the federal bodies of executive power is caused by a lack of legal regulation of control (observation) functions imposed on them. Cases of excessive authorities as well as interruption of spheres in which the federal bodies of executive power carry out control (observation) are not rare, which leads to increase of administrative barriers, which become an unreasonably hard burden for market participants and frequently result in practical inability for them to carry out their economic activities.

32. In 2002 the antimonopoly bodies considered more than 2,500 application on violations of antimonopoly legislation by Regional Offices by adopting acts, taking actions restricting competition. The number of applications regarding anticompetitive actions of bodies of executive power of the subjects of the Russian Federation and bodies of local self-government are decreased in 28% comparatively to the year 2001.

33. As in 2001, the most typical forms of anticompetitive activities were unjustified hindering to conduction of economic activities (mainly in the spheres of electric and heat energy, gas, oil and oil products, communications, railroad, maritime, river, air and particularly automobile transportation) and unjustified granting of advantages. There is a tendency on growth of number of complains on actions of bodies of power regarding them creating internally miscellaneous structures conducting commercial works (rendering services) closely connected with execution of their functions of state power, or combining activities in execution by bodies of state power of the imposed functions with conduction of commercial works (services) which are frequently being fastened to the counteragent. In order to suppress the detected violations of the Article 7 of the Law “On Competition” (acts and actions of bodies of executive power restricting competition) 961 cases were initiated, which is 5% more then it was in 2001. As a result, 654 prescriptions on abolishment or change of the adopted normative acts and on cancellation of violations were issued, 90% of them are executed or in the stage of execution.

34. MAP Russia considered a case on violation by State Committee of Fishery of Russian Federation (SCF)<sup>4</sup> and Administration of Magadan Region of the point 1 Article 7 of the Law “On Competition” by provision of unjustified advantages to OGUP “Magadanskoye Predpriyatiye Po Dobyche I Pererabotke Moreproduktov”<sup>5</sup>, bringing it in superior position comparatively to the other regional enterprises in the field of fisher and creating discriminative conditions for activities of those enterprises resulting from allocation of commercial quotas for the catch of walleye pollack. Upon the results of consideration of this case the decision was taken on violation by SCF ia of the antimonopoly legislation and, in accordance with the Governmental Regulation dated 27 December 2000 No. 1010, it was given a recommendation to work out the relevant normative act.

35. In the year 2002 there were detected 88 violations upon the facts of anti-competition agreements with participation of the federal bodies of executive power, bodies of executive power of the subjects of the Russian Federation and bodies of local self-government (Article 8 of the Law “On Competition”). By

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<sup>4</sup> SCF– State Committee on Fishery

<sup>5</sup> OGUP “Magadanskoye Predpriyatiye Po Dobyche I Pererabotke Moreproduktov” – State Enterprise “Magadan Enterprise for Catch and Processing of Sea Products”

this article 104 applications were considered (in 2001 – only 80). The major part of the detected violations is connected with restrictions of access to the market.

36. The Regional Office of the Altai Republic considered a case on violation of the Article 8 of the Law “On Competition” with respect to the Government of the Altai Republic which adopted Regulations dated 1 March 1999 No. 83 “On the Engagement of Non-Commercial Partnership of Timber Industry Enterprises “Concern Gorno-Altaiestopprom”<sup>6</sup> to the Management of the Timber Industry Complex of the Altai Republic, to the Implementation of the State Programs on Forest Procurement, In-Depth Procession and Sale of Production of the Timber Industry” according to which an agreement between the Government of the Altai Republic and the Non-Commercial Partnership of Timber Industry Enterprises “Concern Gorno-Altaiestopprom” was approved. According to this agreement the procedure of transfer to the Non-Commercial Partnership of Timber Industry Enterprises “Concern Gorno-Altaiestopprom” of functions on management of the timber industry complex on the territory of the Altai Republic was determined. The Commission of Regional Office issued a prescription on cancellation of these Regulations. The prescription was executed.

37. Upon applications of partners and employees of a number of consumer societies of Kstovsk District, the Nizhey Novgorod Regional Office initiated proceedings against the Administration of Kstovsk District, Nizhegorodsk Regional Union of Consumer Societies and Union of Consumer Societies of Kstovsk District, which were, starting from June 2001, taking coordinated measures aimed at restructuring of the existing consumer cooperation in the district. Thus, the Administration of Kstovsk District held meetings attended by representatives of Nizhegorodsk Regional Union of Consumer Societies, in the course of which the assistant of the Head of the Administration of Kstovsk District made a straight statement on the necessity of liquidation of the existing consumer societies replaced by a single the “regional agricultural consumer union” (*RAIPO*) with consolidated balance and on the entry as a member into the Nizhegorodsk Regional Union of Consumer Societies. Measures for restructuring of the existing consumer societies of Kstovsk District taken by the Administration of Kstovsk District and Nizhegorodsk Regional Union of Consumer Societies encompass coordinated actions aimed at restriction of competition and suppression of interests of market participants, leading to removal from the market of the retail trade services of a number of consumer societies of Kstovsk District by the way of their liquidation as legal entities, deprivation of independence and creation on their basis of a single legal entity with consolidated balance – *RAIPO*, which contradicts the Article 8 of the Law “On Competition”. The Commission of the Nizhey Novgorod Regional Office issued an order to stop the violation of the Law, which was executed.

38. In the field of preliminary control over observance of the antimonopoly legislation in 2002 there were more than 2,600 draft normative acts of the bodies of executive power and local self-government considered, at such upon 697 acts (26%) negative conclusions were given which allowed to prevent many violations.

#### **4. State Control Over Unfair Competition**

39. Analysis of practice of application of the Article 10 (unfair competition) shows that the main share of facts of unfair competition detected by antimonopoly bodies was connected with infringement of exclusive (intellectual property) rights. At such, the tendency, which shaped during last few years, of increase of the share of cases connected with such violations, is still preserved. More often unfair competition is expressed in form of illegal use of trade marks or use of designations similar to the degree of confusion with other trade marks.

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<sup>6</sup> “Concern Gorno-Altaiestopprom” – “Trust Gorno-Altaiestopprom”

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40. To a large extent the growth of the detected infringements of trade mark rights is connected with the joint activities of the MAP Russia, Russian Patent Agency<sup>7</sup> in the part of consultations on the issues of application of intellectual property legislation and expertise of the degree of similarity of designations to the protected trade marks. Amendments to the Law “On Competition”, which came into force in 2002, extended ability of antimonopoly bodies to fight unfair competition. In particular, antimonopoly body is now entitled to issue prescriptions to market participants on changing or restricting the use of company names which will serve to improvement of legal protection of company names in the absence of specific legal regulation. The practice of suppression of unfair competition also reveals the necessity in strengthening interaction with the other bodies of executive power, such as Russia Ministry of Internal Affairs, State Customs Committee, Federal Service of Tax Police, Russian Patent Agency. In 2002 MAP Russia initiated preparation of the draft of interdepartmental agreement on interaction and information exchange in the field of prevention and suppression of circulation of false and counterfeit production.

41. In 2002 there were 321 applications on facts of the unfair competition considered, which is in 3% more than it was in 2001. The biggest part of the applications were submitted with regard to sale of goods under illegally used trade marks, misrepresentation of consumers, distribution of false information. In order to detect the infringements the Regional Offices of MAP Russia conducted 41 revisions of compliance of activities of market participants with the antimonopoly legislation. The revisions mainly referred to detection of facts of misrepresentation of consumers and sale of goods under illegally used trade marks. In total, in 2002 the antimonopoly bodies detected 170 violations of the Article 10, initiated 133 cases, approximately half of them were cases on sale of goods under illegally used trade marks. Upon the results of consideration of the cases 80 decisions were taken, 9 of them were appealed, but none of them abolished by a court’s decision. There were 78 prescriptions issued, of which 72 (92%) are executed or are at the stage of execution.

### 5. Statistics

42. In general, in 2002 the state of work connected with detection and suppression of violations of the Law “On Competition” is characterized by the following data:

<b>Names of articles of the Law “On Competition”</b>	<b>Considered facts of violations of the Law</b>	Cases initiated	<b>Decisions taken</b>
Total -	11,763	6,531	4,766
Including:			
Art. 5. (abuse of dominant position)	3,566	829	451
Art. 6 (agreements restricting the competition)	74	46	26
Art. 7, 8 (acts, actions, agreements of the bodies of executive power restricting the competition)	3,110	1,025	707
Art. 10 (unfair competition)	345	133	80
Art. 18 (control over purchase of shares, stakes, participation shares)	1,777	1,665	1,456

<sup>7</sup> Rospatent - Russian Patent Agency

**6. State Antimonopoly Control on the Financial Services Market**

43. In 2002 activities of MAP Russia aimed at development of competition on the financial services market were concentrated at resolving of a range of top priority tasks: creation of equal competitive conditions for the financial structures as a starting point of their strengthening and increase of capitalization aimed at assurance of the investment activeness of the national economy; provision of citizens and legal entities with quality financial services on the whole territory of the Russian Federation; assurance of equal competitive conditions for national and foreign companies in connection with the proposed entry of the Russian Federation into the WTO.

44. During the past year control over implementation of the basic decisions of the President of the Russian Federation and the Government of the Russian Federation was strengthened. First of all, it relates to implementation of the Strategy of Development of the Banking Sector, Concept of Insurance Development in the Russian Federation and Complex of Measures for the Development of Securities Market. Within the frames of implementation of the Strategy, MAP Russia prepared the proposals on participation in drafting in 2003-2005 of legal acts aimed at perfection of reorganization procedures for credit organizations in the form of mergers and takeovers; equation of access conditions for the Russian and foreign banks to the Russian market of financial services; raising requirements to the factual owners of credit organizations and liability of affiliated persons in limited liability companies; oppression to provision of preferential regime of functioning to specific banks by the bodies of executive power and bodies of local self-government, and also gradual cease of participation by the bodies of state power in the capital of credit organizations.

45. A special care was given to the problem of creation conditions for the regional development of banking activities. MAP Russia worked out and submitted to the Government of the Russian Federation and the Federal Commission for Securities Markets of the Russian Federation (FCSM of Russia) the proposals connected as with development of competition, termination of administrative barriers and establishment of definite “rules of the game” on securities market, as with the general tasks of increase of capitalization, reliability and efficiency of the Russian securities market.

46. MAP Russia submitted the proposals for the preparation of the Concept of Insurance Development in the Russian Federation approved by the decision of the Government of the Russian Federation dated 25 September 2002 No. 1361-r, and a complex of measures for its implementation. One of the results was, in particular, adoption by the Government of the Russian Federation of Regulations dated 4 October 2002 No. 737 “On Contests Between Insurers for Conduction of Insurance from the Means of the Relevant Budget” worked out by MAP Russia, Ministry of Finance of the Russian Federation and Ministry of Economical Development of the Russian Federation and approval the Methodical Recommendations on Application by Regional Offices of MAP Russia of provisions set by the Articles 13 and 14 of the Federal Law “On Protection of Competition on the Financial Services Market” (further – the Law “On Protection of Competition”).

47. Under initiative of the antimonopoly bodies as well as based on the considered applications, in 2002 there were 199 cases initiated on violation of the antimonopoly legislation as contrary to 131 cases initiated in 2001. The growth composed 52%. Upon the results of consideration of the cases there were 112 prescriptions issued on cancellation of violations. There were executed either remain in the stage of execution 102 prescriptions.

48. In order to ensure state control over the concentration of capital on the market of financial services, the antimonopoly bodies considered 1,675 applications and notifications as contrary to 1,493

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cases considered in 2001. The growth composed 12%. The processes of concentration of capital on the securities market run quite actively in 2002. First of all, that happened due to the establishment by the FCSM of Russia of the new requirements to the sufficiency of owned assets of the professional participants of the securities market, management companies of private investment funds (PIFs), new licensing requirements to the registrars. In the course of maintaining state control over the concentration of capital on the securities market in 2002 there were considered approximately 280 applications and notifications (which is 1.5 times more than it was in 2001), almost 30 of them are connected with acquisition by non-residents of shares (participation shares in the charter capitals) of the Russian professional participants. The volume of work on maintaining state control over the concentration of capital on the insurance services market increased. In the year 2002 the antimonopoly bodies considered 486 applications and notifications of natural persons and legal entities (which is 1.6 times more than it was in 2001). The charter capitals of insurance organizations are getting increased, process of re-allocation of capital runs actively. One of the important tendencies on the insurance market is extension and restructuring of sales networks by the insurance organizations. As an example, the considered set composing of 60 applications and notifications for restructuring of sales networks in the system of daughter companies of OAO "Rosgosstrakh". In 2002, within the frames of maintaining state control over the concentration of capital on the banking services market, the antimonopoly bodies considered more than 600 applications and 150 notifications.

### **III. The Role of Antimonopoly Bodies in Drafting and Application of Regulative Reform, of Trade, Industrial and Other Policies**

#### ***I. Regulation of Natural Monopolies***

49. One of the main directions of development of activities of natural monopolies in the field of communications is the pricing (tariffs) regulation which is carried out by MAP Russia. It is being conducted in accordance with the tariffs policy, the main directions of which were established by the Federal Law "On Natural Monopolies", the Regulations of the Government of the Russian Federation dated 11 October 2001 No. 715 "On Improving of Mechanism of the State Regulation of Tariffs for Communications Services" and other decisions of the Government of the Russian Federation on this subject.

50. When taking the decisions, the following circumstances were taken into consideration: inflation rates, social importance of services, reimbursement of economically sound costs for rendering of communications services, ensuring the sufficient profit for the efficient operation of communications organizations and necessary level of development of communications facilities, reduction of cross-subsidization. At such the permanent growth of volume of services rendered is provided, as follows: in the intercity telephone dialling – at the level of 15-20%, in the local telephone communications – at the level of 5-6%, in the universal services of postal communications – 5%. For the sake of implementation of the main tasks and principles of state regulation of tariffs for services of publicly available electric and postal communications in 2002 MAP Russia maintained regulation based on the necessity of achieving a balance between the interests of consumers and objects of natural monopolies in the field of communications, provision of general availability of basic communications services and efficiency of their rendering. For all electric communications services in 2002 the level of tariffs' growth composed about 15-20%. It is worth noting that expenses of the population incurred for payment for communications services are in general preserved throughout the country at the level of 2% of the family budget, and for industrial sector – up to 1%. Tariffs for communications services connected with TV broadcasting by all-Russian companies were twice indexed during 2002, with the average rate of tariffs growth being 1.26.

51. Settlement of economic relations between communications operators took place within the frames set by the main provisions of the Regulations of the Government of the Russian Federation dated

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17 October 1997 No. 1331 “On the Approval of Main Provisions for Conduction of Settlements Between Communications Operators of Electric Communications Networks Composing the General Communications Network of Public Use for the Communications Resources Provided and Participation in Transmission of the Noted Networks”.

52. Administration of MAP Russia approved the excessive amount of the integral settlement prices (scales) for settlements between the regional operators with OAO “Rostelekom” for providing pass of intercity traffic with the account of indexation of linear and final settlement scales of communications operators at 25% in order to bring them up to the level of cost value. As for the settlements of telegraph sub-branch, then in 2002 the settlement prices were re-considered for the interacting operators and increased according to the level of growth of tariffs for telegraph communications services to the final consumers, which composed 15%.

53. Objects of natural monopolies in the field of communications make the necessary payments and pay taxes to the relevant budgets of all levels in due time, which amount composes 2% from the GDP. In spite of the positive tendency that was achieved in the field of tariffication (rate setting) of regulated communications services, the low tariffs for state-financed organizations and a high share of privileged persons, for which the communications operators do not obtain full compensation of their expenses, does not allow to refuse from cross-subsidizing.

54. MAP Russia maintains the Register of Objects of Natural Monopolies in the Field of Communications. In connection with establishment of inter-regional companies, the communications operators that lost the status of a legal entity were excluded from the Register. The further work on this subject will be directed at the analysis of communications services market and introduction of proposals on exclusion from the Register of a number of communications operators working under competition circumstances. As of 1 January 2003 there are 522 economic entities enlisted in the Register, 84 of which render services of publicly available postal communications and 438 – services of publicly available electric communications.

### **2. *Participation of MAP Russia in the Reform of Natural Monopolies***

55. The year 2002 was also the year of formation of new conditions of the natural-monopoly sector of the national economy operation, that brought about additional tasks for the state competition policy. One of the major tasks of MAP Russia in this regard was the elaboration of a legal mechanism providing for the non-discriminatory access of independent enterprises to natural monopolies services as well as to dominating entities, to contribute to steady work of enterprises and stabilization of economy in general.

56. Restructuring of the natural monopolies sectors is aimed to ensure the transfer from not effective and lacking transparency system of state regulation of pricing and financial policy in this sphere to the market mechanisms of ensuring the competition of the indicated enterprises and achievement of balance of interests between the interests of manufacturers and consumers.

57. A range of draft laws aimed and reform of the railroad transport was adopted, the directions of development of competition in the sphere of electricity energy industry were legally determined, the directions of gas industry reform are being discussed. Among the draft laws for which MAP Russia is responsible for, we may reference:

58. The Draft Federal Law «On Amendments and Additions to the Federal Law “On Natural Monopolies” with respect to specification of a list of the state regulated natural monopoly entities activity;

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59. The role of antimonopoly body in the electric energy reforming process is one of the most fundamental. At the initial stage, as the competitive wholesale and retail markets are created, as well as the rules of the game on such markets (conducting institutional reformation) it is necessary to develop mechanisms to encourage fair behaviour of market participants, to solve the problems of non-discriminatory access to natural monopoly and essential facilities services. The mechanisms for promoting competition are under development, by which means shall be prevented the abuses of domination position, including those through the forced unbundling and setting up a state control. New legal frameworks are in the process of formation for this sector reformation and it's work in a new economic environment.

60. On further stages of reformation process, a severe antimonopoly control over the economic entities acting on both wholesale and retail electricity energy markets shall be mandatory. However antimonopoly control on competitive markets should be supplemented by the state control (tariffs regulation, licensing etc) on the markets, where there is no possibility to develop competition due to the objective technological conditions. The Federal Law "On Electricity Energy" provides for "the prohibition to combine generation and transmission of electricity energy as well as distribution and sale of electric energy within one legal entity, group of entities, and (or) affiliated entities" to provide for creation of equal competition conditions for conducting of business activity.

61. As the reformation of electric energy sector moves forward, demonopolization of electricity energy generation by attraction of private capital into it, sale of belonging to RAO "UES of Russia" generation companies blocks of shares under the strict antimonopoly control, excluding the possibility for the appearance of dominating positions of separate companies or groups of entities. It is necessary to provide for the methodological control over the structural reformation processes further to the adoption of the Federal Law "On Electricity Energy". It is necessary to form and test the system of control and supervision of application of antimonopoly legislation in the reforming process to choose among the most effective means of control and regulation.

62. On the first stage of the reformation process MAP Russia should pay an exceptional attention to the competitive wholesale electricity energy market formation. On this stage, while keeping within the holding RAO "UES of Russia" generation and distribution of electricity energy, is a matter of the utmost importance of maintaining the antimonopoly control over the concerted practice of this particular group of entities, holding the dominant position on the territory within the Russian Federation, price formation on a free part of the sector, testing the methods for control and termination of violations and many other issues. The success of reforms and creation of competitive market depends on elaboration of effective mechanisms for the control over the activities of market players and promotion of emerging of new independent producers of electricity energy (decreasing a number of barriers of the market access, elaboration of recommendations for the bodies of executive power and etc).

63. According to the new Plan of Actions of the Reformatory Programme of the Electricity Sector in 2003-2005, MAP Russia is a responsible body for the elaboration of the following legal acts (Decrees of the Government of the Russian Federation):

64. The Procedures for the conduction of antimonopoly control on the wholesale and retail markets, ant the criteria for the Assessment of the emergence of a domination and exceptional position of separate organizations or groups of entities and restriction of competition on the markets in question;

65. The Criteria and Procedure for revealing the cases of abuses producers and the suppliers of electricity energy by their dominating position and exceptional cases;

66. The Procedure for the forced reorganization and establishing other particularities in the economic entities activities, which did not perform unbundling according to the Article 6 of the Federal Law "On the

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Particularities of Electricity Energy Operation in the Transition Period and the Introduction of the Amendments in Some Legal Acts of the Russian Federation and Recognition of Some Legal Acts of the Russian Federation Invalid Due to the Adoption of the Federal Law “On Electricity Energy”;

67. The Rules for the non-discriminatory access to the services of the transmission of the electricity energy, operational-dispatching control in the electricity energy and the services of the administrator of the commercial system of the wholesale market (including retail), including the following: the procedure for the technological connection of the energy accepting installation (energy installations) of legal entities and individuals to the electricity networks; the criteria for availability (non availability) of the technical possibility for the connection.

68. A package of draft legislation was adopted to reform the electricity energy. According to the Action Plan the amendments to the Law on Competition were elaborated with respect to the procedure for non-discriminatory access to the natural monopoly services and related activities, which were provided to the State Duma separately from the package of draft laws and were adopted together with the other amendments to the Law “On competition” on September 18, 2002. The Ministry has also prepared the amendments to the Federal Law “On Natural Monopolies” with respect to the scope of activities related to natural monopolies. The said draft law was adopted by the State Duma. The draft is developing the scope of activity of the natural monopoly in the electricity energy sector – the services for operational-dispatching control are supplemented. The obligation of the natural monopoly entities is defined to provide the goods and (services) under the non-discriminatory conditions in line with the antimonopoly legislation requirements to provide for the development of competition in competitive fields (production, sale, extraction, etc).

69. A package of Federal Laws aimed towards demonopolization of railroad transportation and transition to regulation of the essential facilities of the railroad transport. A major task of the Reform now is the creation of the legal frameworks for the sole economic entity OAO “Russian Railroads”. However, following the provisions of the Decree of the Government of the Russian Federation of May 18, 2001, №384 «On the Programme of the Structural Reform on the Railroad Transport”, the core for the development of the competition development on the railroad transport is contained in the increase of a number of operators of the railroad rolling equipment – independent owners of the equipment. According to the Railroad Ministry of Russia (the “MPS”) currently in Russia there are more than 70 operators, who have concluded the appropriate contracts with the carriers and effecting the transportation of about 14% of all the goods carried by rail. Currently the parking lot of vans, containers of operators of the railroad rolling equipment is around 43 thousand units, including 31,2 thousand barrels and more than 6 thousand of semi-vans and covered vans.

70. The legal frameworks of the operators activities and their interaction with the carriers are set forth in the elaborated by MAP Russia and submitted to the Government of the Russian Federation draft Decree of the Government of the Russian Federation «On Competition Development in the Field of the Railroad Cargo Transportation, the Fundamentals of the Legal Control Over the Operator’s of the Railroad Rolling Equipment Activities and their Interaction with the Carriers”. The Draft also provides for the non-discriminatory Conditions in Interactions Between the Carriers and Operators of the Railroad Rolling Equipment, participating in the transportation on the railroad transport.

71. Further to the Federal Law of January 10, 2003 №17-FZ «On the Railway Transport in the Russian Federation” MAP Russia have developed the draft Decree of the Government of the Russian Federation «On Approval of the Rules for Non-Discriminatory Access to the Essential Facilities of the Publicly Available Railway Transport”. The major task of this project is the establishment of the equal conditions in provision of services of the essential facilities of the publicly available railway transport (access to the essential facilities) to the carriers regardless to their legal form and ownership, legal and

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material relations with the owner of the essential facility. The most sensitive is the issue of non-admission of any preferences in the access to the essential facility belonging to OAO "Russian Railroads", the entity which is a carrier and the owner of the essential facility in one person as related to other carriers, which is also reflected in the draft. In this draft of the Decree of the Government of the Russian Federation a foreign experience in provision of equal access of the carriers to essential facilities.

72. In 2002 MAP Russia performed the work on maintaining the state antimonopolycontrol over all types of various segments of communication services market of the Russian Federation. MAP Russia also together with the interested federal bodies of the executive power conducted the activity on elaboration and approving of various legal normative acts, related to the control of use of the radio frequency spectre, operation of the communication services enterprises, the control of the natural monopoly entities in the communication sector.

73. MAP Russia conducted control to ensure the achievement of balance of interests between the interests of consumers and natural monopoly entities in communication sector to implement the major tasks and principles of the state regulation of tariffs for the effective provision of publicly available electric and postal communication services in 2002.

74. In furtherance of the provisions stipulated by the Decree of the Government of the Russian Federation of 11.10.2001 № 715, in 2002 the Ministry together with the Ministry of Communication of Russia and the Ministry for Development and Trade of Russia conducted the work over the further development of the draft of the Regulation on maintaining by the operators of the separate accounting for the proceeds and expenses on the types of communication services, Methodological Recommendations on calculation of economically justified expenses and normative profit for the publicly regulated communication services, which after probation shall be provided for the approval. The draft Methodology for the definition of tariffs for the communication services based on the method of the margin for the price formation.

### **3. *Participation of MAP Russia in the OECD Project for Regulatory Review in the Russian Federation***

75. In the frames of cooperation with OECD in 2002 MAP Russia participated in the work on preparation of "Regulatory Review of Russia". The aim of preparation of the Review is increase of information flow about Russia's transparency for potential investors by getting independent and qualitative assessment of reforms conducted using the approved method with attracting intellectual OECD expert potential.

76. One of the Sections of the Review is entirely devoted to the competition policy. Besides, MAP Russia together with other Ministries and Authorities participates in preparation of other Sections of the Review which are of the competence of the Ministry. The Review should be completed in 2005.

### **4. *Competition Issues of Foreign Economic Activities***

77. In 2002 active cooperation of MAP Russia with the European Union (EU) in the field of implementation of the Strategy for the development of relations between the Russian Federation and the EU for a middle-term perspective and the Partnership and Cooperation Agreement (the "PCA"), that establishes partnership between the Russian Federation on one part and the European Communities and their member states, on the other part.

78. MAP Russia participated in the process of formation of the concept of the common European economic area, among which priorities were competition issues, issues connected with creation of the control system over the provision of state aid in the Russian Federation. The project carried out under the

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Program of Technical Aid under TESIS Europe Aid 112919/C/SV/RU – “Antimonopoly Policy and State Aid Control” is being efficiently implemented. Cooperation with United Nations Conference on Trade and Development (UNCTAD), APEC, OECD and WTO is being continued (in the two latter organizations in the capacity of an observer).

79. MAP Russia takes active part in activities of the International Competition Network (ICN), an informal association of antimonopoly departments of developed and developing countries, the main tasks of which are the vital questions of antimonopoly policy and law enforcement practice, as well as working out proposals for rapprochement of the national competition systems.

80. Participation in activities of ICN enables MAP Russia to take the direct participation in resolving of collisions arising in the sphere of international competition, working out approach to reformation of competition legislation and law enforcement practice in Russia based on the norms coordinated on multilateral level.

81. In 2002 the bilateral cooperation with foreign offices in charge of competition policy issues and entrepreneurship support continued to develop. This cooperation is based not only on the international treaties on cooperation, for example with the relevant offices of East European countries, France, Chinese Peoples Republic, Finland, Republic of Korea, Brazil but also on the basis of close and mutually beneficial contacts with the relevant offices of Germany, USA, England, Italy, Japan and a number of other countries.

82. In 2002 MAP Russia carried out significant work for cooperation with CIS countries aimed at creation of a single economic space on the CIS territory by way of rapprochement of national legal systems and the methodical provision maintained in the CIS member states in accordance with the main directions of the MAP’ activities. Cooperation of MAP Russia with the CIS member states was conducted both on bilateral and multilateral levels, including such cooperation within the frameworks of the Interstate Council for the Antimonopoly Policy (the “ICAP”) and the Advisory Council for the Support and Development of Small Business.

83. Participation of MAP Russia in the regulation of foreign economic activities in 2002 was conducted within the frames of the Commission of the Government of the Russian Federation for the Protective Measures in the Foreign Trade and Customs Tariffication Policy (further – the “Commission”). In order to ensure the implementation of the competition policy rules at introduction of tariff and non-tariff regulative measures and control over preservation of normal competitive environment on the domestic commodities markets in 2002. MAP Russia considered and prepared opinions on 81 applications regarding the correction of the import and export customs duties. During the Commission’s sittings 37 applications were considered, upon 26 of them the relevant Governmental regulations were adopted with the account of the opinion of MAP Russia. Applications on changing the customs duties mainly touched upon agricultural raw materials and food industry goods (crude sugar and refined sugar, vegetable oils, butter, margarine, fats, rice, packed tea, packed coffee, preserved fish), technological equipment (refrigerant compressors, equipment for timber and brewery industries) and equipment supplies (colour kinescopes, accumulators), automobile transportation (second hand cars, buses, load carriers), consumer goods (colour TV sets, linoleum, footwear, photo films, medicines). The Ministry supported in full or in part 26 applications on correction of import customs duties. At preparation of opinions first of all MAP Russia noted the necessity to decrease the import duties for the goods which are either not being manufactured in the Russian Federation or manufactured in the insufficient quantity that does not satisfy the needs of the domestic market, as well as for the raw materials and supplies imported for procession and used in production process in order to increase the competitiveness of the national industry. MAP Russia supported applications connected with increase of import duties in cases when import of certain goods created obstacles for creation or revitalization of a particular branch of the national economy or raised difficulties for the Russian goods manufacturers.

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84. Applications requesting correction of the export customs duties referred both to decrease of those duties and their increase. Applications raising issues of decrease or abolishment of the export duties were coming from metallurgical and chemical enterprises, timber and paper industry, enterprises producing mineral fertilizers and corresponded to the traditional Russian exported goods: ferrous and non-ferrous metals, cellulose, paper and lumber, mineral fertilizers, charred coal, polyvinyl chloride, phenol, germanium and goods produced out of it. Proposals on introduction or increase of export duties came from the State Customs Committee of the RF, Ministry of Energy of the RF and local administrations and corresponded to the following goods: junks and wastes from ferrous and non-ferrous metals, round timber of pine and valuable species, liquefacted gas, black oil fuel, goods made from aluminum and copper, semi finished amber goods. MAP Russia supported in full or in part 24 applications on correction of export customs duties, in particular, on decrease or abolishment of duties for ferrous metals production, polyvinyl chloride, tungstic concentrate, refined copper, aluminum and virgin aluminum alloys, silver, germanium and goods produced out of it.

85. In general, the analysis by MAP Russia of consequences incurred by the protective measures proposed for introduction present complex evaluation of the expected changes on the market resulting from introduction of those measures with regard to restriction of competition and, as well, the evaluation of their social and economic consequences. MAP Russia took the position that the protective measures should by no means be turned into a weapon of lobbyism and serve as a source of creation of favourable conditions for conduction of business activities by specific enterprises.

86. An important aspect of MAP's activities in the field of foreign economy is facilitation of the increase of international competitiveness of the Russian goods and elimination of discrimination of the Russian suppliers on the foreign markets. MAP Russia consistently carried out policy aimed at decrease of export duties for the Russian goods which served to the increase of their competitiveness on the world markets. Taking into consideration that the protective measures introduced by the foreign states against the Russian suppliers are frequently of discriminative nature, MAP Russia insists on the introduction of retaliatory measures against countries applying discriminative and restrictive measures in relation to the Russian goods.

87. One of the main issues today is working out a single state strategy for the industrial, competition, innovation and foreign economy policy. Creation of large transnational corporations using their natural advantages to a full extent (implementation of scale effect, optimization of cash flows, etc.) is being considered by international community as a positive factor assuring receipt of additional funds into the budget, industrial growth, employment of population, extension of the production nomenclature and assisting the integration of national economies into the world global economic system. Oppression to negative processes affecting the Russian industries and preservation of its competitive strength will be successful only on the basis of strategic planning of economic competition and creation of Russian corporations meeting the international standards and able to sustain the aggressive policy of transnational corporations on the world market. In conditions of the economy globalization antimonopoly authorities come across essentially new vital tasks in the field of competition policy. The significance of those tasks entails the necessity of not only modernization but a radical reformation of antimonopoly regulation according to the objective reality, international standards and goals of the state economic policy.

### ***5. Development of Small Entrepreneurship***

88. Advanced small entrepreneurship is the unique tool for achievement of goals of economic reforms aimed at development of competition and formation of the efficient economy ensuring the high level and quality of life for the population. During the last two years positive tendencies bringing hope for improvement of conditions for activities of the participants of small entrepreneurship appeared. The reason for that was consideration and approval by the State Council of the Russian Federation of the

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Concept of State Support of Small Entrepreneurship, attitude of the President of the Russian Federation towards this sphere of economy expressed in his last messages to the Federal Assembly of the Russian Federation. MAP Russia participates in development of system of the financial and credit support of small entrepreneurship, preparation of proposals on the introduction of necessary amendments to the legislation of the Russian Federation.

89. At the initiative of MAP Russia Commissions for Elimination of Administrative Barriers for the Small Business were established in 45 members of the Russian Federation. The Commissions execute the following functions: coordination of activities of the state bodies of the members of the Russian Federation for the working out of the agreed decision and taking the definite measures fighting administrative barriers hindering development of entrepreneurs; working out mechanisms for implementation of the Federal Law "On Protection of Rights of Legal Entities and Individual Entrepreneurs at Conduction of State Control (Supervision); keeping books (journals) for registration of inspector revisions; compiling lists of organizations executing supervisory and controlling activities in relation of small entrepreneurship participants in order to organize the system of revision of financial and economic activities of the small entrepreneurship participants in order to avoid their duplication.

### **IV. Resources of the Antimonopoly Body**

#### **1. Annual Budget**

90. The annual budget of the antimonopoly body (the MAP of Russia) in 2001 composed of 242,548.9 thousand rubles (8,085 thousands U.S. dollars), in 2002 - 266,431/4 thousand rubles (8,881 thousand U.S. dollars).

#### **2. Human Resources**

91. As of 01 January 2003 the average number of employees engaged with the MAP of Russia was 1,765 (from them 357 persons work in the central office of the Ministry, 1408 persons work in the regional bodies). 1502 persons possess higher education (from them 275 persons work in the central office and 1,227 persons - in the regional bodies), 483 persons out of them are economists (73 persons from them work in the central office and 410 - in the regional bodies), 360 persons are lawyers (56 persons work in the central office, 304 - in the regional bodies), other professionals - 659 persons (146 persons - in the central office, 513 - in the regional bodies).

92. In 2002 in the central office of MAP Russia and its Regional Offices 536 persons were in charge of questions connected with control over compliance with antimonopoly legislation on the commodities markets, 146 persons were dealing with financial markets, 152 persons maintained control over observation of advertising legislation, and 259 persons were dealing with consumer protection legislation.

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