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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE RUSSIAN  
FEDERATION**

-- 2010 --

*This report is submitted by the Russian Federation to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 29-30 June 2011.*

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## Executive summary

1. 2010 was a year of laborious and fruitful activity of the FAS Russia on improving antimonopoly legislation. The FAS Russia developed the so-called "third antimonopoly package of amendments" aimed at improving the antimonopoly regulation and competition development in the Russian Federation. The amendments take account of proposals made by business, comments of international competition experts, as well as the OECD Council Recommendations.

2. Besides, in 2010 the FAS Russia prepared amendments to the legislation on foreign investments in strategic sectors of the economy, as well as to the legislation on natural monopolies, the control over which is imposed on the FAS Russia. The amendments aim to substantially liberalize and simplify state control in these areas.

3. Non-discriminatory access rules for acquisition of potassium chloride during its supplies were adopted by the Government of the Russian Federation and elaborated by the FAS Russia aimed at protection of competition and ensuring regulation in the potassium chloride market, as well as creating conditions for effective functioning of the market to ensure that producers of compound fertilizer and its consumers can use these rules.

4. In 2010 the share of decisions adopted by the FAS Russia that were rejected by the court remained at a low level – 15,6% of the total number of appeals. This result was achieved due to, inter alia, active interaction between the FAS Russia and judicial community with the aim to establish common approaches in interpretation and enforcement of competition legislation.

5. Thus, in October 2010, the Plenum of the Supreme Arbitration Court of the Russian Federation introduced some changes and additions to the Statement of the Plenum of 30.06.2008 No. 30 "On some questions arising during enforcement antimonopoly legislation by arbitration courts" that are of vital importance for settlement of cases related to competition enforcement.

6. In addition to this, in 2010 the FAS Russia held several seminars and round-tables with judges of arbitration courts and courts of general jurisdiction in order to discuss the most complex and contentious issues arising during the competition enforcement in Russia.

7. The number of pre-merger and post-merger notifications received by the FAS Russia has significantly decreased due to an increase of the thresholds that determine necessity for obtaining prior approval of transaction by the antimonopoly authority. Thus, in 2010 the FAS Russia received 2964 pre-merger notifications and 1810 post-merger notifications, which is 30% less than in 2009. Therefore, the FAS Russia has now more resources to focus on mergers that have a significant impact on competition.

8. In 2010, after long-term judicial proceedings the Presidium of the Supreme Arbitration Court of the Russian Federation upheld the decision of the FAS Russia on bringing four largest Russian oil companies (THK-BP, Gazprom Neft, LUKOIL, Rosneft) to administrative liability for abuse of dominant position on the wholesale oil products markets. As a result the companies were imposed a fine of 500 mln US dollars.

9. Fight against cartels remains one of the priorities of the FAS Russia. In 2010 the FAS Russia investigated hard-core cartel cases in the coal market, vehicle insurance markets, etc.

10. For the first time in enforcement practice of the FAS Russia, the Authority conducted investigation on cartel between the participants of the coal market (SUEK, etc.) jointly with the Ministry of Internal Affairs of Russian Federation (police). It was confirmed that the companies divided the market

and established and maintained prices on this market. On this fact, the Russian Ministry of Internal Affairs initiated a criminal case against officials of companies participating in cartel under the Article 178 of the Criminal Code of the Russian Federation.

11. The FAS Russia imposed a fine of 70 mln rubles (US \$ 2,3 mln) on insurance companies that have concluded agreements that led to the price-fixing in the market for voluntary vehicle insurance, as well as imposing unfavorable conditions on customers of the insurance contracts. One of the cartelists gained immunity, as he was the first to cooperate with the authority under leniency program.

12. New web-site [www.zakupki.gov.ru](http://www.zakupki.gov.ru) as a single official web-site for placing the information on public procurements was launched in 2010 in order to ensure level-playing field for the entrepreneurs during tenders;

13. The FAS Russia jointly with the Kazakhstan competition authority completed an investigation against mobile operators that set excessive prices for roaming in the CIS countries. As a result of the investigation the companies significantly reduced their tariffs on roaming in the CIS countries and the largest three Russian mobile operators, the so-called "big three" (MTS, MegaFon and Beeline), were admitted violating the antimonopoly legislation in part of abuse of dominant position and were fined on 38 mln rubles (US \$ 1,26 mln).

14. In 2010 the FAS Russia actively participated in the development of integration process on the CIS countries territory, including the development of cooperation between the CIS countries competition authorities within the frameworks of the Interstate Council on Antimonopoly Policy as well as in forming legal framework aimed at ensuring competitive environment in the frameworks of Customs Union between Belarus, Kazakhstan and Russia.

15. Shifting to signing of a new type of bilateral cooperation agreements with foreign competition authorities (Mexican United States Competition Authority and Hungarian Competition Authority) became a tendency in 2010. These agreement clearly defined mechanisms for sharing information during the investigation that leads to the qualitatively new forms of cooperation.

16. In 2010, the FAS Russia was nominated by the Global Competition Review as one of the three best competition authorities in Europe. The other candidates were the Directorate General for Competition of European Commission and French Competition Authority. As a result of a vote the European Commission gained award, however the fact of nomination shows a significant progress and success that the FAS Russia demonstrated in the development of competition policy and enforcement in the Russian Federation over the past few years.

## **1. Changes to competition laws and policies, proposed or adopted**

### ***1.1 Summary of new legal provisions of competition law and related legislation***

1. Antimonopoly legislation of the Russian Federation didn't go through significant changes in 2010 since the FAS Russia focused on elaboration of the so-called "third antimonopoly package of amendments" to antimonopoly legislation that is expected to be adopted in 2011.

Major changes in 2010 related to the Federal Law No. 135-FZ of 26.07.2006 "On Protection of Competition" (hereinafter referred to as the Law on protection of competition) with regard to granting of state and municipal preferences (concept of state aid).

In particular, the new purpose for which granting of state aid is permitted, namely "support of social oriented non-commercial organizations" was added (part 1 Article 19).

2. Federal Law of 27.07.2010 No. 210-FZ “On rendering public and municipal services” entered into force. The law established a number of important regulation ensuring rights of citizens and legal persons when receiving public services. The Law was elaborated under the active participation of the FAS Russia.

For the purposes of implementation of this law on December 8, 2010 the FAS Russia adopted methodic recommendations on antimonopoly control over rendering of public (municipal) services in order to form a common enforcement practice in every region of the Russian Federation within the frameworks of considering application of economic entities dealing with rendering of public and municipal services.

These aspects lie under the FAS Russia competence, since rendering of public and municipal services with violation of legislation affect competition.

3. A number of amendments to the Resolution of the Government of the Russian Federation of 30.05.2007 No. 334 “On establishing size of assets of financial organizations (except for credit organizations) for the purposed of antimonopoly control” (of 24.12.2009 N 1083 and of 09.03.2010 N 135) were introduced. Amendments increased thresholds exceeding which financial organizations need to apply to the FAS Russia for clearance of the merger. This would eliminate necessity to clear those merger that do not significantly affect competition.
4. Resolution of the Government of the Russian Federation of 24.09.2010 No.759 “On improving procedures for technological connection of consumers to network system” aimed at ensuring competition on this market, in particular at ensuring transparency of the procedure of technological connection, as well as non-discriminatory conditions for access to the infrastructure to all the participants of the common power energy market.
5. Resolution of the Government of the Russian Federation of 05.07.2010 No. 504 “On cases of admissibility of certain types of agreements between insurance companies working on the same product market” introduced block exemptions with regard to insurance companies. Resolution, valid for 10 years, introduces competitive rules for agreements of insurance companies on cooperation within the frameworks of joint risk insurance/reinsurance.
6. Resolution of the Government of the Russian Federation 03.12.2010 No. 968 introduced amendments to block exemptions with regard to agreements between credit and insurance organizations that would create conditions for competition development on the banking and insurance market.

The document contains the following provisions to improve competition enforcement practice:

- in order to avoid delaying by bank of procedure of verifying insurance organization, there is a requirement for an exhaustive list of information and document the insurance company should provide to the bank for its verification;
- maximum periods of such verification and report on its results are established;
- list of inadmissible terms of agreements was supplemented;
- it is prohibited to oblige the insurance company to place its funds in deposits and securities of the credit organization, to keep the balance and turnover on accounts of the credit organizations in certain rate.

7. The Supreme Arbitration Court adopted Resolution of 14.10.2010 No. 52 that introduced amendments to its Resolution 30.06.2008 No. 30 “On some questions arising during enforcement antimonopoly legislation by arbitration courts” aimed at specification of certain provisions for the purposes of ensuring common judicial approach during consideration of cases on antimonopoly violations. The most important amendments are the following:
- procedure for the decision on case on violation of antimonopoly legislation to enter into force;
  - appeal of decision and instruction doesn’t cancel decision’s entering into force;
  - appeal of instruction and appeal of decision of the competition authority that was a ground for initiating relevant case on administrative violation, are combined by arbitration court in one case for their joint consideration;
  - absence of concerted actions of companies can be proved not only by the presence of evident circumstances that equally impacted all economic entities on the market, but also by the presence of evident reasons of conduct of the company on the product market and lack of conditionality of its actions by the actions of other persons;
  - fair price on any product set by the competition authority is of recommendatory nature, but its application by the economic entity in any case is not considered as violation of competition legislation;
  - economic entity can apply to the competition authority, indicating that it concluded inadmissible in accordance with competition legislation agreement or conducted inadmissible concerted actions, for the purposes of gaining immunity from administrative liability only before the moment when the FAS Russia announced its decision on the presence of the fact of violation of competition legislation;
  - simultaneous collecting of profit gained as a result of violation of competition legislation by economic entity and collecting of fines for conduction of administrative violation is admissible (in accordance with the Decision of the Constitutional Court of the Russian Federation).

## **1.2 Other relevant measures, including new guidelines**

17. In 2010 in order to enhance transparency of activity of the FAS Russia there was adopted a number of documents related to execution by the FAS Russia of its public functions. In particular, a number of documents were adopted aiming at enhancement of anti-corruption components of the FAS Russia activity, relating to a procedure of providing by FAS Russia employees of certificates on their income, procedure of treatment of personal data, of interaction with the FAS Russia Regional Offices, etc.

18. For the purposes of increasing quality of conduction of investigation the Procedure for conducting of competition assessment analysis on product market was renewed (Order of the FAS Russia of 28.04.2010 No. 220).

19. In order to ensure common interpretation of a number of key notions used for competition assessment on product market the Order specifies a number of wordings, facilitates certain provisions, in particular procedure for conducting a test of hypothetical monopolist was made more precise.

20. Moreover, such stages of competition assessment analysis as determination of the level of concentration of product market, determination of barriers for entry into the product market and assessment of competition environment on the product market can be omitted when assessing competition for the purposes of formation of the register of economic entities having a market share of more than 35 %.

21. A list of initial information on product markets used for competition assessment analysis on the product market, list of factors considered for revealing conditions for circulation of products restricting economic, technical and other opportunities for purchase of products were specified.

22. The Procedure contains reviewed list of methods by which determination of geographical borders of product market is to be done. Moreover, approximate list of actions taken under analysis of conduct of economic entities on product market was specified.

23. New web-site [www.zakupki.gov.ru](http://www.zakupki.gov.ru) was launched in the Russian Federation as an official web-site for placing the information on public procurements in order to ensure level-playing field for the entrepreneurs during tenders (Order of the FAS Russia of 14.07.2010 No. 400);

24. In 2010 the Government of the Russian Federation approved the Rules of non-discriminatory access for purchase of potassium chloride under its supplies, elaborated by the FAS Russia. On September 1, 2010 these Rules became available to the producers of compound fertilizers and their consumers as a guideline in their economic activity. The Rules aim at protection of competition and ensuring regulation on the potassium chloride market, as well as at creation of conditions for effective functioning of this market. The wording of the Rules was discussed during the meetings held by the FAS Russia with producers of potassium chloride, producers of compound fertilizers who are the consumers of the potassium chloride, Ministry of Industry and Trade of the Russian Federation.

25. Moreover in 2010 the FAS Russia pursued its activity on conclusion of agreements on cooperation with other state, municipal authorities of the Russian Federation and a number of associations in order to ensure timely effective cooperation for suppression and detection of violation of antimonopoly legislation. In particular, the Agreements on cooperation with the Federal Service on intellectual property, patents and trade marks, Federal Service on Surveillance in the Transport Sector and Association of Professional Insurance Brokers were concluded by the FAS Russia.

26. An Agreement on Common Competition Principles and Rules that composes the set of documents that form the legal base of the Common Economic Space between Belarus, Kazakhstan and Russia was signed in December 2010. This set of documents was elaborated with active participation of the FAS Russia and includes the following agreements:

- Agreement on common principles and rules of competition;
- Agreement on common principles and rules of regulation of activity of natural monopolies
- Agreement on common rules of granting industrial subsidies;
- Agreement on common rules of public assistance to agriculture;
- Agreement on public (municipal) procurements.

27. The trend of 2010 was a shift for concluding fundamentally new type of bilateral agreements on cooperation with foreign competition authorities that contain detailed mechanism on exchange of non-confidential information when conducting investigations of violations of competition legislation. This will allow shifting to new qualitative forms of cooperation.

28. In 2010 following agreements were concluded:

- Cooperation Agreement in the field of competition policy between the Federal Antimonopoly Service (the Russian Federation) and the Hungarian Competition Authority;
- Agreement between the Federal Antimonopoly Service of the Russian Federation and the Federal Competition Commission of the United Mexican States on Cooperation in the Field of Competition Policy.

29. Moreover, in order to ensure cooperation and exchange of experience in the field of fighting against bid-rigging practices, the FAS Russia enhanced international cooperation in the public procurement field with other foreign authorities in the sphere of public procurement. As a result two MoUs were signed in 2010:

- Memorandum of Understanding between the Federal Antimonopoly Service of the Russian Federation and the Austrian Federal Public Procurement Office;
- Memorandum of Understanding between the Federal Antimonopoly Service of the Russian Federation and the European Bank for Reconstruction and Development to promote the development of the public procurement sector in the Russian Federation.

### ***1.3 Government proposals for new legislation***

#### ***1.3.1 Antimonopoly legislation***

30. For the purposes of competition development in the Russian Federation the FAS Russia elaborated a number of initiatives to the improvement of the antimonopoly legislation in force and submitted them to the Government of the Russian Federation

31. These amendments, called “the third antimonopoly package of amendments”, are supposed to be introduced in the Law on protection of competition, in the Code on Administrative Violations of the Russian Federation, in the Criminal Code of the Russian Federation. Adoption is expected in 2011.

32. Amendments specify requirements to agreements and concerted actions of economic entities separating these two notions in two different Article (so far they are combined in one Article 11).

33. With regard to agreements it is supposed to:

- reduce the list of unconditional prohibitions (per se) and to extend them only on the horizontal agreements (cartel);
- eliminate criminal liability for cartels;
- specify notion of prohibited coordination of economic activity.

34. With regard to concerted actions it is supposed to:

- consider actions of economic entities that publicly stated on their planned conduct on the market as concerted actions;
- introduce the rules of de minimis.

35. Prohibition on agreements and concerted actions will not cover economic entities that form one group of persons or that are controlled by one person.

36. As a result of adoption of these amendments fixed administrative fines for abuse of dominant position with regard to cases not dealing with significant restriction of competition (except for natural monopolies) will be introduced.

37. Amendments also specify extraterritorial procedure for application of competition legislation with regard to actions of persons located outside the territory of the Russian Federation and affecting competition in Russia. In particular, the group of transactions of foreign companies to be notified to the FAS Russia under turnover volume on the territory of the Russian Federation is determined.

38. Scope of the application of the Law on protection of competition will be extended upon such professional services as notaries, lawyers as well as other person that are not individual entrepreneurs, but whose professional activity brings profit and is conducted on the basis of state registration and (or) licenses.

39. Amendments specify criteria for determination of monopolistically high price of product such as exchange price, retrospective analysis, international price indicators.

40. The amendments proposed to establishing a right of the Government of the Russian Federation to determine rules of non-discriminatory access to the infrastructure of natural monopolies, as well as to the products that are technologically connected to them. These rules would contribute to elimination of abuses by economic entities owning essential facilities.

41. Moreover, the FAS Russia would have a right to make warnings to the managers of economic entities who publicly announce their planned conduct on the market if such conduct can lead to violation of antimonopoly legislation

42. After adoption of amendments with regard to control over economic concentration, administrative burden on SME will lessen, the FAS Russia will have more resources to focus on significant violations of competition legislation. It is proposed to eliminate post merger notification, however the antimonopoly authority will have a right to impose behavioural or structural remedies on the merging companies if the authority reveals that the transaction made by those companies restricts competition on a particular market; in case if these remedies are not fulfilled, the antimonopoly authority will have the right to bring a case to the Court in order to cancel the transaction. Moreover obligation to submit post-merger notifications about agreements of financial organizations will be also eliminated.

43. The list of grounds for granting state (municipal) preference (concept of state aid), including definition of the share of the activity with regard to which the preference is granted in the total scope of the operated activity, as well as the procedure for granting state and municipal property will be specified.

44. Moreover, it is proposed to define circumstances that will be considered as aggravating and mitigating when considering administrative case on violation of competition legislation. Moreover, liability for untimely submission to the FAS Russia of necessary information, as well as for violation of procedures and terms for submission of such information will be introduced.

### *1.3.2 Legislation on natural monopolies*

45. In 2010 the FAS Russia prepared and submitted to the Government of the Russian Federation amendments to the Federal Law “On Natural Monopolies” that were developed in accordance with the Program on Competition Development for 2009-2012.

46. Amendments aim to improve the system of regulation of natural monopolies, including:

- introduction more precise definition of the subject of natural monopoly;
- definition of the status of the Register of the subjects of natural monopolies;
- definition of the procedures for control over economic concentration;
- separation of powers of authorities regulating natural monopolies;
- introduction to the system of public regulation of a number of sectors of a method of economically justified profitability of invested capital, method of comparable analysis and other “quasi-competitive” mechanisms that envisage establishment of long-term tariff that will ensure acceptable profitability on the invested capital, as well as mechanism stimulating reduction of costs and maintenance of the certain level of the quality of services;
- ensuring efficiency of purchasing activity of the subjects of natural monopolies through establishment of obligatory requirements for conduction of tenders;
- separation from natural monopolies of certain types of works that can be done by third companies on competitive basis;
- activization of competition development in related to natural monopolies spheres, including through division of subjects on operating competitive and naturally-monopolistic types of activities.

47. At this amendments are proposed also to the Law on protection of competition through adding certain provisions allowing control over prevention and deterrence of economically justified shift of the relevant product market from status of natural monopoly to the status of competitive market, prevention of infringement by natural monopolies of third parties interests.

48. Implementation of proposed changes will allow forming a system of legal regulation of activity of natural monopolies ensuring reliable and effective provision of consumers with products and services, increase of transparency of activity of natural monopolies, as well as creation of conditions for competition development, enhancing quality of public regulation of activity of natural monopolies.

### *1.3.3 Legislation on foreign investments*

49. In 2010 amendments to the Federal Law of 29.04.2008 No. 57-FZ “ On Procedures for Foreign Investments in the Economic Entities of Strategic Importance for the Russian National Defense and State Security” aimed at significant liberalization and facilitation of procedures of state control in this sphere.

50. Moreover, in 2010 in order to ensure transparency of procedures of control over foreign investments, to the extent envisaged given law, the FAS Russia elaborated four administrative regulations on consideration of pre-merger and post-merger notifications of foreign investors, of requests on necessity of preliminary approval of transactions, as well as on conclusion of agreements on remedies with foreign investor. Administrative regulations are now going through the interagency approval procedure.

### *1.3.4 Legislation on production and sale of oil products.*

51. In 2010 a draft law “On market pricing for oil and oil products in the Russian Federation” was elaborated. The draft law envisaged to use three basic indexes of market prices, i.e. comparable prices on foreign markets, exchange quotations and off-exchange prices on oil and such basic oil products as petrol,

diesel, jet fuel and mazut. Consideration of correlation of these indexes will allow orienting prices toward market level of prices on the given commodities and prevent their unjustified growth.

### *1.3.5 Regional programs of competition development*

52. In 2010 within the frameworks of implementation of the Program on Competition Development in the Russian Federation and Plan of Actions on its Implementation till 2015, all the regions of the Russian Federation developed their own Regional programs of competition development aimed at formation of effective, innovative, investment-friendly environment in the region that would stimulate economic entities for robust competition. The FAS Russia 82 Regional Offices, located in every region of the Russian Federation, took an active part in the process of elaboration and implementation of these programmes.

53. Implementation of these Regional Programs will contribute to facilitation of running business, reduction of administrative barriers, reduction of direct participation of state and local authorities in economic activity of business-structures (since one of the major threats to competition development are administrative barriers that reduce incentives for new companies to entry the markets, increase non-production costs and create conditions for rise of corruption).

54. To eliminate given obstacles Regional programs envisage, in particular, to develop activity of multi-functional centers where citizens have an opportunity to apply to single place for receiving different documents (instead of applying to different agencies), as well as to strengthen control over observance of competition legislation.

## **2. Enforcement of competition laws and policies**

55. In 2010 the FAS Russia in order to prevent and suppress monopolistic activity (abuse of dominance and anticompetitive agreements) revealed 12305 violations of competition law, 11431 cases were initiated. The total sum of imposed fines made up 5,7 bln. rubles (about US 190 mln. dollars).

### ***2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions***

#### *2.1.1 Summary of activities of competition authorities and courts*

56. In 2010 the FAS Russia initiated 3343 cases at the signs of monopolistic activity (abuse of dominance and anti-competitive agreements of economic entities) on the product and financial markets, which is 15 % higher than in the last year

- Suppression of abuse of dominance

In 2010 the Russian competition authorities received 13848 claims related to abuse of dominance by the economic entities. The mostly spread type of reasons for applications is still imposition of unfavourable terms of contracts. 2736 cases were initiated, out of them 317 were initiated on the initiative of the antimonopoly authority, and 818 cases were terminated due to non-confirmation of the fact of violation. On the rest of cases under consideration 1593 decisions were taken on admitting violation and 1453 instructions were issued. 748 decisions taken in 2010 were appealed in court. The Court admitted completely invalid 35 decisions and partially invalid 13 decisions.

In 2010 the antimonopoly authority initiated 4 cases on abuse of dominance by financial organizations (setting of the unjustifiably high price of financial service).

- Suppression of anticompetitive agreements concluded by economic entities

In 2010 the antimonopoly authority received 1283 claims on agreements (concerted practices) by economic entities, restricting competition. The majority of claims were submitted due to imposition of unfavourable terms of contracts and establishment (maintaining) of prices (tariffs), discounts, markups (extra charges), margins (19 % and 31 % respectively). 607 cases were initiated, among them 313 cases were initiated by the antimonopoly authority own initiative. 376 decisions on admitting the violation were taken. 150 decisions were appealed to court, 19 were admitted as completely valid, 10 decisions were admitted as completely invalid, 2 – partially invalid and the rest still go through the appeal procedure.

- Practice of application of leniency program

According to the Russian legislation only the first applicant who reported on its participation in cartel can get immunity (Leniency program was adopted in the Russian legislation in 2009).

In 2010 the FAS Russia received 19 applications under leniency program: 6 applications were submitted to the Central Office of the FAS Russia, 13 applications were submitted to the Regional Offices of the FAS Russia.

The major sectors that were studied in connection with the leniency applications received are the following: passenger air transportation, taxi services, meat-processing, mineral resource sector, insurance and others.

## 2.1.2 *Description of significant cases*

### 2.1.2.1 *Suppression of abuse of dominance*

- Telecommunications market

The FAS Russia and Agency of the Republic of Kazakhstan on Protection of Competition completed a joint investigation in relation to mobile operators OJSC MTS, OJSC VypelCom, OJSC MegaFon (the Russian Federation) and “GSM Kazakhstan” Ltd, “Kar-Tel” Ltd, “Mobile Telecom-Service” Ltd (Republic of Kazakhstan) which established monopolistically high roaming prices.

The Russian companies of the so-called “big three” were admitted as violators of part 1 Article 10 of the Law on protection of competition (prohibition of abuse of dominant position) and were fined for up to 38 mln rubles (US \$ 1,2 mln).

The FAS Russia admitted that operators of “big three” established and maintain monopolistically high prices for services in roaming (national, on the territory of the Russian Federation, and international, on the territory of the CIS countries), as well as imposed unprofitable terms of contract for subscribers without their proper informing on change of the calculations in roaming.

Moreover operators maintained monopolistically high tariffs on mutual calculations with operator their roaming partner (including if it also is a part of one group of persons with Russian operator) ensuring gaining of excessive profit when rendering services to “guest” subscribers coming to Russia.

As a result of this investigation companies significantly reduced prices for services in roaming in the CIS countries. Moreover, Russian and Kazakhstan operators sent offers on reduction of

interoperators tariffs to operators in other CIS countries. 70 % of the given offers were accepted. Information on operators who refused to accept non-discriminatory terms was sent to competition authorities of the relevant CIS countries for their competition enforcement.

- Airport services market

In 2010 the FAS Russia initiated a case against a number of airports in several Russian cities with regard to violation of part 1 Article 10 of the Law on protection of competition (prohibition of abuse of dominance). The total sum of imposed fine was 10 mln rubles (US \$ 333000).

Violation was in evasion of airports and economic entities rendering jet fueling services from provision of a possibility for air carriers to store their own fuel in those airports.

The FAS Russia initiated a case due to the claim of OJSC “Aeroflot-Russian airlines”. The company requested above mentioned airports and economic entities to allow it providing supply of its own jet fuel, cost of which is lower than proposed in the airports, however airports refused from providing such an possibility.

Since above mentioned airports and economic entities occupy dominant position on the local jet fueling markets, the FAS Russia decided that their actions that led or could have led to restriction of competition on jet fueling market and infringement of interests of other economic entities are to be considered as violation of the Law on protection of competition.

Judicial proceedings supported the FAS Russia decision thus the successful enforcement practice with regard to ensuring access to the jet fueling services in airports was formed.

- Fertilizer production sector

In September 2010 the Arbitration Court of Moscow region confirmed the FAS Russia decision against OJSC “Voskresenskie fertilizers” and brought the company to administrative liability.

The company was fined by the FAS Russia over 1,5 mln rubles (US \$ 50000) for abuse of its dominant position on the market of phosphoric acid.

The case against this company was initiated by the FAS Russia under application of OJSC “Voskresenski NIYiF” which claimed that OJSC “Voskresenskie fertilizers” unjustifiably refused to supply it phosphoric acid, created discriminatory conditions and infringed its economic interests in 2008.

- Oil products market

In autumn 2008 the FAS Russia admitted four largest Russian oil companies (Rosneft, LUKOIL, Gazpromneft and TNK-BP) violating antimonopoly legislation. The companies established excessive prices for petrol, diesel, jet fuel and mazut. The companies were totally fined over 4 mln rubles for abuse of their dominant position. In 2010 after long judicial proceedings Presidium of the Supreme Arbitration Court of the Russian Federation took a precedent decision in FAS Russia vs TNK-BP case that supported the FAS Russia decision. This stimulated faster completion of judicial proceedings with regard to rest three companies. As a result, all four mentioned companies fully paid imposed fines to the federal budget.

In 2009 the FAS Russia initiated a so-called “second series of cases” against the same oil companies due to unjustified growth of prices on oil products from October 2008 till February

2009. Main violation was in withdrawal of a product from circulation which resulted in increase of the price of products (artificial creation of deficit) and in creation of discriminatory conditions on the market of automobile fuel and jet fuel.

Taking into consideration the repeated violation the fines on these cases were increased and the FAS Russia fined Rosneft on 5,28 bln rubles (176 mln US dollars), Gazpromneft on 4,7 bln rubles (157 mln US dollars), LUKOIL – 6,5 bln rubles (217 mln US dollars), TNK-BP - 4,2 bln rubles (140 mln US dollars).

Initially the total sum of fine imposed on oil companies with two series of cases made up about 26 bln rubles (about US \$ 1 bln).

However later, all companies, except for Gazpromneft applied for a voluntary settlement with the FAS Russia. The companies admitted their violations, stopped participation in judicial prolonging, took obligations not to violate the Law. This step led to significant reduction of total sum of fines till 15 bln rubles (US \$ 500 mln). Gazpromneft defended its position till the end and according to the decision of the High Arbitration Court, which upheld the FAS Russia decision, was obliged to pay the fine entirely.

- Power energy market

In February 2010 the FAS Russia admitted OJSC “TGK-11” violating part 1 Article 10 of the Law on protection of competition (abuse of dominance) with regard to manipulation of prices at a wholesale market of power energy in 2008.

OJSC “TGK-11” was instructed by the FAS Russia to terminate violation and to prevent unjustified actions that could lead to restriction of competition.

TGK-11 price applications on the forward market, as well as on the balancing market was economically unjustified. Price strategy of TGK-11 with regard to a number of thermoelectric power stations led to up to 50% sales price increase on power energy during certain hours of the period under question.

The FAS Russia decision on this case, that was based on economic and technological expertise, became an important precedent for power energy companies operating in Russia.

Currently the FAS Russia’ instruction is being executed.

#### 2.1.2.2 *Suppression of anti-competitive agreements of economic entities*

- Power station coal market

In December 2010 the FAS Russia admitted violation by OJSC “SUEK”, OJSC “Russian coal” and CJSC “Stroyservice” of clause 1 and 3 part 1 Article 11 of the Law on protection of competition. The companies participated in agreements that restricted competition on the coal market and that were aimed at price-fixing and division of the power station coal market for the groups of sellers.

Basing on the admission of the fact of collusion of OJSC “SUEK” and other participants of the power station coal market, the Ministry of Internal Affairs of the Russian Federation initiated a criminal case with regard to officials of OJSC “SUEK” and other cartelists in accordance with Article 178 of the Criminal Code of the Russian Federation.

Profit gained by OJSC “SUEK”, OJSC “Russian coal” and CJSC “Stroyservice” from the sale of coal under competition restricting conditions exceeded 100 mln rubles (US \$ 3,3 mln).

It was for the first time in enforcement practice of the FAS Russia that evidence of cartel was gained by the FAS Russia and Ministry of Internal Affairs (police) together with the use of search powers of the latter.

The FAS Russia conclusion on the case was submitted to the Ministry of Internal Affairs for conduction of criminal proceeding on the case stipulated in Article 178 of the Criminal Code of the Russian Federation.

- Beer bottlers sector

In December 2010 the FAS Russia admitted agreement between “Rexam Beverage Can Naro-Fominsk” Ltd. and OJSC “Brewery company “Baltica” as anti-competitive, violating part 2 Article 11 of the Law on protection of competition (prohibition of concerted actions) and imposed a total fine about 182 mln rubles (US \$ 6 mln).

Agreement that was concluded in 2006 determined general conditions of circulation of aluminum 1 litre can, which is a violation of antimonopoly legislation. Agreement limited ability of other beer produces to bottle their production in aluminum 1 liter cans. Thus, this agreement restricted consumer choice in buying beer in aluminum 1 liter can. The case is currently under judicial proceedings.

- Housing services

The FAS Russia initiated a case against Sberbank, Odinkbank, Post of Russia and a number of municipal authorities of Odintsov municipal district of Moscow Region with regard to violation of part 2 Article 11 of the Law on protection of competition (prohibition of concerted actions and competition-restrictive agreements).

As a result of conclusion of three-side-agreements that approved single form of payment document using barcode technology for every service supplier instead of indicating bank details, Sberbank, Odinkbank, Post of Russia gained an opportunity to unilaterally influence conditions of circulation of bank service on acceptance and transfer of money for payment of housing services by citizens living on the territory of the Odintsov district. This led to establishment of monopolistic position on the market and restriction of competition.

- Chemical industry

In August 2010 Moscow Arbitration Court supported the FAS Russia decision and instruction with regard to OJSC “Silvinit”, “Mineral Trading” Ltd. and OJSC “Uralkali”.

In December 2009 the FAS Russia admitted these companies as violating part 1 Article 11 of the Law on protection of competition. Agreement between OJSC “Uralkali”, OJSC “Silvinit” and “Mineral Trading” Ltd. is a vertical agreement prohibited by the Law on protection of competition. This agreement led to establishing resale price on potassium chloride.

Decision and instruction of the FAS Russia with regard to these companies were aimed at stabilization of market, competition development and, as a consequence, ensuring national food safety.

In April 2010 the Federal Antimonopoly Service fined these companies over 264 mln rubles (US \$ 8,8 mln):

- Silvinit – 143 mln rubles (US \$ 4,7 mln)
- Mineral Trading – 18 mln rubles (US \$ 600 000)
- Uralkali – 103 mln rubles (US \$ 3,4 mln)

The case is currently under judicial proceedings.

- Medicine market

The FAS Russia initiated a case against 18 producers and sellers of medicine with regard to bid-rigging (part 1 Article 11 of the Law on protection of competition). The criminal case was also initiated against managers of the companies involved in cartel.

During the procurement of medicines by the Ministry of Healthcare and Social development of the Russian Federation in 2008-2009 a number of companies admitted to the auction took part in bidding but didn't provide their proposals on price or having registered didn't take part in action. As a result, contracts were awarded to the single participant under initial (maximum) price.

Besides bid-rigging, price collusion and division of market took place. As a result the pharmaceutical market and the sphere of procurement medicine were divided.

In 2008-2009 the Ministry of Healthcare and Social Development concluded 164 contracts amounted to 66,3 bln rub. (US \$ 22 bln) out of which 127 were concluded with only 6 suppliers (with 61 bln. rubles (US 2 bln) cost of contract). Moreover, the Ministry prevented unjustifiably organizations that didn't take part in the scheme from the access to the tenders.

Actions of the Ministry of Healthcare and Social Development (overstanding of initial (maximum) price for medicines) led to maintaining high prices at bids and as a result to 3,4 bln rubles (US \$ 1 bln) losses to the Federal Budget.

### *2.1.2.3 Enforcement practice under leniency program.*

57. In August 2010 the FAS Russia admitted a number of Russian insurance companies and banks violating Article 11 of the Law on protection of competition (prohibition of cartels). Companies concluded agreements that led to price-fixing on the market of voluntary vehicles insurance, as well as to imposition of unprofitable terms of insurance contract on customers and borrowers of the relevant banks with regard to establishing fixed size of rate of insurance for the second and further years of insuring the vehicle.

58. Cost of the insurance constituted to 9,99 % of the initial cost of the vehicle and it was fixed for the whole period of bank contract validity. Such cost is higher than the average one proposed on the market.

59. This cartel affected consumers in 15 regions of the Russian Federation.

60. The fine imposed on the companies constituted to up 70 mln rubles (US \$ 2,3 mln). At this, the fine was imposed only on five insurance companies out of seven, since one company as a result of inspection was deprived of license and another company gained immunity under leniency program since it was the first one to apply to the FAS Russia. Two companies can reckon on minimal fine due to their cooperation with the FAS Russia during investigation,

## 2.2 *Mergers and acquisitions*

### 2.2.1 *Statistics on number, size and type of mergers notified and/or controlled under competition laws*

61. In 2010 the FAS Russia considered 2964 pre-merger notifications and 1810 post-merger notifications by economic entities: 2907 pre-merger notifications and 1784 post-merger notifications were satisfied; 57 pre-merger and 26 post-merger notifications were blocked.

62. Due to increase of the thresholds for the companies' assets for getting permission under the current legislation there was a reduction of the number of notification (in 2008 – by 4 % compared with 2007, in 2009 - about 30% compared with 2008, in 2010 – by 51 % compared to 2009), meanwhile the number of large transaction requiring clarification is still significant.

63. With regard to pre-merger notifications they were basically dealing with purchase of disposal of more than 25 % of voting shares of the joint-stock company (823), purchase of disposal of more than 1/3 shares in the nominal capital of the limited companies (719), purchase of rights to determine the terms for the economic entity's activity or to run the functions of its executive authority (474).

### 2.2.2 *Summary of significant cases*

- Clearance of notification with issuing of instruction

In 2010 the FAS Russia approved three interconnected transactions on the purchase, production and sale of milk and milk products markets. These transactions were aimed at consolidation of the milk- and milk- products production and sale business, belonging to the DANONE group of persons, and the one, belonging to the UNIMILK group of persons, on territory of the Russian Federation so as to establish a joint undertaking.

The decision of the FAS Russia to satisfy the notification in question was accompanied with imposition of certain remedies to the joint DANON-UNIMILK group of persons. These remedies were aimed at competition maintenance on the purchase, production and sale of milk- and milk - products markets.

The FAS Russia established that the UNIMILK group has high market potential in a number of regions, in particular, on the milk- purchase market.

The DANONE Company also operates business on the milk-and – milk-products market, however, mainly in segments other than those, the UNIMILK Company operates in.

Alongside with that, according to the market research data, basing inter alia on the market segmentation, the FAS Russia established that transactions in question can result in establishment and intensification of dominant position of the group of persons, created as a result of a the transaction, in certain regional purchase, production and sale of milk and milk products markets concerning certain market segments.

In accordance with requirements imposed by the FAS Russia the joint company Danone-Unimilk should inform the FAS Russia on a quarter basis on its purchasing prices on raw and dried milk and sale price on its products as well as should fulfill some other conditions imposed by the FAS Russia.

In 2010 the OJSC MTS, one of the biggest mobile operators in Russia, filed with the FAS Russia a notification on acquisition of CJSC SMART (mobile operator, which conducts business in several Russian regions).

While considering the transaction in question the FAS Russia carried out the economic analysis, assessing economic indexes of the companies participating in the transaction, as well as major rivals – national mobile operators Vypelcom and MegaFon in order to determine their position on the Russian market under different types of rendered services.

The FAS Russia approved the transaction and imposed certain remedies on the OJSC MTS, specifically, such remedies included the following: the company was to divest its mobile assets into separate companies in those regions, where the company set up as a result of the transaction, will hold a dominant position (more than 50 %), and to sell in a given period these companies to undertakings, that do not belong to the OJSC Company group.

- Clearance of notification

In 2010 the FAS Russia cleared transaction of the company European Refreshments (Irish subsidiary of the Coca-Cola) on purchase of 100 % of shares the forth soft-drinks producer in Russia, company “Nidan-Juices” at fund Lion Capita (75,001 %) and minor shareholders.

Clearance was facilitated due to the fact that it is not Coca-Cola Hellenic Bottling Company (CCHBC, bottler of Coca-Cola products) that buys “Nidan Juices” but other company that doesn’t have “soft-drinks assets” in Russia.

CCHBC own a soft-drink company “Multon” in Russia that occupied a third place (19 %) on the soft-drinks market in Russian in January-February 2010. “Nidan Juices” occupied 13 % share during the same period.

The FAS Russia noted that if Coca-Cola Company decides to buy its bottler CCHBC than it will lead to a more scrutiny by the FAS Russia to this transaction (currently Coca-Cola own minor shares in CCHBC).

- Rejection of pre-merger notification

In 2010 the FAS Russia dismissed the notification of the OJSC ”Ural mining and smelting” company (CJSC “Kolchugtsevtmet” and “Kirovsky non-ferrous metal working plant” belong to the OJSC ”Ural mining and smelting” company’s group of persons) on acquisition of 100% of voting shares of the LLC “Shatravan Holdings Limited”, which is in possession of the OJSC “Revdinsky non-ferrous metal working plant”.

Upon the examination of the data, the FAS Russia concluded that upon completion of this transaction, the share of the OJSC ”Ural mining and smelting” group will be more than 35% in the cooper, latten and bronze rolled stock market and more than 50 % in the cooper-nickel rolled stock market, so, the FAS Russia made a decision to refuse the notification.

It should be noted that 35 % of a market share is not a reason for the FAS Russia to block mergers, but in this particular case was it was proved that the notified transaction could have had a negative effect on competition.

**2.3 State Control over acts, actions, agreements or concerted practices restricting competition of the federal executive authorities, state authorities of the subjects of the Russian Federation, the local self-governments, other organizations vested by the functions or rights of the mentioned authorities and Central Bank of the Russian Federation**

*2.3.1 Summary of activities of competition authorities and courts*

64. In 2010 as well as in 2009 the biggest number of violations of competition law was committed by the state and local authorities. 6952 cases were initiated under Articles 15, 16, 17, 17.1, 18, 19-21 (prohibition of violations of antimonopoly legislation by authorities) of the Law on protection of competition.

65. In 2010 there were considered 3421 applications in respect to acts and actions of state and local authorities (article 15). 1399 applications were submitted due to unjustifiable restriction of economic entities activity. 3362 cases were initiated. There were taken 2597 decisions on admitting violations and issued 2319 instructions. 320 decisions were appealed to courts. Out of them 60 were found completely valid, 5 – partially valid, 29 – invalid, 226 are still under appeal.

66. In 2010 there were received 280 applications on anti-competitive agreements (concerted actions) with participation of state authorities (Article 16). Percentage remains almost the same: 46% of applications were submitted due to restriction of access to the market, exit from the market. 639 cases were initiated, including under the FAS Russia initiative. 456 cases were admitted as violations and 711 instructions were issued. Out of 75 appealed decisions the court found 24 decisions completely valid, 4 – invalid, and 47 are still under appeal.

67. With regard to non-observance of antimonopoly requirements to conduction of tenders on public procurement (Article 17) there were received 1827 applications. The majority of applications (590) deal with unjustified restriction of access to participation in tender (361), as well as with creation of beneficial conditions for participation in tender (280). 894 cases were initiated. 205 cases were terminated due to elimination of violation during proceeding or non-confirmation of the fact of violation. On the rest of cases there were taken 694 decisions on admitting the violation and 431 instructions were issued. 98 decisions were appealed to court. Out of them the court found 25 decisions completely valid, 1- partially invalid, 10 – invalid, and 62 are still under appeal

*2.3.2 Summary of significant cases*

*2.3.2.1 Suppression of anti-competitive actions by state and local authorities and economic entities*

68. The FAS Russia admitted the Federal Service on regulation of alcohol market (Rosalcoregulation) as violating part 1 Article 15 of the Law on protection of competition.

69. Having received a claim of “Vinograph” Ltd. the FAS Russia established that company submitted to Rosalcoregulation a full set of documents necessary for receiving license for purchase, storing and supply of alcoholic production. However Rosalcoregulation asked for additional documents and established requirements not envisaged by the legislation on state regulation of production and circulation of alcohol products.

70. The FAS Russia came to a conclusion that Rosalcoregulation infringed legal interest of “Vinograph” Ltd. preventing its entry to the relevant market through establishment of requirements to the economic entities that are not envisaged by the legislation of the Russian Federation.

71. Rosalcoregulation received instruction of the FAS Russia to eliminate consequences of its violation and to prevent restriction of competition.

72. In February 2010 the Federal Arbitration Court of Moscow district admitted valid decision and instruction of the FAS Russia with regard to Federal Service on Property that violated part 1 Article 15 of the Law on protection of competition. Violation was in renting of the North River Station that is under federal property to the “Inter finance technologies” Ltd. without holding of tender.

73. The case was initiated under claim of OJSC “Passenger port”.

74. The Court confirmed the FAS Russia decision and stated that conclusion of renting agreement over federal property should be done as a result of tender in accordance with Resolution of the Government of the Russian Federation No. 685 of 30.06.1998 “On measures to ensure profits transfer to the federal budget from usage of federal property”.

75. It is obligatory that state or municipal property should be rented under open procedures that ensure equal access of all economic entities to such property.

#### *2.3.2.2 Suppression of anti-competitive agreements of the state and local authorities and economic entities*

76. In November 2010 the FAS Russia admitted Ministry of Internal Affairs of the Russian Federation and “Business Consultant” Ltd as violating Article 16 of the Law on protection of competition (prohibition of anti-competitive agreements by authorities and economic entities). Ministry and company concluded an agreement that led to restriction of access on product market of sale of software programs used for qualification examination of private security.

77. It was established that Ministry “selected” the only software program owned by Business-Consultant Ltd. At this, Ministry didn’t hold public procedures of such programs, didn’t search for any alternatives to it.

78. Moreover, the FAS Russia admitted Ministry and CJSC “V.A.O.Y” as violating Article 16 of the Law on protection of competition due to the fact that their agreement provided for monopoly position of CJSC “V.A.O.Y” on the market of sale of form production necessary for holding qualification examination for private security.

79. It was established that only one economic entity CJSC “V.A.O.Y” gained a right to produce Certificates on awarding qualification to private security on the territory of the Russian Federation. At this, production of such Certificates was done at the expense of non-governmental educational institutions that held such qualification examination.

80. The FAS Russia issues Ministry, Business-Consultant Ltd. and CJSC “V.A.O.Y” instruction on termination of violations of antimonopoly legislation and imposed a fine over economic entities over 150000 rubles (US \$ 5000).

#### *2.3.2.3 Violation of antimonopoly legislation at tenders*

81. In October 2010 the FAS Russia admitted the Social Insurance Fund of the Russian Federation violating of the part 2 of the Article 17 of the Law on protection of competition in the part of restriction of competition during tenders for the supply of personal computers.

82. The violation consists of the auction organizers' requirements for the supply of computer equipment for the Social Insurance Fund of the Russian Federation, according to which supplied personal computers should be equipped on the base of the motherboards assembled with chipsets and processor connectors consistent only with "Intel" processors; that limits participation in the auction of the personal desktop computers providers based on "AMD" processors.

#### **2.4 *Actions aimed at suppression of unfair competition***

##### *2.4.1 Summary of activities of competition authorities and courts*

83. Total number of control and supervision actions in order to prevent and suppress unfair competition (article 14) in 2010 made up 1695. 927 cases were initiated. Out of them in 630 cases there was admitted violation and 537 instructions were issued.

84. Out of 927 cases initiated on product markets the biggest number (30 %) dealt with sale of products with illegal use of intellectual activity results; 21 % of cases was initiated due to false information, 16 % of cases was initiated due to consumers' deceit.

85. On the facts of unfair competition on financial markets 127 cases were initiated.

86. 111 decisions were appealed to court (13 – on financial markets, 98 – on product markets, 3 – with regard to natural monopolies). The court admitted 39 decisions as valid (7 – on financial markets, 32 – on product markets, 1 – with regard to natural monopolies), 7 decisions were admitted as invalid (all on product markets), the rest 65 decisions (6 – on financial, 52 – on product markets, 2 – with regard to natural monopolies) are still undergoing the appeal procedure.

##### *2.4.2 Summary of significant cases*

87. In August 2010 the FAS Russia admitted actions of OJSC "Newspaper Metro" on product market of periodicals as unfair competition.

88. OJSC "Newspaper Metro" sold its periodicals on the territory of the Russian Federation indicating information on circulation (overstating) of its newspaper "Metro Moscow" as not representing the real facts.

89. The FAS Russia came to a conclusion that such actions are violation of point 2 part 1 Article 14 of the Law on protection of competition (prohibition of unfair competition). Information on circulation of periodicals is a significant criteria for advertisers who are interested in informing as many potential consumers as possible on their products or services. Thus, overstating of information on circulation can lead to gaining unjustified advantages in their activity.

90. The FAS Russia issues an instruction to OJSC "Newspaper Metro" to terminate violation of antimonopoly legislation.

91. In February 2010 the FAS Russia imposed a 100 000 rubles (US \$ 33000) fine on Vitesse France S.A.R.L. for violation of point 2 part 1 Article 14 of the Law on protection of competition (prohibition of unfair competition) on the market of manufactured goods.

92. Violation was in deceiving consumers with regard to place of production of manufactured goods "VITESSE" sold by the company on the territory of the Russian Federation.

93. The company placed indication “Vitesse.France” on the packages of household goods, as well on the household ware “VITESSE” sold in Russia that is perceived by the consumers as the place of production of the goods. The social survey conducted by Russian Centre on Survey of the Population Opinion showed that consumers had a strong association between VITESSE and France as a place of production of VITESSE goods. However the place of production was China.

94. Thus, the FAS Russia admitted that actions of the company are aimed at deceiving consumers with regard to the place of production of its goods which is an act of unfair competition.

### **3. The role of competition authorities in formulation and implementation of other policies**

#### ***3.1 Participation of the FAS Russia in the Administrative reform and Anti-corruption activity***

95. The FAS Russia pursues its active participation in the implementation of administrative reform held in the Russian Federation. The major activity of the FAS Russia is devoted to combating corruption.

96. The FAS Russia held significant activities among its personnel to explain the problematic aspects of possible conflict of interests while conducting public service. Moreover the FAS Russia adopted an Order No. 225 of 19.05.2010 “On procedures for federal public servants of the FAS Russia on notifying the Head of the FAS Russia (Head of the FAS Russia Regional Office) about the facts of their inclining to conduction of corruption violations, on checking such information and registration of notifications”. The Order allows preventing conflict of interests within the FAS Russia.

97. Moreover, in 2010 the FAS Russia held a review of its current Administrative Regulations in order to increase transparency and openness of the applicable procedures. In 2010 the FAS Russia adopted a decision on public services provision in electronic form starting from December 15, 2014. Introduction of high-end informational communication technologies using the system of electronic interagency cooperation will allow reducing time and financial costs for citizens and business in their relations with state.

#### ***3.2 Control over foreign investments into strategic sectors of economy***

98. Within enforcement of the Law on foreign investments in 2010 the FAS Russia considered 89 applications of foreign investors out of which 57 were submitted for consideration of Governmental Commission on control over foreign investments in the Russian Federation.

99. As a result the Commission cleared 48 mergers (including 4 with remedies determined by the Commission) and blocked 3 transactions. 23 applications were considered directly by the FAS Russia within its competence, 6 were withdrawn.

100. There were no appeals with regard to the decisions taken by the FAS Russia and by the Commission.

#### ***3.3 Control over observance of legislation on placement of public procurements***

101. Placement of public procurements in the Russian Federation is regulated by the Federal Law No. 94-FZ of 21.07.2005 “On placement of orders to supply goods, carry out works and render services for state and municipal needs” (hereinafter referred to as Law on placement of public procurements). The FAS Russia controls its observance.

102. During 5 years of functioning of the Law on placement of public procurement (2006-2010) the aggregate savings of the budget funds from placing public procurements has made up 1 trillion 68 bln rubles (US\$ 35,6 bln 600 mln).

103. From July 1, 2010 all the tenders on placement of public procurement is conducted through electronic auctions at five selected trading platforms that contributes to creation of single economic space Russia-wide (usage of electronic digital signature and only electronic correspondence).

104. The number of participants in electronic auctions has increased twice compared to the previously held tender procedure. Increase of the number of participants leads to reduction of initial prices due to rise of competition among participants, and, as a result, to significant savings of the budget funds.

105. Thus, open electronic auctions in construction and repair works provided for the average savings of budget funds up to 25 % for lots under 50 mln rubles (US\$ 1,6 mln) and about 15 % for lots over 50 mln rubles (US\$ 1,6 mln).

106. In 2010 due to introduction of liability insurance of suppliers (elimination of opportunity to supply low-quality goods), as well as financial provision (should the supplier fail to execute the contract, he will lose his money) and pre-qualification of suppliers (bank guarantee, guarantee of large legal person or deposit), the number of non-executed contracts due to the suppliers' failure has decreased 11 times compared with 2008 (about 99% of contracts were executed).

107. Starting from January 1, 2011 information on all the auctions conducted at the five trading platforms can be searched at a single Russia-wide portal [www.zakupki.gov.ru](http://www.zakupki.gov.ru). This information resource allows for new level of information openness and competition that will lead to increase of tenders liquidity and savings of budget funds.

108. Reform of the public procurement system in Russia is currently ongoing. New amendments to the Law on placement of public procurements (to be adopted in 2011) will ensure more open and easy-accessible process of public procurement. The improved law will ensure integrity of the Russian legislation on placement of public procurement allowing to integrate all the stages of public procurement placement starting from planning of procurement and ending with execution of contract and complex analysis of the results.

### **3.4 *Antimonopoly regulation of foreign commerce***

109. Within the frameworks of activity of the Subcommittee on customs and tariff and non-tariff regulation, protectionist measures in foreign trade of the Governmental Commission on economic development and integration, the FAS Russia considered and provided its comments over 159 applications on adjustment of import and export customs duties in 2010.

110. Providing its comments the FAS Russia proceeded from necessity to maintain normal competitive environment on the Russian domestic market, prevention of unreasonable protectionism and necessity to increase competitiveness of the national producers.

111. Major attention of the FAS Russia was paid to introduction of special protectionist measures, as such measures are applicable to imported goods supplied under the terms of fair competition and significant restriction of their import can lead to distortion of competition on the relevant product market and infringement of the interests of consumers of the protected products.

112. In 2010 within the frameworks of implementing provisions of the Article 26 of the Federal Law No. 165-FZ of 08.12.2003 "On Special Protectionist, Anti-dumping and Compensatory measures for

imported goods” that envisages presence of the FAS Russia comment when conducting investigation before introduction of protectionist measures, the FAS Russia provided comments on consequences of impact of protectionist measures over competition on the following product markets: machine-building location bracketry, rolled nickel metal, caramel, activated carbon and forming rolls.

113. To provide such comments the FAS Russia assesses competition on the relevant product market, including assessment of the level of concentration of product market, probability of enhancement of market power by the incumbents after introduction of protectionist measures and of abuse of such power, and, as a result, probability of price increase on protected products. Moreover, the FAS Russia took into account such factors as ability of protected sector to meet the demand on the domestic market during the period of protectionist measures application, presence of modernization programs and increase of currents capacities in the sector.

#### **4. Resources of competition authority**

##### **4.1 Resources overall (current numbers and changes over previous year)**

###### **4.1.1 Annual budget**

114. In 2010 the annual budget of the competition authority (the FAS Russia) amounted to 1'788'251'500 rubles (approximately 66,2 million USD). The growth compared to 2009 is 15 %.

###### **4.1.2 Number of employees (person-years)**

115. On 01.01.2010 the actual number of staff of the FAS Russia was 3269 persons in all the system of the FAS Russia. Out of them 622 persons work in the Central Office of the FAS Russia located in Moscow, 2647 person work in Regional Offices of the FAS Russia located in 82 regions of the Russian Federation.

116. Out of total number of employees (3269) there are:

- «lawyers» – 803 persons;
- «economists» - 637 persons;
- «other professionals» - 881 persons (people having technical and other education, as well as incomplete higher education);
- «support staff» - 948 persons.
- 32 employees of the Central Office have an academic degree; out of them 17 have an academic degree in economics.

##### **4.2 Human resources applied to certain enforcement practices**

117. There is no such statistics in the FAS Russia.

##### **4.3 Period covered by the above information**

118. From January 1, 2009 till January 1, 2010.

## 5. Summaries of or references to new reports and studies on competition policy issues

- Forum “Antimonopoly regulation in Russia” – Attachment to the newspaper Vedomosti (The wall street journal&financial times)» – Moscow – 17.11.2010
- Avdasheva, S.B. Economics of criminal sanction for violation of antimonopoly legislation / S. Avdasheva, A. Shastitko // Economics issues - 2010. - No. 1. - p. 129-142.
- Avdasheva, S.B. Competition policy: composition, structure, system / S.B. Avdasheva // Modern competition. – 2010. – No. 1. – p. 4–20.
- Belov, V.A. "Second antimonopoly package" : general assessment and perspectives of further activity /V. A. Belov //Legislation. –2010. – No. 5. – p. 40 – 50.
- Vitryanski V. Certain fragments of judicial practice on cases on protection of competition / V. Vitryanski// Economics and law. – 2010. – No. 5. – p. 3–11.
- Daurova T.G. Legal aspects of competition policy in Russia (monograph) /T.G. Daurova. – Saratov, 2010. – 276 p.
- Knyazeva I.V., Lukashenko O.A. Modernization of theory and practice of antimonopoly regulation at modern stage: principles and trends (international experience) / O. A. Lukashenko // Modern competition. – 2010. – No. 3 (21). – p. 88-96.
- Knyazeva I.V., Lukashenko O.A. Transformation of antimonopoly policy into policy on protection of competition: evolution, trends, analysis and practice (monograph)/ I.V. Knyazeva, O. A. Lukashenko – Novosibirsk state technical university, 2010. - 245 p.
- Knyazeva I.V., Social aspects of state competition policy //Ideas and ideals – Novosibirsk – No.2 (4), t.1 - 2010 p. 106-117
- Lopashenko N. New version of Article 178 of the Criminal Code/ Lopashenko N. // Legitimacy. - 2010. - No. 11. - p. 9-14.
- Sushkevich A.G. Antimonopoly legislation became more effective/A.G. Sushkevich.//Corporate lawyer . –2010. – No. 2 (May). – p. 37 – 40.
- Shagrova D. Problems of qualification and proving of concerted actions of economic entities restricting competition / D. Shagrova // Mergers and acquisitions. – 2010. – No. 5. – p. 37–46.
- Pyzirevski, S.A. Development of antimonopoly legislation / S. Pyzirevski // Economics and law. - 2010. - No. 11. - p. 14-27.
- Tikin, V. Criterion of unfair competition / V. Tikin // Economist. - 2010. - No. 1. - p. 85-90.
- Tsirel, S.V. Is fair tender possible in Russia? / S.V. Tsirel // Social sciences and modern time. - 2010. - No. 1. - p. 126-133.