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DAF/COMP/AR(2014)14

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

12-Jun-2014

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2014)14
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN RUSSIA

-- 2013 --

18-19 June 2014

This report is submitted by Russia to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 18-19 June 2014.

JT03359180

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TABLE OF CONTENTS

1.	Changes to the Competition Law and Policy, Proposed and Adopted.....	4
1.1	Review of new legal norms in the competition law and related normative legal acts	4
1.1.1	The Market of Financial Services	5
1.1.2	Customs Regulation	6
1.2	Other Relevant Normative Legal Acts and Guidelines, etc.	6
1.2.1	Completing the legislative framework for establishing the conditions when exchange price is not recognized monopolistically high	6
1.2.2	Introducing Price Competition on OSAGO Market.....	7
1.3	Government Proposals on New Legislation.....	8
1.3.1	Proposals on Changing the Competition Law.....	8
1.3.1.1	Transactions with Participation of Natural Monopolies	8
1.3.1.2	“Vertical” Agreements.....	8
1.3.1.3	Abusing Dominant Position.....	8
1.3.1.4	Buyers’ Cartel	9
1.3.1.5	Actions of the Authorities and Local Self-Government Bodies	9
1.3.1.6	Formation of State and Municipal Unitary Enterprises	9
1.3.1.7	Establishing FAS Presidium	10
1.3.1.8	Refusal to Keep the Register of Economic Entities	10
1.3.1.9	Improving the Institution of “Warnings”	10
1.3.1.10	Agreements on Joint Activities	10
1.3.1.11	Administrative Liability.....	11
1.3.2	Combatting Anticompetitive Agreements	12
1.3.3	The Market of Banking Services	12
1.3.4	Foreign Investments.....	13
2.	Enforcing Competition Law and Carrying Out Competition Policy.....	13
2.1	Efforts against Monopolistic Activities	13
2.1.1	Description of the Efforts of Competition Bodies and Courts of Law.....	13
2.1.1.1	Suppressing Abuses of Dominance.....	13
2.1.1.2	Suppressing Anticompetitive Agreements and Concerted Actions of Economic Entities	14
2.1.1.3	Practice of relieving from administrative liability for committing violations (leniency programme).....	14
2.1.2	Typical Cases.....	14
2.1.2.1	Suppressing abuse of dominance in the market of rail transportation services.....	14
2.1.2.2	Suppressing Violations in Trading.....	14
2.1.2.3	Practice of Combating Competition-Restricting Concerted Actions of Economic Entities	15
2.1.2.4	Cases with an International Aspect.....	16
2.2	State Control over Economic Concentration.....	17
2.2.1	Statistical Data on the Number, Scope and Type of Transactions, of which the Antimonopoly Authority was Notified and/ or which were Controlled under the Competition Law.....	17

2.2.2	Typical Cases	17
2.2.2.1	Approving Petitions with Issuing Determinations	17
2.2.2.2	Granting Petitions	17
2.2.2.3	Refusal to Grant a Petition for Acquiring	18
2.3	State control over competition-restricting acts, actions, agreements or concerted actions of the federal executive bodies, the authorities of the subjects of the Russian Federation, local self-government bodies, other bodies or organizations assigned the functions or the rights of the above bodies, the Central Bank of the Russian Federation	18
2.3.1	Efforts of Competition Authorities and Courts	18
2.3.2	Typical Cases	19
2.3.2.1	Suppressing competition-restricting acts and actions of the authorities	19
2.3.2.2	Suppressing Competition-Restricting Anticompetitive Agreements with the Authorities	19
2.4	Actions Aimed at Suppressing Unfair Competition	19
2.4.1	Efforts of Competition Bodies and Courts	19
2.4.2	Typical Cases	20
2.4.1.1	Unfair competition related to acquiring and use of the exclusive rights for the means of product individualization	20
2.4.1.2	Unfair Competition on the Market of Tobacco Products	20
3.	The Role of Competition Bodies in Shaping and Implementing Other Policies	20
3.1	Control over foreign investments in strategic sectors of economy	20
3.2	Ensuring non-discriminatory conditions in the markets	21
3.2.1	Development of the Code of Conduct of car manufacturers and distributors» in cooperation with the Association of European Businesses in Russia (AEB)	21
3.2.2	Creating of regulatory environment in order to prevent unfair competition in the provision of consumer credits (loans)	21
3.3	Development of competition in the infrastructure industries	22
3.3.1	Telecommunications	22
3.3.2	Transport	23
3.4	Development of the Competition Standard	23
3.5	Development of international enforcement cooperation	24
3.5.1	Cooperation within integration associations	24
3.5.2	Interstate Council for Antimonopoly Policy	25
3.5.3	New Forms of Cooperation	26
3.6	System-Wide Measures and Competition Advocacy	27
3.6.1	Public Consultations	27
3.6.2	Annual Conference on “Antimonopoly Regulation in Russia”	28
3.6.3	An International Event – “Russian Competition Day”	29
3.6.4	Creation of Books on pro-and anti-competitive regional practices	29
3.6.5	"Russian Competition Law and Economics Electronic Research-to-Practice Journal"	29
3.7	External Audit: ISO 9001:2008	30
4.	Resources of the Competition Authorities	30
4.1	General Resources (the Current Numbers and Changes within the Past Year)	30
4.1.1	Annual Budget (in the Local Currency and in the US Dollars)	30
4.1.2	The Number of Employees (Man –Years)	30
4.2	Staff (Man-Years) Involved in:	30
4.3	The Information Period	31
5.	References to New Reports and Works on Competition Policy	31

1. Changes to the Competition Law and Policy, Proposed and Adopted

1.1 Review of new legal norms in the competition law and related normative legal acts

1. In 2013, the work towards improving the antimonopoly regulation continued through adopting a number of Federal Laws of the Russian Federation.

2. No. 423-FZ Federal Law “On Introducing Changes to the Federal Law “On Protection of Competition” of 28.12.2013 (further on referred to as No. 423-FZ) was drafted to execute Section 6 of the Road Map for “Developing Competition and Improving the Antimonopoly Policy”, approved by No. 2579-r Order of the Government of the Russian Federation of 28.12.2012, as well as to improve the antimonopoly regulation and reduce administrative burden upon entrepreneurs.

3. The Law eliminates the procedure of post-merger notification.

4. Adopting the Law considerably reduced an administrative burden upon middle-level business (the number of notifications is halved). So antimonopoly bodies will be able to focus on large transactions (actions) considerably affecting competition, which will consequently enhance efficiency of the antimonopoly regulation in the Russian Federation.

5. No. 343-FZ Federal Law “On Introducing Changes to Article 19.8 of the Code of the Russian Federation on Administrative Violations” of 02.12.2013 (further on referred to as No. 343-FZ Federal Law) was drafted in accordance with No.1-P Ruling of the Constitutional Court of the Russian Federation of 17th January 2013 in order to improve the procedures for holding legal entities administratively liable for violating the antimonopoly law of the Russian Federation.

6. No. 343-FZ Federal Law introduced changes to Part 5 Article 19.8 of the Code of the Russian Federation on Administrative Violations (further on referred to as the Code on Administrative Violations) aimed at reducing the minimum administrative fine (50,000 RUB) currently specified by this norm of the Law.

7. The above changes are designed to ensure fair and proportionate administrative fines in line with the nature of committed administrative violations as well as property and financial position of legal entities.

8. A draft Law was devised with FAS involvement, based on which No. 285-FZ Federal Law “On Introducing Changes to the Code of the Russian Federation on Administrative Violations and Article 3 of the Federal Law “On Introducing Changes to the Federal Law “On Road Traffic Safety” and the Code of the Russian Federation on Administrative Violations” of 02.11.2013 (further on referred to as No. 285-FZ Federal Law).

9. Under the above Law, Parts 7 and 8 were added to Article 19.8 of the Code on Administrative Violations that establish administrative liability for failure to submit or late submission of data (information), which is necessary to calculate the size of an administrative fine, to the federal antimonopoly authority upon its request as well as knowingly submitting incorrect data (information) necessary to calculate the size of an administrative fine to the federal antimonopoly authority, its regional bodies upon their requests. According to No. 285-FZ Federal Law the above circumstances will be considered as aggravating administrative liability of persons for imposing administrative sanctions for committing violations under Articles 14.31, 14.32, Part 2 Article 14.33 of the Code on Administrative Violations.

10. For instance, committing violations specified in the above Articles of the Code on Administrative Violations is punishable by administrative fines calculated on the basis of the revenue gained by a violator from selling goods on the market where the violation was committed.

11. In view of the above, to determine the size of a fine it is necessary to request a person to be held administratively liable to supply revenue information that cannot be obtained from other persons.

12. At the same time, such persons often avoid submitting such information, thus, preventing comprehensive administrative investigation and sanctions proportionate to a committed antimonopoly violation.

13. Therefore, introducing changes to the Code on Administrative Violations by No. 285-FZ Federal Law in the part of establishing administrative liability for abusing dominance, concluding anticompetitive agreements, including cartels, unfair competition related to counterfeit goods adversely affecting the state of competition, and legislatively formalizing an additional circumstance aggravating administrative liability for the violations under Articles 14.31, 14.32, Part 2 Article 14.33 of the Code on Administrative Violations, will ensure the principle of inevitability of punishment for violations of the antimonopoly law that involve the most negative consequences for competition.

14. At the same time, No. 285-FZ Federal Law introduces changes to Article 26.10 of the Code on Administrative Violations, detailing the right of officials to request information in order to calculate an administrative fine, which will enable to determine the scope of applying sanctions, formalized in the proposed Part 7 Article 19.8 of the Code on Administrative Violations in view of the current Part 5 Article 19.8 of the Code on Administrative Violations.

1.1.1 The Market of Financial Services

15. With adopting No. 251-FZ Federal Law “On Introducing Changes to Some Legislative Acts of the Russian Federation due to Assigning the Powers for Regulating, Control and Supervision over Financial Markets to the Central Bank of the Russian Federation” of 23.07.2013 (further on referred to as No. 251-FZ Federal Law), that came into force on 1st September 2013, the Central Bank of Russia was assigned the powers for regulating, control and supervision over financial markets.

16. Thus, since 01.09.2013 FAS has been interacting with the Bank of Russia on the issues of control and supervision on the markets of services not only credit organizations but also the financial ones.

17. Simultaneously No. 251-FZ Federal Law introduced changes to No. 135-FZ Federal Law “On Protection of Competition” of 26.07.2006 (further on referred to as the Law on Protection of Competition), providing for expanding FAS cooperation with the Bank of Russia to protect and develop competition on the markets of financial services. In particular, since September 2013 representatives of the Bank of Russia are included in the Commissions for investigating cases on violations of the antimonopoly law not only by credit organizations but also by other financial organizations regulated by the Bank of Russia.

18. In view of the changes in the powers of the Bank of Russia, it is provided that the size of the assets of financial organizations, regulated by the Central Bank of the Russian Federation, to exercise antimonopoly control, the conditions of recognizing the dominant position of a financial organization and the Rules of establishing dominant position of financial organizations in order to establish the dominant position of financial organizations regulated by the Central Bank of the Russian Federation, are to be approved by the Government of the Russian Federation in coordination with the Bank of Russia.

19. Therefore, in 2014 FAS plans to adjust by-laws in line with the current law of the Russian Federation.

20. All measures planned by FAS in view of assigning the powers to the Central Bank of the Russian Federation for regulating, control and supervision over financial markets, were taken into consideration and included in the Action Plan for implementing the Strategy for developing competition and the antimonopoly law in the Russian Federation in 2013-2024 (I stage - 2013-2015).

1.1.2 Customs Regulation

21. In 2013, FAS supported proposals on amendments to No.130555-6 Federal Law “On Introducing Changes to the Federal Law “On Customs Regulation in the Russian Federation” (prohibiting state unitary enterprises to operate in the field of customs services provided for by Chapter 5 of the Federal Law, and as an authorized economic operator (activities specified in Part 1 Article 34 Chapter 6 the Federal Law “On Customs Regulation in the Russian Federation”).

22. In the FAS opinion, introducing the proposed amendments to the above Law will help reduce (exclude) influence of agencies and state unitary enterprises formed by the Federal Customs Service, particular, through subsidiaries and dependent enterprises, consumers and competitors and, as a consequence, development of competition on the relevant markets.

23. As a result, two significant changes were introduced to the customs law. The first is aimed at stimulating entrepreneurs to develop business in customs services and eliminate excessive pressure from the State (No. 339-FZ Federal Law “On Introducing Changes to the Federal Law “On Customs Regulation in the Russian Federation” of 02.12.2013); the second – at detailing the requirements to the candidates for including in the Register of customs agents (No. 347-FZ Federal Law “On Introducing Changes to Article 61 of the Federal Law “On Customs Regulation in the Russian Federation” of 02.12.2013).

1.2 Other Relevant Normative Legal Acts and Guidelines, etc.

1.2.1 Completing the legislative framework for establishing the conditions when exchange price is not recognized monopolistically high

24. FAS and the Ministry of Energy adopted No.313/13/225 Joint Order “On Approving the Minimum Value of Oil Products Sold through Exchange and the Requirements to Exchange Trading, when Transactions with Oil Products are Concluded by an Economic Entity that Has the Dominant Position on the Relevant Markets” (further on referred to as the Joint Order) of 30.04.2013 that has come into force.

25. The Joint Order is drafted in accordance with Clauses 1, 2 Part 5 Article 6 of the Law “On Protection of Competition” and establishes the requirements on the minimum amount of oil products to be sold through exchange by vertically-integrated oil companies, and the conditions for exchange trading, compliance with which will enable to form fair prices through exchange trading.

26. Earlier, to enforce Part 5 Article 6 of the Law “On Protection of Competition”, were adopted the Procedures for submitting a list of affiliated persons by an economic entity that has the dominant position on the relevant market, accredited and (or) taking part in competitive bidding (particularly, by filing bids for participating in competitive bidding to a broker, brokers), approved by No. 409 FAS Order of 26.06.2012, and the Criteria of regularity and uniformity of selling goods through exchange for certain markets where oil and (or) oil products circulate, approved by No.1035 Decree of the Government of the Russian Federation of 11.10.2012.

27. Also changes are introduced to No. 409 FAS Order “On Approving the Procedure for Submitting a List of Affiliated Persons to Exchange by an Economic Entity That Has the Dominant Position on the Relevant Market, Accredited and (or) Taking Part in Competitive Bidding (Particularly, by Filing Applications for Taking Part in Competitive Bidding to a Broker, Brokers)” of 26.06.2012 enabling

Commodity Exchanges to efficiently reveal transactions with oil products between affiliated persons with regard to the economic entities dominating wholesale markets of oil products.

28. Conditions are formed for creating a representative price indicator on off-exchange market of oil and oil products by adopting No. 249-FZ Federal Law “On Introducing Changes to the Law of the Russian Federation “On Commodity Exchanges and Exchange Trading” and Some Legislative Acts of the Russian Federation” of 23.07.2013, establishing administrative liability for failure to submit information about off-exchange transactions with exchange goods to be registered at an Exchange in the cases, according to the procedures, in the amount and by the deadlines set by the Government of the Russian Federation.

1.2.2 Introducing Price Competition on OSAGO Market

29. The existing regulation of the market of services for mandatory third-party motor liability insurance (further on referred to as OSAGO) implies absence of price competition between insurers. Antimonopoly control of OSAGO market shows that some insurers, their agents acting on behalf of an insurer and on its instructions, as well as brokers acting in the interests of an insurer, offer to compensate insurers a part of insurance payment from 5% to 25% of the costs of an insurance policy.

30. Also, in the course of fulfilling the function of control over state and municipal procurement the facts are established of insurance companies offering tariff rates below than specified by No. 739 Decree of the Government of the Russian Federation “On Approving Insurance Tariffs for Mandatory Civil Liability Insurance of Vehicle Owners, their Structure and the Procedure of Applying by Insurers in Determining Insurance Premium” of 08.12.2005 when competition for state (municipal) contracts for OSAGO agreements.

31. Thus, to attract customers the insurers involved in OSAGO services are engaged in latent price competition, offering different gifts and discounts. Such behavior of insurers on the market of OSAGO services constitutes a violation of the insurance law of the Russian Federation and the Law “On Protection of Competition” in the part of unfair competition.

32. In the FAS opinion, a solution to the problem is to legislatively formalize price competition on OSAGO market, which will enable insurance companies to independently decrease insurance premium on insurance agreements, based on a company’s financial position, and offer quality services to physical persons at a favourable price.

33. In view of the above, FAS drafted proposals to formalize possibility of price competition on OSAGO market by legislatively formalizing in a relevant act of the Government of the Russian Federation the highest and the lowest OSAGO tariffs, their structure and procedures of applying by the insurers determining insurance premium.

34. Measures on implementing the above proposals were included in the Strategy for developing insurance activities in the Russian Federation by 2020, approved by No. 1293-r Order of the Government of the Russian Federation of 22.07.2013.

35. The proposals were implemented through No. 251-FZ Federal Law establishing a possibility of introducing price competition on OSAGO market after documents are drafted and approved by the Bank of Russia, in particular, on OSAGO insurance tariffs (their minimum and maximum values) and the procedures of applying them by insurers determining insurance premium under an OSAGO agreement.

36. These changes will enable bona fide competition between insurance companies, which will enhance trust of physical persons to insurance companies.

1.3 Government Proposals on New Legislation

1.3.1 Proposals on Changing the Competition Law

37. In 2013 the Federal Antimonopoly Service devised a draft Federal Law “On Introducing Changes to the Federal Law “On Competition Protection” and Some Legislative Acts of the Russian Federation”.

1.3.1.1 Transactions with Participation of Natural Monopolies

38. The draft Law proposes changes to Chapter 7 of the Federal Law “On Protection of Competition” establishing requirements to the transactions with participation of holders of natural monopolies currently specified in Article 7 of No. 147-FZ Federal Law “On Natural Monopolies” of 17.08.1995 (further on referred to as the Law on natural monopolies).

39. Adopting the draft Law extends Part 2 Article 28 of the Federal Law “On Protection of Competition” to transactions involving holders of natural monopolies. Thus, the requirement on prior approvals by the antimonopoly authority of transactions involving holders of natural monopolies shall not be applicable if the transactions are exercised by persons included in the same group of persons on the grounds specified in Clause 1 Part 1 Article 9 of the Federal Law “On Protection of Competition”, or if the transactions are exercised under Article 31 of the Federal Law “On Protection of Competition”, or are provided for by acts of the President of the Russian Federation or acts of the Government of the Russian Federation.

1.3.1.2 “Vertical” Agreements

40. The draft Law proposes to exclude from the concept of “vertical” agreements the provision that agent agreements are not vertical” agreements (Clause 19 Article 4) because for the purposes of applying the Federal Law “On Protection of Competition” agent agreements should be evaluated on the basis of actual rights and obligations of the parties established by such an agreement.

41. To avoid inconsistencies in interpreting the criteria for allowed “vertical” agreements specified in Part 2 Article 12 of the Federal Law “On Protection of Competition”, the draft Law specifies that such agreements are allowed if neither a seller, nor a buyer does not exceed 20% market share of the goods that are the subjects of the “vertical” agreement”. The proposed norms will undoubtedly guarantee that the antimonopoly standards shall not be applicable to insignificant “vertical” agreements.

1.3.1.3 Abusing Dominant Position

42. The draft Law introduces changes to Part 1 Article 10 of the Federal Law “On Protection of Competition” that actions (omissions) of an economic entity with the dominant position which lead or can lead to preventing, restricting and (or) eliminating competition and (or) infringing the interests of other persons (economic entities) in business activities or of indefinite range of consumers are recognized as abusing dominant position.

43. Therefore, the draft Law excludes from antimonopoly regulation actions of the dominant economic entities that infringe the interests of citizens and organizations not related to business activities.

44. To improve transparency of activities and preventing economic entity with the dominant position to create discriminatory conditions, the draft Law proposes changes to Article 10 of the Federal Law “On Protection of Competition” that based on analysis of the state of competition carried out by the federal antimonopoly authority to prevent discriminatory conditions, a normative legal act of the Government of the Russian Federation can establish the Rules for discriminatory access to the goods produced and (or)

sold by an economic entity that has the dominant position and is not a holder of natural monopoly (Part 4 Article 10).

1.3.1.4 Buyers' Cartel

45. The draft Law clarifies that not only agreements between economic entities that sell goods on the same market can be recognized as a cartel but also between companies buying the goods – competitors in the field of goods consumption (buyers' cartels). The objective of the proposed changes is to adjust the Federal Law "On Protection of Competition" in this part in line with the best world practices, particularly, with provisions of the antimonopoly legislation of the European Union, where buyers' cartels are considered as an analogy of consumer monopsony on the market and must be suppressed (for instance, "boycott" of industrial consumers by refusing to purchase goods from certain sellers or fixing the purchase prices of such goods for suppliers due to a cartel).

1.3.1.5 Actions of the Authorities and Local Self-Government Bodies

46. The draft Law prohibits competition-restricting acts, actions (omissions) and agreements with the authorities and local self-government bodies that can lead to preventing, restricting, eliminating competition by violating the pricing procedures established by normative legal acts, tariff-setting, except cases provided for by the Law of the Russian Federation on public defence procurement (Articles 15, 16).

47. The proposals are put forward because violations of pricing procedures, tariff-setting committed by tariff regulators can lead to preventing, restricting, eliminating competition and in this part must be suppressed in accordance with the antimonopoly law.

48. The draft Law gives a new version of Chapter 5 of the Federal Law "On Competition Protection", which excludes regulatory approval procedures for granting state and municipal preferences. The draft Law details the procedures for granting state and municipal preferences with follow-up antimonopoly control.

1.3.1.6 Formation of State and Municipal Unitary Enterprises

49. The draft Law adds a new Chapter 5 of the Federal Law "On Competition Protection" providing for antimonopoly requirements to formation of state and municipal unitary enterprises and State participation in the authorized capital of economic entities.

50. Chapter 5 will prohibit formation of state and municipal unitary enterprises, economic entities with over 50% of their shares (stock) belonging to the State, without preliminary approvals by the antimonopoly authority for formation of state and municipal unitary enterprises, economic entities with over 50% of shares (stock) belonging to the State, the decision-making procedure on the above petitions by the antimonopoly authority, as well as possibility to issue determinations by the antimonopoly authority exercising control over formation of state and municipal unitary enterprises and economic entities over 50% of shares (stock) of which belong to the State.

51. Part 1 Article 21 of the proposed Chapter specifies that formation of state and municipal unitary enterprises, economic entities over 50% of shares (stock) of which belong to the State, in breach of the established procedures is punishable in accordance with the law of the Russian Federation.

52. Under Part 1 Article 21, failure to execute a determination of the antimonopoly authority issued in the course of exercising control over formation of state and municipal unitary enterprises, economic entities with over 50% of shares (stock) belonging to the State, will be punishable by administrative sanctions specified in Article 19.5 of the Code of the Russian Federation on Administrative Violations.

1.3.1.7 Establishing FAS Presidium

53. To optimize activities of the antimonopoly bodies, the draft Law proposes that the federal antimonopoly authority forms its Presidium (Article 23). Its powers will include explaining antimonopoly enforcement practice and reviewing the decisions made by regional antimonopoly bodies on the cases of violating the antimonopoly law if such decisions breach uniformity in interpreting and applying the norms of the antimonopoly law by the antimonopoly bodies or infringe the rights and legitimate interests of the general public or other public interests.

1.3.1.8 Refusal to Keep the Register of Economic Entities

54. To decrease administrative burden upon economic entities, the draft Law introduced changes to Clause 8 Article 23, and Articles 27 and 28 of the Federal Law “On Competition Protection”, excluding FAS powers to keep the Register of economic entities with the share exceeding over 35% of a market of particular goods or that have the dominant position on the market of particular goods, if with regard to such markets other federal laws establish cases of recognizing the dominant position of economic entities for the purposes of applying the laws.

1.3.1.9 Improving the Institution of “Warnings”

55. The draft Law, first, expands the range of persons to whom warnings can be sent prohibiting violations the antimonopoly law (Article 25), including officials of federal executive bodies, the authorities of the subjects of the Russian Federation, local self-government bodies, organizations involved in rendering state and municipal services, state extra-budgetary funds and the Central Bank of the Russian Federation.

56. Second, the draft Law introduces changes to Article 39 of the Federal Law “On Competition Protection” on expanding the list of violations, to which the institution of warnings can be applied. According to the draft Law, warnings can be issued for:

- Fixing economically, technologically and otherwise unjustified different prices (tariffs) for the same goods unless otherwise established by the federal law (Clause 6 Part 1 Article 10 of the Federal Law “On Protection of Competition”)
- Creating discriminatory conditions (Clause 8 Part 1 Article 10 of the Federal Law “On Protection of Competition”)
- Disseminating false, inaccurate or distorted information that can inflict damages to an economic entity or harm its business reputation (Clause 1 Part 1 Article 14 of the Federal Law “On Protection of Competition”)
- Misleading with regard to the nature, method and place of production, consumer qualities, the quantity and quality of the goods or with regard to its producers (Clause 2 Part 1 Article 14 of the Federal Law “On Protection of Competition”)
- Incorrect comparison by an economic entity of produced or sold goods with the goods produced or sold by other economic entities (Clause 3 Part 1 Article 14 of the Federal Law “On Protection of Competition”).

1.3.1.10 Agreements on Joint Activities

57. The draft Law expands Article 27 of the Federal Law “On Protection of Competition” to concluding agreements by economic entities on joint actions if the total value of their assets (assets of their groups of persons) on the recent balance sheets exceeds 7 billion RUB or the total revenue of such

organizations (their group of persons) from sale of goods in the calendar year preceding the year of concluding an agreement exceeds ten billion RUB.

58. In view of possible economic effects of agreements on joint activities, the draft Law provides for several mechanisms enabling legal certainty in the course of such activity:

- 1) First, if large companies plan joint operations (asset value over 7 billion RUB), such companies undergo the procedure of approving economic concentration transactions
- 2) Second, if companies do not fall under the thresholds of approving economic concentration transactions, but wish to obtain a conclusion of the antimonopoly authority that an agreement complies with the antimonopoly law, they can petition a draft agreement to the antimonopoly authority according to the procedures specified in Article 35 of the Federal Law “On Protection of Competition”
- 3) Third, the draft Law excludes applying Article 11 of the Federal Law “On Protection of Competition” (cannot be recognized as a cartel) an agreement on joint activities approved by the antimonopoly authority
- 4) Forth, economic entities that do not fall under the thresholds of approving economic concentration can independently conclude an agreement on joint activities, guided by the criteria for allowed agreements, specified in Part 1 Article 11 of the Federal Law “On Protection of Competition”.

59. In view of the above, the proposed changes will lead to positive effects in antimonopoly regulation. Such changes will enable the antimonopoly authority to evaluate emerging positive effects due to subsequently concluding an agreement on joint activities and, if a decision is made to approve the transaction, reduce the risks for its participants, associated with prohibitions set by the antimonopoly law, in implementing the agreement.

1.3.1.11 Administrative Liability

60. The draft Law proposes a rule that a determination to transfer income, obtained through violating the antimonopoly law, to the federal budget, cannot be issued to a person subject to administrative liability under the procedures established by the law of the Russian Federation, as an administrative fine, multiple of the income gained by the violator from selling goods on the market where the violation was committed (Part 3 Article 51 of the Federal Law “On Protection of Competition”).

61. It is also proposed to make changes to Article 14.9 of the Code on Administrative Violations providing for a single-option sanction in the form of disqualification in repetitive violations of the antimonopoly law by officials of the authorities.

62. Since the draft Law expands the institution of warnings under Article 15 of the Federal Law “On Protection of Competition”, administrative sanctions specified in Part 2 Article 14.9 of the Code on Administrative Violations shall be applicable only to the persons that repeatedly violated the antimonopoly law.

63. The draft Law adds Note 5 to Article 14.32 of the Code on Administrative Violations specifying that for committing administrative violations under Parts 1 and 3 of this Article, an administrative fine imposed upon a legal entity is the lowest administrative fine specified for committing such administrative violations if the legal entity voluntarily reported to the federal antimonopoly authority, its regional body about concluding an agreement (cartel) prohibited by the antimonopoly law of the Russian Federation, and in totality fulfilled the conditions specified in the projected norm.

64. This norm is designed to decrease administrative liability for the persons that admitted committing an administrative violation; refused to take part or further take part in an agreement (cartel),

and information and documents submitted by such persons were sufficient to establish a fact of an administrative violation.

65. Based on administrative liability for failure to execute determinations issued by the antimonopoly body in the course of exercising control over state and municipal unitary enterprises and economic entities, over 50% of shares (stock) of which belong to the State, the draft Law makes changes to Article 19.5 of the Code on Administrative Violations, providing for administrative fines upon officials of the authorities and local self-government bodies for failure to execute a determination within the designated period.

1.3.2 Combatting Anticompetitive Agreements

66. FAS proposals on combating anticompetitive agreements come to amendments to No.144-FZ Federal Law “On Operational-Investigative Activities” of 12.08.1995 and to the Criminal Procedural Code of the Russian Federation. Amendments to the Federal Law allow law enforcement bodies to conduct operational-investigative activities upon requests from the antimonopoly bodies and forward them information about the results of such activities to be used in proving cartels. Amendments to the Code state that an indictment on criminal cases under Article 178 of the Criminal Code of the Russian Federation (preventing, restricting or eliminating competition) should be appended with a decision issued by a Commission of an antimonopoly body establishing a fact of violating the antimonopoly law.

67. The proposed amendments are aimed at improving the investigation practice on antimonopoly cases on the crimes under Article 178 of the Criminal Procedural Code of the Russian Federation, raising requirements to justification of criminal prosecution of the persons accused in committing relevant crimes, and at preventing incidents of unreasonable application of the criminal law to the persons that committed administrative violations due to complexity of interpreting the antimonopoly law.

1.3.3 The Market of Banking Services

68. Currently, No. 48-FZ Federal Law “On Guardianship and Custodianship” of 24.04.2008, the Family Code of the Russian Federation and No. 159-FZ Federal Law “On Additional Guarantees for Social Support of Orphaned Children and Children Deprived of Parental Care” of 21.12.1996 obligate some categories of the population, including socially disadvantaged groups, to deposit payments due to them (pensions, benefits, alimonies, compensations, etc.) only in the banks with at least half of their shares (stock) of the authorized capital owned by the Russian Federation, or specifically in the “Savings Bank of Russia” OJSC.

69. The draft Federal Law devised by FAS excludes the above restrictions, allowing citizens to deposit funds in any banks of their choice provided that the funds are insured within the system of mandatory insurance of private deposits.

70. Adopting No. 295767-6 draft Federal Law will exclude unreasonable competitive advantages in attracting monetary funds of particular categories of the population as deposits in three banks, no less than half of the shares (stock) of which are owned by the Russian Federation, enabling over 850 other banks participating in the system of private deposit insurance to compete in this segment.

71. In perspective it will facilitate activities of small and medium banks, favourably affect their market position and, as a consequence, will encourage development of the banking sector and strengthening of the banking system in general.

1.3.4 *Foreign Investments*

72. In 2013, one of the priorities was further improvement of the law on foreign investments in the Russian Federation in the part of eliminating excessive administrative barriers for foreign investors in exercising transactions with regard to economic entities of strategic importance for the national defence and state security, as well as clarification of some provisions of No. 57-ФЗ Federal Law “On the Procedures of Foreign Investments in Economic Entities of Strategic Importance for the National Defence and State Security” of 29.04.2008 (further on referred to as No. 57-ФЗ Federal Law).

73. No. 255707-6 draft Federal Law “On Introducing Changes to the Federal Law “On the Procedures of Foreign Investments in Economic Entities of Strategic Importance for the National Defence and State Security” devised by FAS (further on referred to as a draft Federal Law) adopted on 14.05.2013 in the first reading by the State Duma of the Federal Assembly of the Russian Federation.

74. Amendments to the current law on control over offering investments drafted by FAS and adopted by the State Duma of the Russian Federation in the first reading, provides for:

- Excluding from strategic types of activities use of infectious agents by economic entities, the main activities of which is related to production of food products
- Relieving from prior notification of intra-group transactions, particularly, with regard to sub-soil users, completed by foreign investors subordinated to the same person
- Excluding the need for prior approval of transactions by foreign investors that own 75% and more of the authorized capital of sub-soil users as well as intra-group transactions with regard to such strategic companies
- Possibility to extend the validity period of an earlier issued decisions on prior approval
- Excluding the need for approving transactions, when an acquirer is an organization controlled by the Russian Federation, the constituent territories of the Russian Federation, as well as citizens of the Russian Federation that do not have dual citizenship and are tax residents of the Russian Federation
- Clarifying the concept of “agreement” (that shall be understood as any arrangements and actions by foreign investors on joint voting in the governing bodies of strategic companies)
- Obligation of foreign investors to notify the authorized body on completing transactions pre-approved by the Government Commission.

2. **Enforcing Competition Law and Carrying Out Competition Policy**

75. To prevent and suppress anticompetitive practices, in 2013 FAS initiated 10,028 cases, on which 9597 antimonopoly violations were exposed. Overall, FAS imposed fines for 8.33 billion Rubles (around US \$ 261 millions).

2.1 *Efforts against Monopolistic Activities*

2.1.1 *Description of the Efforts of Competition Bodies and Courts of Law*

76. In 2013 FAS initiated 2565 cases upon signs of monopolistic activities (abusing dominance and anticompetitive agreements of economic entities) on goods and financial markets.

2.1.1.1 *Suppressing Abuses of Dominance*

77. In 2013 the antimonopoly bodies received 18,397 petitions about abusing dominant positions by economic entities. FAS opened 2401 cases (234 – upon initiatives of the antimonopoly bodies); in 679

incidents the proceedings were terminated due to unconfirmed facts of violations. Out of the remaining cases, FAS made 1955 decisions to recognize violations and issued 1 461 determinations. 1304 decisions (664 issued in 2013) were appealed. Courts pronounced legitimacy of 612 decisions in full and fully invalidated 238 decisions, partly invalidated 46 decisions, judicial proceedings on other cases have not been completed.

2.1.1.2 Suppressing Anticompetitive Agreements and Concerted Actions of Economic Entities

78. On 2013 the antimonopoly bodies received 1084 petitions about competition-restricting agreements and concerted actions of economic entities. Majority of petitions were filed in relations to increasing, decreasing or maintaining prices at tenders and auctions – 242; fixing (maintaining) prices (rates), discounts, mark-ups, surcharges - 147; imposing disadvantageous contract conditions – 236. Violations were recognized on 193 cases and 358 determinations were issued. 136 decisions were appealed (57 made in 2013); of which Courts pronounced legitimacy of 60 decisions, fully invalidated 2 decisions, 6 decisions was found to be partly invalid, others are being considered by Courts.

2.1.1.3 Practice of relieving from administrative liability for committing violations (leniency programme)

79. Under Russian law, only the first applicant can count on administrative liability for taking part in cartels.

80. In 2013, FAS received 21 administrative leniency applications for taking part in cartels and 3 administrative leniency applications on the cases initiated under Article 16 of the Federal Law “On Protection of Competition” (prohibiting competition-restricting agreements and concerted actions by the authorities).

81. Overall, 16 applicants were granted administrative leniency, of which 13 were for violating Article 11 (prohibiting competition-restricting agreements of economic entities) and 3 for violating Article 16 of the Federal Law “On Competition Protection”.

82. The main markets investigated on the basis of received applications are the markets of catching and selling fish, the markets of liquid caustic soda, trade and social sphere, etc.

2.1.2 *Typical Cases*

2.1.2.1 Suppressing abuse of dominance in the market of rail transportation services

83. Russian Railways, JSC that occupied a dominant position in the market of rail transportation services imposed on the Trading House RFP, LLC contract terms on organization of calculations not stipulated by the current legislation and unprofitable for the company.

84. Those included a payment for using cars, containers not belonging to the Russian Railways, JSC for the time they were on public railways waiting for their reception by owners of uncommon railways. A corresponding payment was collected by Russian Railways, JSC within the territory of the whole Russian Federation. As a result of consideration of the case, the specified term was excluded from all contracts offered to conclusion by Railways, JSC within the whole territory of the Russian Federation.

2.1.2.2 Suppressing Violations in Trading

85. FAS found that “METRO Cash & Carry” Ltd. violated Clause 1 Part 1 Article 13 of the Federal Law “On the Fundamental Principles of State Regulation of Trading Activity in the Russian Federation”.

The company created discriminatory conditions for 65 suppliers of fish and fish products by fixing contract prices for fee-based services in percentage of the total price of goods supplied under a delivery contract. The company also charged different payments for the same volume of services in comparison with other suppliers of fish and fish products.

86. FAS issued a determination to “METRO Cash & Carry” Ltd. to eliminate the antimonopoly violation.

87. The Cassation Court confirmed legitimacy of FAS conclusions.

2.1.2.3 Practice of Combating Competition-Restricting Concerted Actions of Economic Entities

- *“Fish-Norway” Case*

88. FAS investigated the circumstances of supplying farmed fish (salmon, trout) from Norway to Russia (the market volume – over 25 billion RUB (US \$ 800 millions)).

89. FAS exposed a market-dividing cartel in this segment (a breach of Clause 3 Part 1 Article 11 of the Federal Law “On Protection of Competition”). The main cartel participants were companies included in the “Russian Sea” and “North Company” Groups (in total 9 legal entities). The cartel was coordinated by the Association of Production and Trading Companies on the Fish Market. FAS found that Rosselkhoznadzor [the Federal Service on Veterinary and Phytosanitary Supervision] violated Article 16 of the Federal Law “On Protection of Competition” by concluding an anticompetitive agreement.

90. One of the cartel members took advantage of the “leniency programme”.

91. Investigation was conducted in cooperation with the Main Department for Economic Security and Anti-Corruption Enforcement of the Ministry of Interior of the Russian Federation.

92. In the course of the investigation, respondents challenged FAS actions at Courts and different instances. None of the arguments put forward by the respondents in their claims was confirmed.

93. Materials on officials of cartel members and Rosselkhoznadzor are forwarded to the law enforcement bodies.

94. Cartel members were fined over 225 million RUB (US \$7.25 millions).

- *“Fish-Vietnam” Case*

95. Russian importers concluded an anticompetitive agreement (cartel) that resulted in fixing prices for pangasius, dividing the market by volume of sales and purchases, and categories of buyers and sellers.

96. Such activities were coordinated by the “Association of Production and Trading Companies on the Fish Market” Non-Government Organization.

97. In the course of the investigation, as a result of FAS request, Vietnam authorities liquidated one of suspected participants of the anti-competitive agreement – Vietnam Regulatory Committee for pangasious export to the Russian market.

98. Cartel members were fined over 31 million RUB (US \$1 million).

99. One cartel participant took advantage of the “leniency programme”.

100. Materials on officials of economic entities are forwarded to the Ministry of Interior to initiate a criminal case under Article 178 of the Criminal Code of the Russian Federation.

- *“Salt” Cartel*

101. The main evidence on a case about a cartel on the table salt market was an anticompetitive agreement between “Grocery” Ltd., “TDS” CJSC, “Veles Group” Ltd., “Bryanks Salt” Ltd. and “TDS Rostov” Ltd. obtained by FAS during an unscheduled inspection of “Salina Trade” Ltd.

102. The subject of the agreement was dividing the market of wholesale supplies of table salt within the geographic boundaries of the Russian Federation. Members of the Agreement divided the market between themselves under the geographic principle, volume of sales, the range of sold goods and the categories of buyers, and agreed not to supply products to a region not assigned to them without a written permission from a company responsible for this region.

103. The Agreement was concluded between competitors that sell goods on the same market.

104. Cartel participants are fined over 4.6 million RUB (US\$150,000).

2.1.2.4 Cases with an International Aspect

- *“Yakutia” Case*

105. The case was initiated upon a request from the Investigation Department of the Investigation Committee of the Russian Federation in the Republic of Sakha (Yakutia).

106. The Ministry of Health Care of the Republic of Sakha (Yakutia), “No.2 Republican Hospital – Centre for Emergency Medical Treatment” State-Financed Institution of the Republic of Sakha (Yakutia), “Siemens” Ltd., Diatech S. A. (Switzerland), “Diatech A.G.” CJSC and “ROST MED” Ltd. concluded and executed an agreement between the authorities of the constituent territory of the Russian Federation and economic entities that resulted in eliminating competition at tenders for purchasing medical equipment.

107. Actions of the respondents were classified under Article 16 of the Federal Law “On Protection of Competition”.

108. As a result of the actions undertaken by the participants to the agreement, the medical equipment valued at 102.99 million RUB (US\$ 3.2 millions) was supplied for the needs of Yakutia health care at the price of 378.05 million RUB (US\$ 11.8 millions).

109. A case specifics is establishing the fact of participating a foreign legal entity – “Diatech S. A.” (Switzerland) in the anticompetitive agreement.

110. The cases on administrative violations are at the stage of initiating.

- *“Uzbekistan” Case*

111. Uzbek companies - “Rubicon Wireless Communication” Ltd. and a specialized branch of “Uztelecom” – “Uzmobile” concluded an anticompetitive agreement aimed at pushing “Uzdunrobita” Ltd. (Russia) – a 100% subsidiary of “MTS” OJSC away from the market of mobile communications in the Republic of Uzbekistan.

112. The cartel agreement was implemented in the Republic of Uzbekistan and affected competition on the markets of mobile communications in the CIS and the Russian Federation.

113. Actions of respondents were classified under Clause 4 Part 1 Article 11 of the Federal Law “On Protection of Competition”. For the first time Part 2 Article 3 of the Federal Law “On Protection of Competition” was applied to anticompetitive agreements, enabling to prosecute cartels formed outside Russia if they affect the state of competition in the Russian Federation.

114. Upon these facts, the Ministry of Interior initiated a criminal case under Article 178 of the Criminal Code of the Russian Federation.

2.2 State Control over Economic Concentration

2.2.1 Statistical Data on the Number, Scope and Type of Transactions, of which the Antimonopoly Authority was Notified and/ or which were Controlled under the Competition Law

115. In 2013 FAS considered 2258 pre-merger notifications and 1913 post-merger notifications from economic entities: granted (took note of) – 2231 pre-merger notifications (of which 105 with issuing determinations) and 1907 post-merger notifications; refused – 27 pre-merger notifications and 6 post-merger notifications. Since 30.01.2014 the procedure of post-merger notification is cancelled.

2.2.2 Typical Cases

2.2.2.1 Approving Petitions with Issuing Determinations

116. In the course of investigation, a petition of “SIA INTERNATIONAL LTD” CJSC (further on referred to as “SIA”) on purchasing voting shares of “Sintez” Kurgan Medicines and Medical Products Shareholding Company” OJSC (further on referred to as “Sintez”) and increasing its block of shares to 51.56%, FAS established that medicines with the following trade names are registered and allowed for medical use in the Russian Federation: “BUCILLIN-3”, “BUCILLIN-5”, “KLOMEGEL”, “LOFOX” (0.3% eye drops), the only producer of which is “Sintez”. No analogues of these medicines are registered in the Russian Federation.

117. Therefore, “Sintez” has the dominant position on each market of the relevant medicines, and as a result of the transaction “SIA” could obtain a possibility to determine the general conditions of exercising business activity by “Sintez” and the general conditions for circulating the above drugs on the relevant markets, which could have restricted access to the market of sale of the medicines to independent economic entities (counteragents) of “Sintez”.

118. As a result, FAS made a decision to grant the petition and simultaneously issue determinations to “SIA” and “Sintez” to exercise actions aimed at supporting competition. In particular, the producer must execute all contracts (agreements) concluded with the counteragents that are valid on the date of the transaction. Since the date of completing the transaction “Sintez” also must not reduce or terminate production and (or) supplies of goods without any economic or technological justification if the demand for the goods continues. All incidents of reducing or terminating production and (or) supplies of the goods should be reported to FAS in writing.

2.2.2.2 Granting Petitions

119. In November 2013, FAS granted the petition of “Publicis Group S.A”, Paris, France) on acquiring the rights enabling to determine the conditions of entrepreneurial activity of “Omnicom Group Inc.”, New York, the USA).

120. As a result of the transaction, “Publicis” global communications holding, that comprises multiple subsidiaries in various jurisdictions, will merge with “Omnicom” international company, which renders

advertising and communications services through its subsidiaries across the world to form “Publicis Omnicom Group”.

2.2.2.3 Refusal to Grant a Petition for Acquiring

121. FAS did not allow the companies - members of the group of persons of “Gazprom” OJSC to acquire over 50% voting shares of a generating company - “Quadra” OJSC.

122. Based on a detailed analysis of the petitioned transactions by FAS, ultimately, in view of capacity commissioning under the capacity supply contracts, if the transaction were completed, the share of the generating companies of the group of persons of “Gazprom” OJSC would reach 20.5% (installed capacity) within the boundaries of the “Centre” free power transfer zone¹ (18 constituent territories of the Russian Federation in the Central Federal District), which would form the dominant position in this area.

123. Also the level of economic concentration in the “Centre” free power transfer zone would increase from moderate to high (CR3 would go up from 61.9 to 71.9, and HHI would rise from 1894 to 2104). It would result in introducing the price ceiling in the “Centre” free power transfer zone in the course of competitive capacity take-off.

2.3 *State control over competition-restricting acts, actions, agreements or concerted actions of the federal executive bodies, the authorities of the subjects of the Russian Federation, local self-government bodies, other bodies or organizations assigned the functions or the rights of the above bodies, the Central Bank of the Russian Federation*

2.3.1. *Efforts of Competition Authorities and Courts*

124. In 2013 FAS investigated 4665 petitions about acts and actions of the authorities (Article 15). 2000 of them were filed regarding unreasonable prevention of activities of economic entities. 3576 cases were initiated. Violations were found in 2923 cases and 2222 determination were issued. 411 decisions were appealed, of which Courts pronounced full legitimacy of 92 decisions, partially valid – 9 decisions, fully invalid - 9, and on 301 cases judicial procedures continue.

125. In 2013 FAS received 382 petitions regarding anticompetitive agreements (concerted actions involving the authorities (Article 16). 57% petitions were filed about restricted market entry / exit. 438 cases were opened, including upon FAS initiatives. Violations were recognized on 361 cases and 264 determinations were issued. Of 67 appealed decisions, Courts pronounced full legitimacy of 8 decisions, 3 were found fully invalid and 56 decisions are under judicial consideration.

126. 2252 petitions were filed with regard to failure to comply with the antimonopoly requirements to competitive bidding (Article 17). Majority of the petitions (697) related to unreasonably restricting participation in bidding and to violating the procedures for determining the winner (389) and creating advantageous conditions for participating in bidding (371). FAS initiated 1237 cases. Violations were found in 1011 cases and 485 determinations were issued. 103 decisions were appealed. Courts pronounced full legitimacy of 32 decisions, one was found partly valid and 4 – fully invalid, while 66 are being considered by Courts.

¹ Free power transfer zone: a part of a unified power grid, within which there is no technical restrictions for transferring electric power from generators to consumers.

2.3.2 *Typical Cases*

2.3.2.1 Suppressing competition-restricting acts and actions of the authorities

127. FAS initiated a case against the Governor and the Government of the Samara region upon a petition of “METRO Cash & Carry” Ltd. and “Federal Product Company” Ltd.

128. On 29th December 2012, the Governor of the Samara region in the Address to the Members of Samara Regional Legislature and the residents of the region pointed out that it would be necessary to increase the share of Samara-made beverages on the market to 80% due to elements of monopolistic status of regional producers, which would considerably increase an inflow of excise duties to the regional budget. FAS issued a warning to the Governor of the Samara region on impermissibility of a calling to form a monopoly.

129. Responding to the warning, the Governor of the Samara region reported that the Government of the Samara region did not undertake any actions towards implementing his Address. Investigating the case, however, FAS established that to implement the Governor’s address, the Government of the Samara region had adopted normative legal acts of a constituent territory that did not comply with the antimonopoly law.

130. Respondents executed the determinations within the period designated by FAS.

2.3.2.2 Suppressing Competition-Restricting Anticompetitive Agreements with the Authorities

131. FAS investigated actions of the authorities of the Kemerovo region, “Russian Railways” OJSC and the largest rolling stock operators on pushing other operators away from the market of carrying coal from Kuzbass (over 20% of all rail freight in Russia).

132. In the course of the investigation, it was established that as a result of an anticompetitive agreement concluded by the respondents (a violation of Article 16 of the Federal Law “On Protection of Competition”) the number of market participants decreased from 230 to 16. Respondents claimed that they had been executing the Order of the President of the Russian Federation; however, FAS established that the President of the Russian Federation had not given any order to reduce the number of participants on the market in question.

133. FAS fined 14 rolling stock operators in total 2 billion RUB. Administrative cases against three other economic entities as well as officials of Kemerovo Regional Authority and “Russian Railways” OJSC are being investigated.

2.4 *Actions Aimed at Suppressing Unfair Competition*

2.4.1 *Efforts of Competition Bodies and Courts*

134. The overall number of petitions considered by FAS in 2013 to prevent and suppress unfair competition (Article 14 of the Federal Law “On Protection of Competition”) reached 2568. FAS initiated 1175 cases; on 923 of them violations were found and 531 determinations were issued.

135. 139 decisions made by FAS in 2012 were appealed. The Courts pronounced full legitimacy of 28 decisions, 1 was found partly invalid and 6 – fully invalid. The remaining 104 decisions are under consideration.

2.4.2 *Typical Cases*

2.4.1.1 Unfair competition related to acquiring and use of the exclusive rights for the means of product individualization

136. Investigating a case upon petitions of Richemont International SA (Switzerland) and “Vacheron & Constantine” (Switzerland) (further on referred to as the Petitioners), FAS found that actions of “VASHERON” Trading Alliance” Ltd. for acquiring and use of exclusive rights for the “VASHERON” combined trade mark under No.362861 Certificate, constituted an act of unfair competition under Part 2 Article 14 of the Federal Law “On Protection of Competition”.

137. FAS established that “VASHERON” Trading Alliance” Ltd. (further on referred to as the Respondent) acquired for individualizing the company’s goods and services the “VASHERON” verbal label registered as a trade mark, while the above person, members of its bodies knew about “VACHERON CONSTANTIN” registered mark. In the course of the investigation, FAS revealed the circumstances and obtained evidence indicating that the goods offered for sale by the respondent are marked by the “VASHERON” label as well as an image of the Maltese cross, which even more increases similarity between the trade mark of the Petitioners and the label used by the Respondent. Such use of the trade mark acquired by the respondent evokes associations with the internationally acclaimed Swiss manufacturer of watches and jewelry – “Vacheron & Constantin”. Leather accessories marked “VASHERON” also have the “Genève” label associated with the country of origin of the products of “Vacheron & Constantin”.

138. FAS concluded that choosing this verbal label for individualizing the products and commercializing the goods with a label similar to the trade mark of the Petitioners under such circumstances is aimed at using the reputation and popularity of the trade mark, affiliation of its consumers to high social status. This similarity could have incurred demand redistribution from other producers of goods similar to the goods of the Respondent – its competitors, to the benefit of the goods of the Respondent, while the above goods may not have the intrinsic qualities of the goods of the Petitioners and are nor related to achievements in the quality and reputation of the mark typical for “Vacheron & Constantin” goods, so company’s advantages on the market cannot be recognized justified.

2.4.1.2 Unfair Competition on the Market of Tobacco Products

139. FAS found that actions of “SaShiKo” Ltd. on the market of tobacco products of the Russian Federation on commercializing “OPAL”, “RODOPI”, “BT”, “INTER”, “TU-134”, “STUARDESSA” were contrary to Part 1 Article 14 of the Federal Law “On Protection of Competition”, and imposed fines upon the company and its Director.

140. Unfair competition pursued by the company took the form of offering for sale and commercializing (sales) in the Russian Federation of the above cigarette brands copying the package design of the cigarettes produced by “Bulgartabac Holding” AD. As FAS established, “SaShiKo” also unlawfully used the trading mark under No.188550 Certificate owned by “Bulgartabac Holding” AD.

3. The Role of Competition Bodies in Shaping and Implementing Other Policies

3.1 *Control over foreign investments in strategic sectors of economy*

141. Within the framework of the Federal Law from 29.04.2008 № 57 -FZ “On the Procedures of Foreign Investments in the Business Entities of Strategic Importance for the National Defence and State Security” (hereinafter - the Law № 57-FZ) in 2013, FAS considered 32 petitions of foreign investors, 12 of them required prior approval and were introduced for the consideration by the Government Commission on monitoring Foreign investments in the Russian Federation (hereinafter - The government commission

on foreign investments). Upon the review of petitions the Government Commission on Foreign Investment adopted:

- 10 decisions on preliminary approval of the petitioned transactions (including 5 decisions, upon condition of conclusion of agreements on the enforcement of the obligations set out by the Government Commission);
- 1 decision to deny preliminary approval of the transaction;
- 1 decision to extend the examination of the petition for 3 months.

142. FAS itself examined and returned to foreign investors 17 petitions as not requiring prior approval; 3 petitions were withdrawn due to changed intentions to complete the transactions in question.

143. All decisions on the considered petitions were issued by FAS in accordance with the requirements of the Law № 57-FZ and sent to the applicant under the appropriate procedure, neither of decisions on the petitions of foreign investors has not been appealed in the court by foreign investors (applicants).

3.2 Ensuring non-discriminatory conditions in the markets

3.2.1 Development of the Code of Conduct of car manufacturers and distributors» in cooperation with the Association of European Businesses in Russia (AEB)

144. Within the analysis of the situation on the market of cars, spare parts and maintenance service, FAS found that the practice of sales of cars and spare parts sold by car manufacturers and their exclusive distributors are often discriminatory to dealers and service centers. This leads to a substantial increase in the cost of spare parts and maintenance service.

145. In order to eliminate negative practices, AEB in coordination with FAS developed the Code, which defined the basic principles of cooperation between car manufacturers and distributors with dealers and independent service stations. The main objective of the development of this document - the formation of transparent, non-discriminatory rules for cooperation between auto distributors and dealers.

146. The Code has been signed by the majority of automakers and auto distributors and affect the interests of general public: Chrysler Russia, Ford Sollers Holding, General Motors, Hyundai Motor, Honda Motor Rus, Jaguar Land Rover, Kia Motor Rus, Mazda Motor Rus, MMC Rus LLC, Nissan Manufacturing Rus , Porsche Russland, Renault Russia, Subaru Motor, Suzuki Motor RUS, Toyota Motor, Volkswagen Group Rus.

147. For purposes of effectively implement of the principles, provided in the Code, as well as the development of self-regulatory institutions, market participants planned to create a body of consideration of pre-trial disputes between auto distributors, official dealers and independent service stations.

148. The Code is based on current standards of antitrust laws, comply with the principles laid down in the Federal Law “On Protection of Competition”, as well as the principles of the practice of antitrust regulation of the European Union.

3.2.2 Creating of regulatory environment in order to prevent unfair competition in the provision of consumer credits (loans)

149. In 2013, the Federal Law of 21.12.2013 No.135-FZ "On consumer credit (loan)" was adopted. The law regulates relations arising in connection with the granting credits (loans) to individuals in purposes not connected to their business activities. The law will get enforced on 01.07.2014.

150. Over the period 2012- 2013, the FAS Russia took an active part in development of the Federal Law "On consumer credit (loan)" and amendments to it, particularly in form of participation in meetings of the special working groups that consisted of both representatives of interested agencies and a bank services market.

151. In practice, all comments and suggestions of the FAS Russia aimed at ensuring fair competition by creditors (lenders) in the consumer credit market, as well as protection of rights of borrowers to obtain complete and accurate information about consumer properties and characteristics of the relevant credit products were taken into account in developing of the Law "On consumer credit (loan)".

152. The most significant suggestions among them were:

- To exclude the imposition on borrowers of additional paid services by creditors (lenders) directly, as well as by third parties by means of introducing a mandatory requirement to obtain further express consent of the borrower to get additional services;
- To inform borrowers by creditors (lenders) of information of the full cost of the loan under the agreement in the form that will allow borrowers to improve the perception of this information and provide the opportunity to compare services of credit granting (loans) offered by various creditors (lenders);
- The obligation for creditors (lenders) to inform the borrower before a loan agreement for the sum of 100,000 Rubles and more has been concluded about the possibility of default of its obligations under this agreement and imposing of penalties on him, in case during the year the total size of all existing debt obligations of the borrower would exceed 50% of its annual revenue.

153. According to the FAS Russia, the adoption of the law "On consumer credit (loans)" will positively affect the market of banking services and in prospects will promote the development of the banking sector and strengthen the banking system as a whole.

3.3 *Development of competition in the infrastructure industries*

154. The FAS Russia takes a range of activities aimed at promoting competition and developing economy in Russia.

3.3.1 *Telecommunications*

155. The MNP initiative (Mobile number portability) was implemented with the active participation of FAS.

156. MNP allows a subscriber to use services of the mobile radiotelephone of different operators using the same phone number. Thus, while introducing MNP, the key factors determining what a service provider to be chosen, will be a set and cost of services, quality of coverage and service, as well as openness and transparency in communications.

157. Concerning the implementation of MNP amendments to the Federal Law of 07.07.2003 No. 126-FZ "On Communications" were added (hereinafter - the Law on Communications), as well as necessary regulations governing the process of transferring subscriber numbers and operators interaction were approved. The service has been implemented since 01.12.2013.

158. One of the obvious results of implementing MNP services is increase in quality of customer service, preparation of proposals to limit costs of subscribers, reduce the waiting time for subscribers.

159. For further development of competition in the telephone communication market the Action Plan “Promotion of competition in the communications sector” (approved by the Federal Government of 03.02.2014 No. 130-r) provides extent of transfer of subscriber numbers to fixed networks within a subject of the Russian Federation.

160. Implementation of number portability for fixed-line operators will make it possible to implement a number portability between fixed and mobile networks, which further aggravate the competition, will encourage increase in quality of services, as well as contribute to the extension of new technologies.

3.3.2 *Transport*

161. Another initiative of the FAS Russia together with «Federal Passenger Company, JSC» (hereinafter - FPC) aimed at developing competition in rail transport in Russia was the introduction of the «dynamic pricing» in passenger rail transport.

162. The «dynamic pricing» program is used in the deregulated segment of passenger rail transport in the long-distance routes. Pilot project includes more than 100 fast trains and passenger trains running on 20 directions.

163. Due to introduction of dynamic pricing system in 2013 FPC observed increase in passengers in the deregulated transportation segment up to 3% in comparison with 2012, while, as in the deregulated segment of the other trains decreased up to 94.8% (according to the information «FPC, OJSC », December 2013).

164. According to the analysis of experiment on dynamic pricing, it is advisable to distribute it on routes where there is interspecies competition.

165. The FAS Russia independently and together with other interested federal executive bodies actively develop and implement measures to promote competition in the field of air transport.

166. Such measures as adoption of the Rules of access to services of natural monopolies in airports or approval by the Government of the Russian Federation roadmaps for the development of competition, development of regional transportation etc., which are carried out over a number of years, not only promote the development of the industry (for example, total growth of air travel was 87.9% in the years 2007-2013), but also contribute to the economic development of the country (the aggregate GDP growth in Russia in 2007-2013 was 19.4%).

3.4 *Development of the Competition Standard*

167. According to the Road Map for “Developing Competition and Improving the Antimonopoly Policy” FAS actively participated in the drafting of the Competition Standard in the Russian Federation.

168. Competition Standard objectives are:

- Establishing requirements for the implementation of the executive authorities of the Russian Federation aimed at creating conditions for the development of competition in the sectors of economic activity of economic entities of the territory;
- Ensuring the implementation of a systematic and consistent approach to activity on the development of competition on the whole territory of the Russian Federation, taking into account the specific functioning of the regional economy and markets;

- The formation of a transparent system of regional authorities in implementing effective and efficient measures to promote competition in the interests of the final consumer goods and services, business entities, citizens of the Russian Federation and the society as a whole;
- The creation of incentives and conditions for the development and protection of small and medium-sized businesses, elimination of administrative barriers;
- Provision of the key objectives, characterizing the development of competition in the markets of the Russian Federation.

169. In 2014, the development of Competition Standard was approved by the Government of the Russian Federation. In accordance with the request of the Government of the Russian Federation, the FAS Russia will assist in the pilot implementation of the Competition Standard in the Republic of Tatarstan, Khabarovsk region, Volgograd, Nizhny Novgorod, Ulyanovsk region and St. Petersburg.

3.5 *Development of international enforcement cooperation*

170. FAS continued to be actively involved in development of international cooperation, including cooperation within enforcement process.

171. Following the results of 2013, legislative base of the FAS Russia included 50 executive international documents on competition policy, which have made international enforcement cooperation between foreign competition authorities possible. Among them are agreements of “new level”, which assigned such forms of cooperation as consultations on specific cases investigated, information requests, consideration of interests in case investigations, coordination of actions in case investigations. Realization of such agreements allows the FAS Russia to conduct practical cooperation with foreign competition authorities while investigating specific transboundary cases and be actively involved in restraint of such anticompetitive behavior.

3.5.1 *Cooperation within integration associations*

172. In the period reviewed, the FAS Russia was actively committed to the process of creation of Common economic space of Republic of Belarus, Republic of Kazakhstan and Russian Federation (CES).

173. This activity was connected with further development of antimonopoly regulation system on the territory of CES.

174. One of the steps of this work was development and agreement of Model Law “On competition”, which after agreement by the Parties were approved by the Decision of Superior Eurasian economic board of heads of the states (decision dated 24, October, 2014 № 50).

175. Despite of the fact that the Model law is advisory in nature, it defines unified standards of competition protection in member states of CES. Model law includes key provisions on prohibitions of such anticompetitive actions as abuse of dominant position, anticompetitive agreements, unfair competition, anticompetitive acts, actions and agreements of public authorities, etc. Taking into account deep integration of member states of CES, Model law describes these prohibitions in details, specifies procedures and regulation criteria, and includes some special provisions concerning powers allocation between national competition authorities and Eurasian economic commission (EEC).

176. In 2013 a special attention was paid to development of Agreement on the Protection of Confidential information and Liability for its Disclosure in the Exercise of the European Economic Commission (EEC) its Powers of Monitoring the Compliance of the Common Rules of Competition (hereinafter – the Agreement).

177. The development of this Agreement is a key for transfer to EEC the power to investigate cases of violations of competition legislation on transboundary markets. Nowadays the Parties are conducting internal agreement procedures necessary for the signing of the Agreement.

178. One of the major steps of creation of antimonopoly regulation system in CES in 2013 is formation of special judge bench within the EurAzEC Court which would specialize in antimonopoly procedures. Such decision was also made by Superior Eurasian economic board on the level of heads of the states (decision dated 24 December 2013 №57).

179. The FAS Russia was actively involved in the process of development of the Treaty of Eurasian Economic Union (EEU). This treaty aims at compiling in code all the legislative base of CES, which includes agreements on competition policy.

180. This work has begun in November 2011 with adoption of the Decree on Eurasian economic integration by the Heads of three member-states. The Decree fastens the intention to code the legislative base and finish formation of EEU on this base until 1, January 2015.

181. Necessity of solving of this task was base for development of the Treaty in 2013. This process was in the preview of the Board of EEC² as well as Superior Eurasian economic board.

The provisions of agreements on competition policy, which were adopted in the process of creation of CES, are fixed in the text of the Treat. Adoption of the Treaty is planning to have place in May, 2014.

3.5.2 *Interstate Council for Antimonopoly Policy*

182. In 2013 international cooperation was actively developed with competition authorities of CIS countries, the basic platform for such cooperation is Interstate Council for Antimonopoly Policy (ICAP). The legal framework for the activity of the ICAP were established by the Treaty on Implementation of the Coordinated Antimonopoly Policy dated December 23, 1993. Sessions of the Council are held regularly – at least twice a year, and, as a rule, in the capitals of the CIS Member-Countries by turns.

183. In 2013 during the meetings of ICAP the issues were discussed which are of the major interest for all the competition authorities of CIS countries. In particular, the following questions were discussed: using of “soviet” trademarks of particular goods, experience of the FAS Russia on improving of quality of management and taking the certificate of quality management international standard ISO 9001:2008.

184. In is worth to note that 39th meeting of ICAP was confined to 20 Anniversary of ICAP foundation. Participants of this meeting were as existing members of Council as the former heads of competition authorities of CIS countries.

185. The Report “Interstate Council on Antimonopoly Policy: activity results and perspectives” was prepared to the Anniversary meeting of ICAP. The Report includes description of history of formation of ICAP, the main results of its activity, which include process of development of competition legislation in

² In accordance with Agreement on Eurasian economic commission (dated 18, November, 2011) the Board of the Eurasian economic commission exercises overall regulation of integration process in the Custom Union and Common economic space and overall management of the activity of Commission. The Board of EEC consists by one representative from each Party which is the deputy head of the national government and empowered in accordance with legislation of the Party. The representatives in the Board of EEC are the first Deputy head of the Government of the Russian Federation Igor Shuvalov, head of the Board; Sergey Rumas – Deputy Head of the Government of Republic of Belarus; Bakhidzhan Sagintaev – the first vice- Minister of Republic of Kazakhstan.

the CIS, development of practical cooperation of competition authorities and establishment of the Headquarters for Joint Investigations of the Violations of the Antimonopoly Legislation in the CIS Countries (hereinafter – the Headquarters). The results of the Headquarters activity on the analysis of air transportation market, roaming telecommunication market, food product retail market were highly evaluated by the Council of Heads of Governments of CIS.

186. Priorities of further activity of ICAP are defined: further harmonization of competition legislation of CIS countries, adoption of joint methodology and coordination of joint actions in the process of investigation of antimonopoly violations, first of all, on the markets of high social importance, development of cooperation with sectoral authorities of CIS aiming at injecting and developing of competition principles on relevant markets.

187. In 2013 traditionally results of the Headquarters' activity were discussed during two meetings of ICAP. This year the subject of analysis were markets of food products, grain, pharmaceuticals and oil and oil products.

188. Nowadays the work on the Report "On competition situation on the pharmaceutical markets of CIS countries" has been almost terminated. The Report was approved by the members of ICAP.

189. In the process of analysis of pharmaceutical markets of CIS countries, it was found that antimonopoly regulation in CIS countries has significant potential to development. Relevance of the development of competition on these markets relates to the dynamic development of the pharmaceutical markets and their direct influence on lives and health of CIS citizens. Degree of development of competition on pharmaceutical markets influence directly assortment and affordability of medical care.

190. Members of ICAP approved the results of Headquarters' activity and defined future areas, among which continuation of analysis of competition development on grain market, market of food products and pharmaceutical market of the CIS countries.

191. Another significant event of 2013 within the cooperation with CIS countries was assigning the Training Center of the FAS Russia in Kazan a status of the Basis Organization of the CIS countries for professional advancement and re-training in the field of antimonopoly regulation and competition policy.

192. Appropriate decision was made by the Council of the Heads of Governments of CIS in November, 2013.

193. In general, active work exercising by major of competition authorities of CIS countries in the sphere of suppressing of anticompetitive actions and agreements as well as development of competition legislation and enforcement taking into account best international experience were marked during the meetings of ICAP.

3.5.3 New Forms of Cooperation

194. To intensify international cooperation between competition authorities of different countries, in 2013 FAS undertook active efforts on studying development of competition on the socially important markets, which include:

- International Working Group on the issues of pricing on the markets of oil and oil and gas and the methods of their functioning (Co-Chairs – Russia and Austria) (further on referred to as the Oil Working Group)
- International Working Group on pharmaceuticals (Co-Chairs – Russia and Italy);
- International Working Group on roaming (Co-Chairs – Russia and Turkey).

195. Their objective is to devise coherent approaches to antimonopoly regulation on the relevant markets, draft recommendations on developing competition on such markets based on the experiences of different jurisdictions, devise specific measures to eliminate factors hampering competition development, and if necessary – carry out joint investigations.

196. In particular, the Oil Working Group was formed upon an initiative of FAS Russia and Austria's Federal Competition Authority in October 2011. The goals of the WG are to facilitate establishing price indicators that reflect fair prices for oil and oil products formed under market conditions; and support competitive pricing through organized forms of trading with oil and oil products.

197. The Oil Working Group has had five meetings. They focused on the methodology of analyzing the markets of oil and oil products; accounting for the specifics of wholesale and retail sales, specifics of the markets due to their oligopolistic structure and vertically integrated chains of relations between their participants. The Group also discussed monitoring of the markets of oil and oil products. In view of the social-and-economic importance of such markets, the parties continuously monitor them directly by the workforce and means of the antimonopoly bodies as well as within the system of state and industry-specific branch statistics. The Oil Working Group also looked at the pricing on the global markets and the influence of world prices upon the wholesale prices on the national markets of oil and oil products. In 2013 the Oil Working Group launched a database (the Platform) to exchange the main information related to the national markets of oil and oil products.

198. The Working Group for Research on the Competition Issues in the Pharmaceutical Sector (hereinafter referred as the "Pharma Working Group") was formed at the initiative of FAS Russia and the Italian Competition Authority in January 2012.

199. The key task of the Pharma Working Group is the elaboration of specific proposals on forming the competition environment in the pharmaceutical market and ensuring the availability of medicines to the consumers.

200. The Pharma Working Group operates through consultation and exchange of non-confidential information among the members of the Pharma Working Group during and outside of the meetings, through organizing meetings with the relevant state authorities, businesses and other interested persons.

201. The Pharma Working Group has had four meetings. They focused on methodology of defining the pharmaceutical market / market analysis; EU and EU-National pharmaceutical case studies; promotion of production and consumption of generic medicines.

202. During the last meeting the Pharma Working Group discussed issues regarding to unfair competition of the pharmaceutical companies (assignment of diverse and unconfirmed therapeutic characteristics to equal medicines produced in different jurisdictions) and to agreements concluded between companies-producers of originals and generics aimed at delaying of entry of competitive medicines at the corresponding markets.

3.6 *System-Wide Measures and Competition Advocacy*

3.6.1 *Public Consultations*

203. For the purposes of public discussions of the issues of antimonopoly regulation in various fields and objectivity and transparency of decision-making FAS is actively developing a system of Public Advisory.

204. Such Public Advisory at the FAS Russia comprise over 730 representatives of the Public Chamber of the Russian Federation, regional public chambers, “OPORA Russia”, “Business Russia”, the Chamber of Commerce and Industry of the Russian Federation, the Russian Union of Industrialists and Entrepreneurs, other organizations and associations. In 2013 236 sessions was held.

205. Moreover, during 2013 the FAS Russia took part in the series of different events for the purpose of competition advocacy. The innovation conception/model has been developed, which determinate principles, forms and mechanisms of national public associations cooperation with the FAS Russia including following elements:

- Conclusion of agreements between Russian non-government associations and the FAS Russia (agreement on cooperation with “OPORA Russia”, “Business Russia”);
- Development and realization of Plans of joint activities between Russian non-government associations and the FAS Russia (Plan of joint activities of “OPORA Russia” and the FAS Russia on 2013);
- Simplification of the order of consideration of request (Recommendations for the order of consideration of request from non-government associations);
- Creation of working groups focused on competition development in different economic sectors (for example, Working group on development and realization of the Road Map on “Development of competition and improvement of antimonopoly policy in the sphere of guard”);
- Participation in the working and expert bodies established under the FAS Russia and non-government organizations (working group of the FAS Russia and “OPORA Russia”, “Reducing the share of the government sponsored enterprises on the competitive markets”, Competition Council under the FAS Russia, General Council “OPORA Russia”, Board of “OPORA Russia” etc.).

206. The implementation of this idea provides to improve the FAS Russia cooperation practice with civil institutions, to ensure effective feedback, to build uniform notification practice and restraint of antimonopoly violations, to improve the FAS Russia activity to consider appeals, petitions and proposals from the Russian non-government organizations.

207. In order to invite professional market participants to the solving of issues of the development of competition in the commodity markets the FAS Russia has established a number of Expert Councils. There are expert councils on a variety of topics in the Central office and 41 Regional Offices of the FAS Russia.

3.6.2 *Annual Conference on “Antimonopoly Regulation in Russia”*

208. In October 2013 the V Annual Conference on “Antimonopoly Regulation in Russia” was organized in Moscow by “Promoting Competition” Non-Commercial Partnership and the “Vedomosti” newspaper with support by FAS. Over 400 attendees were involved in the work of the Conference.

209. The I Conference on “Antimonopoly Regulation in Russia” took place in October 2009 bringing together a broad spectrum of representatives of all branches of power, academia and business circles and the legal community.

210. Since 2009 the Conference on “Antimonopoly Regulation in Russia” has been a leading informational platform where the antimonopoly authority sums up the outcome of its annual work and prospective areas of competition policy are discussed. A considerable interest of the participants to the Conference agenda ensured its annual status.

211. Each Conference focused on specific issues to which the business community showed the most interest, so the Conference has gained popularity, each year attracting increasingly more participants.

212. In 2013 the Conference discussed the current situation with competition policy, particularly in view of international cartels investigation practices, antimonopoly regulation in financial sector and telecommunications, development of competition standards in Russian regions.

3.6.3 *An International Event – “Russian Competition Day”*

213. The fourth International Russian Competition Day took place in Irkutsk in September 2013 (further on referred to as the Competition Day).

214. The event was attended by representatives of competition authorities from the CIS member-states and from other countries across the world, several international organizations and integration associations (OECD, BRICS, UNCTAD, the Eurasian Economic Commission).

215. In 2014 the Competition Day will be in Saint-Petersburg, a Russian cultural capital, one of the most beautiful cities in the world.

216. The purpose of Competition Days is to advocate competition both at the national level in Russia and in the provinces, attracting attention to the issues of competition development, devising approaches to resolving them in view of the best world practices and intensifying integration of the Russian Federation in the global economic space.

3.6.4 *Creation of Books on pro-and anti-competitive regional practices*

217. FAS put forward an initiative for drafting books that would reflect the best practices of the authorities of the constituent territories of the Russian Federation and local self-government bodies (the "White book"), facilitating development of competition, as well as the worst regional practices of anti-competitive nature (the "Black book").

218. In 2013, FAS began the preparation of the first books for 2012 and 2013. In 2014 The Books of pro-and anti-competitive practices are published at FAS official web-site.

3.6.5 *"Russian Competition Law and Economics Electronic Research-to-Practice Journal"*³

219. "Russian Competition Law and Economics" Electronic Research-to-Practice Journal is published at the electronic resources of FAS Russia.

220. The main objective of the electronic publication is to facilitate development of competition in Russia as well as across the entire space of the Customs Union of Russia, Belarus and Kazakhstan. From the journal, the readers learn first-hand news about the antimonopoly law and enforcement practice, about the most complex and interesting cases heard at Courts.

221. The target audience of the journal includes officers of the antimonopoly bodies, representatives of the business-community, experts, consultants and members of the general public.

222. Since 2013 the digest magazine has been publishing in English⁴.

³ <http://fas.gov.ru/eljournal/>

⁴ <http://en.fas.gov.ru/e-journal/>

3.7 External Audit: ISO 9001:2008

223. In 2013, the FAS Russia during the surveillance audit confirmed compliance of the quality management system in the Central office of the international standard ISO 9001-2008. In addition, in 2013 three Regional offices of the FAS Russia successfully passed certification on conformity to requirements of standard ISO 9001-2008.

4. Resources of the Competition Authorities

4.1 General Resources (the Current Numbers and Changes within the Past Year)

4.1.1 Annual Budget (in the Local Currency and in the US Dollars)

224. Expenses for maintaining the Central Office of the Federal Antimonopoly Service and its regional Offices financed from the federal budget.

225. In 2013, FAS budget was approximately 2 366 022 700 Rubles or US \$ 73 938 209. In comparison with 2012, it decrease by around 3.02 % in Rubles or 6.03% in US dollars.

4.1.2 The Number of Employees (Man –Years)

226. The structure of FAS comprises the Central Office and 83 regional Offices operating in 83 constituent territories of the Russian Federation.

227. Employed at the Central FAS Office – 590.

228. As of 31.12.2013 the FAS personnel at the regional offices included:

- Economists:
 - 395 (the figure is tentative since some FAS officers exercise the functions of both lawyers and economists);
 - 37 employees have a doctorate degree in economics
- Lawyers
 - 780 (the figure is tentative since some FAS officers exercise the functions of both lawyers and economists).
 - 23 employees have a doctorate degree in law
- Other Professions: 166 (persons with technical and other education as well as incomplete college education).
- Supporting Personnel: 1073
- Total employees in the regional offices: 2414
- The total number of employees - 3004.

4.2 Staff (Man-Years) Involved in:

- Enforcement on Anticompetitive Practices (Excluding Unfair or Misleading Practices Covered by the Norms on Consumer Protection where Available)
- Merger Consideration and Enforcement
- Advocacy.

229. The total number of members of staff involved in enforcements is 2204. FAS does not gather statistical data with breakdown by different types of practices and enforcement areas.

230. The organizational structure of the Central FAS Office is built upon an industry principle, so it is not easy to specify the exact number of officers involved in enforcement in a particular area of antimonopoly regulation. For instance, FAS has the Department for Control over Electric Power Industry, the Department for Control over Fuel-and Energy Complex, the Department for Control over Social Sphere and Trade, and others.

231. At the same time FAS has a special Anti-Cartel Department that exposes cartels of special and precedent importance at the federal and interregional levels. In 2013, the Department had 20 staff members. The Department is also responsible for cooperation with law enforcement bodies on the issues of gathering evidence in the course of cartel investigations.

232. Other structural units of the Central Office and regional FAS bodies deal with suppressing all types of violations of the antimonopoly law, including cartels, and exercise control over economic concentration. Thus, the number of staff members investigating cartels is considerably higher than the staff of the Anti-Cartel Department.

4.3 The Information Period

233. The above information covers the period from 1st January to 31st December 2013.

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