

Unclassified

DAF/COMP/WD(2014)125

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

18-Nov-2014

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE

DAF/COMP/WD(2014)125  
Unclassified

**ROUNDTABLE ON CHANGES IN INSTITUTIONAL DESIGN OF COMPETITION AUTHORITIES**

-- Note by the Russian Federation --

**17-18 December 2014**

*This document reproduces a written contribution from the Russian Federation submitted for Item VIII of the 122nd meeting of the OECD Competition Committee on 17-18 December 2014.*

*More documents related to this discussion can be found at <http://www.oecd.org/daf/competition>.*

**JT03366440**

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## RUSSIAN FEDERATION

### 1. Introduction

1. Changes in institutional design have always been in a focus of the Russian competition authority. Empowering of competition authority with appropriate range of functions is a key feature of successful activity. The number of functions should be enough for creation of conditions for enhancing competition but do not be an excessive burden. Many years' experience of the Russian Federation in the sphere of empowering competition authority with appropriate set of functions shows that the process of institutional design is very dynamic. It is required to respond to all the challenges, standing before the national economic system. These are transparency and flexibility of institutional and functional structure of a modern authority, which are essential for effective protection of competition.

2. During the whole process of changes of institutional design, the Russian competition authority has done everything possible to improve its effectiveness. It has included improving the internal structure of the authority, composing the functions between departments, enhancing cooperation between the Central Office and Regional Offices.

3. The Russian competition authority is an integral part of the national system of public administration. According to the administrative traditions, the structure of public authorities on the federal level is affirmed by the President of the Russian Federation<sup>1</sup>. Statutes on particular federal executive authorities with naming their functions are affirmed by the Government of the Russian Federation.

### 2. Brief history of development of competition authority in Russia

4. In 1990 the place and role of the Russian competition authority in a system of federal executive authorities was defined for the first time<sup>2</sup>. Since that time until today many structural and functional changes took place.

5. The foundation of competition authority in Russia was laid in 1990 when Russia started took transition from the planning to market economy, privatization and de-monopolization of certain sectors. That time the State Committee of the RSFSR on antimonopoly policy and support of new economic structures was found<sup>3</sup>. The Committee was the central authority on implementing antimonopoly policy, development and regulation of markets, competition and entrepreneurship in different economic sectors. In general there were blocks of functions of the Committee: control over competition law compliance, control over advertising law compliance, control over compliance with law on protection of consumers' rights and promotion of private business, especially small and middle entrepreneurship.

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<sup>1</sup> At present time the structure of federal executive authorities is functioning in accordance with the Decree of the President of the Russian Federation dated April, 9, 2004 № 314 "On the system and structure of federal executive authorities".

<sup>2</sup> Law of the RSFSR dated 14.07.1990 "On republican ministries and government committees of the RSFSR"

<sup>3</sup> The Decree of the Ministers' Board of RSFSR dated September, 10, 1990 'Issues of the State Committee of the RSFSR on antimonopoly policy and support of new economic structures'; "Temporal Decree on the State Committee of the RSFSR on antimonopoly policy and support of new economic structures".

6. One of the major aims of the Committee was development of new antimonopoly legislation. In 1991 for the first time in the Russian history a law “On competition and restriction of monopolistic activity on commodities markets” was adopted. In the beginning of 1992, 82 Regional offices of the Committee were established. They were subordinated to the Central office, but executed independently a major part of its functions.

7. That time the Committee had already been drawn to the solution of problems which were not directly connected with antimonopoly policy (in its narrow sense): regulation of free economic zones, development of entrepreneurial activity, control over activity of commodity exchanges, monitoring of violations of intellectual property rights, etc. Anticompetitive activity in Russian law had a very wide definition including not only actions of undertakings but of public authorities as well. However a part of antimonopoly functions was out of the Committee’s responsibility. For example, development of competition in banking sector was under the supervision of the Ministry of finance.

8. In 1992 the law “On protection of consumers’ rights” was adopted. Mainly the Committee was empowered to control over its compliance.

9. In 1995 the Law “On advertising” was developed. It instituted the unified requirements to the advertisement on the territory of the Russian Federation and empowered the competition authority to supervise over compliance with advertising law and law on unfair competition.

10. Despite of the active renewal of legislative base, in the middle of 1990-s it became obvious that the antimonopoly legislation should be developed and the functions of the antimonopoly authority should be modernized. In 1997 the State Committee of the Russian Federation on antimonopoly policy and support of new economic structures was reformed to the State antimonopoly committee of the Russian Federation. In particular, the issues of support of business structures were excluded from the list of functions of competition authority. At the same time, competition authority took an active part in the process of deregulation and restructuring of all the sectors of natural monopolies in cooperation with newly created sectoral regulators.

11. In connection with the process of optimization of Russian system of public administration in 1998, a number of authorities were abolished, among them the State antimonopoly committee of the Russian Federation, the State Committee of the Russian Federation on support and development of entrepreneurship, the Federal service of the Russian Federation on regulation of natural monopolies in the sphere of transportation, the Federal service of the Russian Federation on regulation of natural monopolies in the sphere communications<sup>4</sup>. These structures were replaced by the Ministry of the Russian Federation on antimonopoly policy and support of entrepreneurship (MAP Russia). The MAP Russia was empowered with all the functions of the authorities mentioned above.

12. The MAP Russia was a part of the Government of the Russian Federation. The Minister was appointed and eliminated by the President of the Russian Federation upon the recommendation of the Prime-Minister.

13. The Ministry’s tasks were prevention, restriction and suppression of monopolistic activity and unfair competition, support of creation of market relations based on the development of competition and entrepreneurship, control over compliance with antimonopoly legislation, legislation on protection of consumers’ rights, legislation on promotion of entrepreneurship, advertising law and – within its competence - legislation on natural monopolies and commodity exchanges.

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<sup>4</sup> The Decree of the President of the Russian Federation dated September 22, 1998 № 1142 “On the structure of federal executive authorities”.

14. Moreover, the Ministry faced the problem of modernization of legislative base, which lead to amendments and additions to the current legislation. As it was noticed in the OECD report in 2004, relatively quick changes in the structure of competition authority and the number of challenges it faced, permanent amendments to the antimonopoly legislation and the volume of enforcement functions itself complicated development of legal standards and contributed to the diversion of resources from the solution of key problems in the sphere of competition<sup>5</sup>. Low threshold limits of the merger control, absence of the complex regulation of natural monopolies and vast jurisdiction related to the activity of public authorities made a workload, which could be hardly processed, and included problems, solution of which had little influence on competition. All of that became the reasons of further modernization of competition authority in 2004.

15. In 2004 in the framework of new reform of public administration the Ministry was abolished, its functions were partly delegated to other authorities. Functions of competition authority were deputed to the Federal antimonopoly service of the Russian Federation (FAS Russia). The FAS Russia is currently empowered federal executive authority, executing its functions in the sphere of adoption of legislation and control over antimonopoly law compliance, natural monopoly law compliance (in part of instituted competences of competition authority), advertising as well as control in the sphere of public procurement contracts for goods, works and services for state and municipal needs<sup>6</sup>.

16. Structural and functional transformations of Russian competition authority could be illustrated with the further Table:

**Table 1. Functions of competition authority in the Russian Federation from 1990 to the Present**

Period	Title	Major functions and its brief description
September 1990 – May 1999	State Committee of the RSFSR on antimonopoly policy and support of new economic structures	<ul style="list-style-type: none"> <li>• Initiating and realization of programs of support of competition in different economic sectors.</li> <li>• Control over antimonopoly law compliance:               <ul style="list-style-type: none"> <li>– Detecting and suppression of monopolistic activity;</li> <li>– Control over economic concentration;</li> <li>– Control over anti-competitive decrees and actions of government units;</li> <li>– Suppression of unfair competition.</li> </ul> </li> <li>• Control over advertising law;</li> <li>• Control over compliance of legislation on protection of consumers' rights.</li> </ul>
	From 1997 – State antimonopoly committee of the Russian Federation	
May 1999 – March 2004	Ministry of the Russian Federation on antimonopoly policy and support of entrepreneurship (MAP Russia)	<ul style="list-style-type: none"> <li>• All the functions mentioned above, and also in the framework of competences established by the Government of the Russian Federation:               <ul style="list-style-type: none"> <li>• Control over legislation on commodity exchanges.</li> <li>• Control over legislation on natural monopolies:                   <ul style="list-style-type: none"> <li>– State regulation and control over activity of subject of natural monopolies in telecommunication sector (services on public electric and post communications);</li> <li>– State regulation and control over activity of subjects of natural monopolies in transportation sector.</li> </ul> </li> <li>• State support of small entrepreneurship.</li> </ul> </li> </ul>

<sup>5</sup> Antimonopoly legislation and competition policy in the Russian Federation. OECD expert evaluation. - 2004.

<sup>6</sup> Decree of the Government of the Russian Federation dated June, 20, 2004 № 331 “On affirmation of Statute on Federal antimonopoly service”.

March 2004 – present time	Federal antimonopoly service (FAS Russia)	<ul style="list-style-type: none"> <li>• Initiating and realization of programs of support of competition in different economic sectors.</li> <li>• Control over antimonopoly law compliance: <ul style="list-style-type: none"> <li>- Detecting and suppression of monopolistic activity;</li> <li>- Control over economic concentration;</li> <li>- Control over anti-competitive decrees and actions of government units;</li> <li>- Suppression of unfair competition.</li> </ul> </li> <li>• Control over natural monopolies law compliance (in terms of non-tariff regulation).</li> <li>• Control over advertising law.</li> <li>• Control over law on public and municipal procurement.</li> <li>• Control over trade legislation compliance.</li> <li>• Control over compliance of legislation on foreign investment to the strategic Russian entities.</li> <li>• Control over compliance over electric energy legislation (in terms of competences of the FAS Russia).</li> <li>• Control over compliance of sectorial legislation in terms of open procedures of sale of government property and rights).</li> </ul>
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17. Unlike the MAP Russia, the FAS Russia directly subordinates to the Government of the Russian Federation, but is not a part of it. On the one hand, it downgrades the status of the FAS Russia in comparison with the previous one. On the other hand, because the FAS Russia is empowered to control over relevant activities of public authorities, this fact provides an opportunity for competition authority to be more independent while initiates the proceedings against public authorities, first of all, federal ones.

18. Thus, at present time the FAS Russia is a multifunctional authority, which, along with its 84 Regional Offices, exercises a wide range of functions differ greatly from the competences of “classical” competition authority.

### **3. The FAS Russia at the modern stage**

19. As a result of transformations, mentioned above, the FAS Russia today has a number of competences, which gives a synergetic effect in practice, despite of its quantity and, from the first glance, relative mismatch. They design an effective base for creation of competitive economy. By the beginning of IV quarter of 2014 the FAS Russia exercises the following functions:

- State regulation over compliance of economic entities with the competition law;
- Control over observing competition rules by the authorities, including control over state preferences (state aid);
- Control over public procurement, including the sphere of defense and security;
- Control over natural monopolies’ activity (excluding tariff regulation);
- Control over allocation of property, resources, rights on a competitive basis stipulated in the sectoral legislation;
- Control over advertising law compliance;
- Control over trade legislation compliance;
- Control over foreign investments in strategic industries;
- Control over unfair competition;
- Control over compliance with competition rules in the sphere of intellectual property;
- Specific control functions in defense industries and electricity sector.

20. The wide range of competences of the FAS Russia allows reacting quickly to the appearance of anti-competitive practices in many sectors: trade, commodity exchanges, advertising, activity of public authorities in all the economic spheres, including security and defense, natural monopolies and financial markets. All these spheres are core for effective market functioning and creation of competitive environment.

21. The FAS Russia is not limited with exercising functions on control and supervision over compliance with legislation; it actively participates in development of sectoral and functional policies on many markets, promoting their pro-competitive orientation.

22. As for the decision-making process, the FAS Russia is the only authority in Russia empowered with control over compliance with antimonopoly legislation in all the economic spheres without any exceptions. The FAS Russia is an authority of the “full range”, responsible for dealing with complaints and appeals, collection of evidences, decision making, issuing notifications and prescriptions, control over execution of previously issued prescriptions, imposing administrative sanctions, protection of state interests on the cases of violation of the antimonopoly legislation in courts.

23. In the process of expanding of functions of the FAS Russia, the internal structure of the authority also needs to change. At present, the FAS Russia's structure consists of sectoral and functional divisions. Depending on the priorities of the activity, new departments are created in the structure of the FAS Russia. For example, in 2008 fighting against cartels was proclaimed as one of the most important activity of the competition authority. Aiming at execution of this function in the most effective way, a new structural department was created – Anti-cartel Department.

24. Nowadays the process of competition development in the Russian Federation goes very fast. The Government of the Russian Federation adopts new policy documents specifying this process. In 2012 Plan of actions (“road map”) “Competition development and improvement of antimonopoly practice” was adopted<sup>7</sup>. The subject of the “Road map” is activities in the framework of so-called national entrepreneurial initiative, and have a special importance for competition development. The list of activities of the “road map” includes that ones which could influence the institutional design of the authority. For example, implementing a settlement system in regard to decisions of Regional Offices; realization of a pilot project on distant consideration of cases of violations of the antimonopoly legislation.

25. In the framework of execution of this document a special attention was paid to competition development and stimulation of pro-competition activity of regional authorities of the Russian Federation. With this aim the FAS Russia created “white and black books” of pro-competitive and anti-competitive regional practices. Relatively, the White book includes the best practices of regional and municipal authorities, the Black book – the worst practices of anti-competitive nature. These “White and Black books” are publicly available in the Internet. Publication of such a data helps to reduce the number of violations of the antimonopoly legislation by public authorities and stimulates their pro-competitive activity. “White and Black books” is an important activity of competition authorities connected with competition advocacy. It helps Regional offices of the FAS Russia to unify enforcement practice and to disseminate examples of the most interesting pro-competitive initiatives.

26. One of the major tools of implementation of the best practices of competition development in the regions of the Russian Federation is elaboration of the Standard of Competition Development in the regions of the Russian Federation. The Standard was developed with participation of the FAS Russia and Ministry of economic development of the Russian Federation and adopted by the Government of the

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<sup>7</sup> Decree of the Government of the Russian Federation dated December, 28, 2012 № 2579-r “On adoption of Plan of actions (“road map”) Competition development and improvement of antimonopoly practice”.

Russian Federation. In 2014 the Standard was incorporated in a number of regions. It is planning to implement the Standard in all the Russian regions in 2015. This is a document which describes new work of regional governments on development of competition should be done: how to set priorities and goals of development, how to elaborate indicators of development, how to organize and institutionalize cooperation with the main stakeholders.

27. One of the tools of implementing regional competition policy is agreements on cooperation signed between higher regional authorities and the FAS Russia. These agreements aim at creation of conditions for competition development on commodities markets. Agreements assign mutual consultations, working meetings, workshops and information exchange aiming at elimination of administrative barriers and effective functioning of commodities' markets. Moreover, Agreements assign cooperation in the sphere of public procurement contracts for public and municipal needs, also in the sphere of control over activity of natural monopolies. By October, 2014 the FAS Russia has signed 29 such agreements.

28. Such agreements are signed with a number of federal executive authorities. A part of them allows only the exchange of information and participation in specific events while some of agreements clearly define mechanisms of cooperation in the process of execution of some functions (for example, agreements with the Ministry of Internal Affairs of the Russian Federation, Investigative Committee of the Russian Federation define the order of joint actions in conducting down raids, investigation of cartels and other dangerous violations).

#### **4. Conclusion**

29. Today the FAS Russia is an active partner in international cooperation. International cooperation with foreign competition authorities is one of the priorities of the current development of the FAS Russia. Increasing number of bilateral and multilateral agreements and memorandums nowadays goes into the sphere of practical cooperation. The FAS Russia conducted a number of international investigations on the facts of violation of the antimonopoly legislation along with foreign competition authorities. For example, the FAS Russia investigated the fish cartel case (on supply of pangasius from Vietnam to the market of the Russian Federation) with active support of Competition Authority of Vietnam. The case was initiated against number of Russian companies and the "Association of Production and Trade Enterprises on Fish Market" Non-Commercial Organization (the Association) upon signs prohibited coordination of economic activities of market agents. The FAS Russia suspects that the Association coordinated such activities of economic entities – competitors, which resulted in dividing the market among themselves the volumes of purchasing pangasius. The similar case was considered related to a number of salmon suppliers from Norway.

30. Moreover, nowadays the FAS Russia is an initiator of development and signing of International Convention "On Fighting against Cartels".

31. This way of development of the FAS Russia was pointed out by the journal Global Competition Review which outlined: "Since its inception a decade ago, it has become a major presence on the global competition enforcement landscape and a partner in growing number of complex international investigations"<sup>8</sup>.

32. The high valuation of the Russian competition authority proves that despite of a wide range of functions and limited resources, the FAS Russia could reach that condition when "non-classical" functions are not an excessive burden but make a synergetic effect. The process of development of institutional structure of the FAS Russia has an evolutionary nature; it changes and adapts facing new challenges of

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<sup>8</sup> Rating Enforcement 2013 // Global Competition Review, 2014.

economic environment and tasks of public administration, taking in mind previous developments and achievements. Competition authority gains new functions, leaving the excessive ones. All the new functions are considered to be one more step towards effective authority's activity. The Head of the FAS Russia during the Plenary session in the framework of annual international event "Russian Competition Day" (September 8, 2014, St. Petersburg, Russian Federation) said: "for Russia and for major part of large countries in transition from socialistic methods to market economy it is necessary to have a powerful integrated authority which could face the attacks of conservative structures which don't want competition. For this purpose we should be powerful and strong, should have a wide range of functions, all the arrows should fly to one goal and this goal should be competition development in practice".

33. Nowadays the FAS Russia is a powerful authority of antimonopoly control represented by the Central Office and 84 Regional Offices which have their own functions and competences. The FAS Russia as well as its Regional Offices are independent in decision-making. In the structure of public authorities the FAS Russia is reporting to the Government of the Russian Federation.

34. Because of the complexity of Russian economic system and appearance of new economic challenges, the FAS Russia is always in the process of actualization of current antimonopoly legislation. Today the lower chamber of Russian Parliament (State Duma of the Federal Assembly of the Russian Federation) considers a number of amendments to the current competition legislation (so-called "forth antimonopoly package"). These amendments, among others, clarify functions of competition authority. Among the legislative initiatives, there are those which change institutional design to some extent. For example, the empowerment of collegial body of the FAS Russia (Presidium and Appeal Collegium) with the function to revise decisions of Regional Offices and to adopt guidelines of antimonopoly legislation.

35. The powers and structure of the FAS Russia are changing not only under the influence of economic challenges, but also according with reforming the structure of the Russian government as a whole. Thus, the last example of the functional changes of the competition authority became the delegation of power of the disbanded Federal Service for Defense Contracts (Rosoboronzakaz) in a part of pricing control in the markets of defense products and control tendering procedures for conclusion contracts on supply of products for the defense and security needs.

36. Recently, clarifying of powers and terms of reference of the competition authority have launched intensive public debate. Moreover variety of expert' opinions is very wide – from creation of the "indiscrete antimonopoly authority" under classical functions (abuse of dominance, cartels and mergers) to further expanding the powers by joining the tariff regulator (The Federal Tariff Service).