

Unclassified

DAF/COMP/WD(2015)3

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

29-May-2015

English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

DAF/COMP/WD(2015)3
Unclassified

HEARING ON OLIGOPOLY MARKETS

-- Note by the Russian Federation --

16-18 June 2015

This document reproduces a written contribution from the Russian Federation submitted for Item 5 of the 123rd meeting of the OECD Competition Committee on 16-18 June 2015.

More documents related to this discussion can be found at www.oecd.org/daf/competition/oligopoly-markets.htm.

JT03377361

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

English - Or. English

RUSSIAN FEDERATION

1. Introduction

1. Major markets of the Russian Federation at the federal, regional and municipal levels, except for some commodity markets, have oligopoly features and characterized by a small number of competitors. According to the results of analysis, conducted in 2012, municipal retail markets of medicines, medical devices and relevant products were highly concentrated in 88 municipalities; retail market of gasoline of all brands in 2014 was of high concentration in 25 regions of the Russian Federation and in 754 municipalities; diesel fuel retail market had high level of concentration in 27 regions and 857 municipalities. In 2013, it was found out that federal market of raw oil was also highly concentrated. That is why specific issues of oligopoly markets concerning violation of antimonopoly legislation in the form of concerned actions (collective dominance) and restrictive agreements between economic entities are the reality of Russian economy and a problem of Russian competition authority.

2. Problems of oligopoly markets' regulation

2. Identification of oligopoly markets is a subject of market analysis that is conducted by competition authority during the case investigation, in the process of control over economic concentration or on the scheduled base. It requires certain resources but it is not a methodological or organizational problem.

3. Oligopoly markets have not only structural features such as few number of competitors, but also behavioral ones that could lead to violation of competition rules. Antimonopoly regulation of oligopoly markets comes on three main directions:

- prohibition of abuse of dominance, especially in the form of setting of monopolistically high or low prices;
- control over economic concentration;
- prohibition of restrictive agreements and concerned actions.

4. **Dominant position** itself is not illegal. That is why for answering the question if any threat to competition on the market exists, it is necessary to analyze not only a market structure but also the relations of competitors on this market. It should be considered if they are able to influence collectively on the general conditions of commodity circulation and if they are able to remove other players from the market, make the entrance to the market more difficult.

5. It should be noted that not always such relations are illegal from antimonopoly point of view (otherwise they would be considered to be cartel agreement' parties). On the contrary, they could be very constructive, for example, if companies jointly participate in scientific research or intend to use benefits jointly. Such relations are the necessary tool for defining if independent economic entities should be treated as one monopolist.

6. If finally, such relations would be established and parties would be found to be dominant, the next step will be establishing the fact of abuse of such collective dominance.

7. Three situations could happen on the oligopoly market with few numbers of competitors. They are the following:

- all the companies on the market abuse their dominance;
- at least one company does not abuse its dominance;
- only one company abuses its dominance while others behave competitively.

8. The Federal law dated 26 July 2006 No. 135-FZ “On Protection of Competition” (hereinafter – the Law on protection of competition) establishes the following features of dominance of every entity from several economic entities (except for financial organizations):

- the aggregate market share of not more than three economic entities, market share of any of them are more than market shares of other market participants, exceeds 50 per cent or aggregate market share of not more than five economic entities, market share of any of them are more than market shares of other market participants, exceeds 70 per cent (this provision is not applied if market share of at least one abovementioned economic entity is less than 8 per cent);
- during a long period (during not less than a year or in case this period is less than a year during the period of the relevant goods market existence) the relevant sizes of such economic entities' shares are stable or subjected to insignificant changes, as well as access of new competitors to the relevant goods market is impeded;
- the commodity sold or purchased by economic entities cannot be substituted with another commodity in the process of consumption (including consumption for production purposes), growth of the commodity price does not condition corresponding to such growth reduction in demand for this commodity, information about the price, conditions of selling or purchasing of this commodity in the relevant goods market is available to indefinite group of persons.

9. The FAS Russia in its practice has examples of identification and suppression of abuse of dominance by economic entities on oligopoly markets, in particular, on the market of oil and oil products. In 2007-2008 during the consideration of the case against TNK-BP company on violation of Article 10 of Law on protection of competition the FAS Russia established the following: The aggregate share of GAZPROM JSC, NK-Rosneft JSC, LUKOIL JSC, TNK-BP JSC on the market of gasoline and aviation kerosene exceeded 70 per cent, share of every company exceeded 8 per cent, shares of other market participants were less than shares of abovementioned companies:

- during a long period of time (in particular, during 1.5 years) market shares of companies had changed insignificantly;
- access of new competitors to the market was impeded;
- the commodity sold or purchased by economic entities cannot be substituted with another commodity;
- growth of the commodity price did not condition corresponding to such growth reduction in demand for this commodity;
- information about the price, conditions of selling or purchasing of this commodity in the relevant goods market is available to indefinite group of persons.

10. In accordance with Article 5 of the Law on protection of competition, the FAS Russia established that these companies occupied dominant positions on the market of gasoline and aviation kerosene. It became a base for initiation of a number of cases against every company. The cases were investigated in such a way that other companies of the oligopoly market did not participate in proceedings. During 2008-2012 the FAS Russia considered “three waves” of cases against oil companies. The total fine amounted more than 500 mln EUR.

11. **Control over economic concentration** (except financial organizations) is performed in the form of the prior consent by competition authority of the merger of commercial organizations if the aggregate value of assets thereof (assets of companies of their group) in accordance with accounting balance sheet exceeds seven billion Rubles or if the aggregate revenues from sale of commodities for the calendar year preceding the merger exceed ten billion Rubles, or where one of organizations is included into the Register of economic entities because its share in a particular goods market exceeds thirty five percent. The last condition will be eliminated after adoption of the “forth antimonopoly package” of amendments to Russian antimonopoly legislation. In accordance with the Decree of the Government of the Russia Federation dated 28 December 2012 No. 2579-r on adoption of the Plan of Actions (“the road map”) “Development of competition and antimonopoly policy” the exceeding function of the Register will be excluded aiming at avoiding excessive administrative burden on economic entities.

12. Significant increase in assets value or in aggregate revenue, that are the lower frame of antimonopoly control, was made for promotion of freedom of actions of medium and small companies and decrease of burden on SME. However this measure did not exclude the opportunity of influence of competition authority on keeping (or decrease) of economic concentration on oligopoly markets at regional and municipal levels. The reality of Russian economy is that the oligopoly nature of regional and municipal markets cannot be changed by introduction of detailed control over economic concentration. Existence of few players on such markets are defined and limited by balance of demand and supply.

13. Another problem is identification and proving of **anticompetitive agreements** on oligopoly markets. However few market participants, high entrance barriers and informational transparency of the market could lead not only to a classic cartel but also to a tacit collusion (concerned actions).

14. In accordance with Article 11 of the Law on protection of competition, the FAS Russia exercises its functions on suppression of restrictive anticompetitive agreements and concerned actions through initiation of cases and issue of regulations on the bases of complaints of economic entities as well as conducting dawn raids and inspections. The FAS Russia is able to hold economic entities to administrative liability in accordance with the Administrative Code of the Russian Federation and to criminal liability in accordance with Article 178 of the Criminal Code of the Russian Federation. The introduction of criminal liability was necessary in order to create atmosphere of infeasibility and inexpedience of cartels.

15. Competition authorities usually face the practical problem of cartels’ proving. Difficulties of evidence’ collection result from the fact that the active violators of competition legislation, after analyzing the enforcement practice of previous years, usually exclude documents and other material evidences of the agreement. As a result, facts of signing formal (documentary) agreements are very rare. The FAS Russia considers documents, data, information in written and oral form, e-mails as evidences, and then evaluate such evidences as a whole.

3. Methods of development of effectiveness of oligopoly markets' regulation

3.1 *Market analysis*

16. The FAS Russia exercises the annual scheduled study of socially important commodity markets. Methodology of analysis is developed in accordance with the Order of conducting analysis of competition situation on commodity markets. Administrative barriers of entrance to the market and influence of public authorities on the market are defined and evaluated during market analysis. If the FAS Russia identifies violations of antimonopoly legislation, it could initiate an investigation or introduce some other enforcement measures. In 2015-2016, the following markets are planned for analysis: wholesale markets of natural gas, gasoline, diesel fuel, electricity, mineral fertilizers, poultry meat, pork meat, salmon fish-breeding, primary market of fish-out crabs, tobacco. Most of these market are oligopolies in major Russian regions and municipals.

3.2 *International activity for study competition issues on oligopoly markets*

17. In order to conduct in-depth study of competition issues on socially important markets, many of which have oligopolistic nature, the FAS Russia jointly with foreign competition authorities creates International Working Groups. In 2011 the International Working Group on Investigating Issues on Pricing in the Oil and Oil Product Markets and Methods of their Functioning (co-chaired by the FAS Russia and the Austrian Federal Competition Authority) was created. The purpose of this Working Group is to promote the formation of the price indexes reflecting the fair markets price of oil and oil products, and ensuring competitive pricing within existing trade forms of oil and oil products.

18. Another example is creation of International Working Group on international roaming telecommunications co-chaired by the FAS Russia and Competition Authority of Turkey. Telecommunication market in many countries is oligopoly and characterized by few number of competitors. During the work of the Working Group on roaming "Road Map" and Principles of fair roaming were formulated:

- Effective competition of interacting operators - partners, including during registration of guest users in each country;
- Interdependence of the measures undertaken for development of the competition and ensuring balance of interests of telecom operators and subscribers;
- Non-discrimination of subscribers of the interacting operators when receiving communication services in the country of registration and in roaming;
- Non-discrimination of conditions for partner operators - when rendering services of termination (end of a call) from networks of foreign operators and operators in the country of registration.

19. Implementation of "Road map" is supposed to be in two stages. The first stage of implementation is about realization of principles of fair roaming by operators on a voluntary basis. In case if the aim will not be achieved that means there will be a lack of significant dynamics on reduction of tariffs in roaming, obtaining information on lack of interest of participants of the market in realization of "The principles of fair roaming", the second stage of "Road map" will be realized in carrying out joint investigations, legislative fixing of "the principles of fair roaming" and empowering of national regulators of communication with control over their observance.

20. Thus, the FAS Russia develops not only national tools of oligopoly' regulation, but also makes certain steps to creation of common methods to regulation of such markets along with foreign competition authorities.

4. Conclusion

21. The FAS Russia pays a priority to creation of methods that will help to develop competition and overcome oligopolistic nature of some markets in Russian economy as well as to decrease possibility of cartels and concerned actions' existence. The FAS Russia focuses on control over economic concentration and prohibition of abuse of dominance, which is very likely to oligopoly markets at federal, regional and municipal levels.

22. The Government of the Russian Federation is also actively involved into competition development on socially important markets. With this aim the Government of the Russian Federation adopted the Decree of the Government of the Russia Federation dated 28 December 2012 No. 2579-r on the Plan of Actions ("the Road map") "Development of competition and antimonopoly policy" The subject of the Road map is competition development through realization of number of systemic and sectoral measures. At present 80 per cent of measures of the Road map have already been implemented.

23. Some regions of the Russian Federation adopted their own Road maps in order to overcome oligopolistic nature of markets and to solve the relevant problems.

24. The FAS Russia develops complex approach to regulation of oligopoly markets. Measures on suppression of violations of antimonopoly legislation on oligopoly markets are prepared not only at federal level, but also at the level of regions and municipalities. It shows the high importance of the problem and understanding of necessity of competition developments by all public authorities in the structure of Russian public administration. Moreover, the FAS Russia attracts attention of international competition community to problems of oligopoly markets and invites all the competition authorities to cooperation in order to develop common methods and tools of regulation of oligopoly markets.