Defining monopolistically high price: practice of the Federal Antimonopoly Service

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Content

1. **The methodology employed by the antimonopoly body to analyze pricing of dominant economic entities:**
   a. The “costs” method vs. the “comparable market “method
   b. Determining the “market comparability” criteria; representative sources of information.
2. **Judicial evaluation of the methods used by the antimonopoly body to analyze pricing practices.**

Monopolistically high price

Article 6 of the Federal Law “On Protection of Competition”

Monopolistically high price:

- Fixed by a dominant economic entity
- Exceeds the sum of the costs and profit required to produce and sell the goods (**the “costs” method**),
- Exceeds the price formed under competitive conditions on a comparable market, if such a market exists in the Russian Federation or outside RF (**the “comparable market” method**).

The “costs” method

Price of goods **>** (Costs + Profit) required to produce and sell the goods

The “costs” method involves **<u>pricing analysis:</u>**

- Analyzing information about expenses of the dominant entity required to produce and sell the goods
- Analyzing information about profit of the dominant entity gained producing and selling goods
- Determining the level of profit **“required”** to produce and sell goods.

Profit level evaluation is typically based on a profitability ratio calculated as follows:

$$\frac{\text{Цена} - \text{Себестоимость}}{\text{Себестоимость}} \times 100\%$$

Price – the costs per unit of goods

Flat costs – the sum of expenses required to produce and sell a unit of goods.

The “costs” method

Determine the level of the “required” profit: HOW?

Derives from:

- Profitability level of the same entity in other periods of time or within other geographic boundaries
- Profitability level of other entities (including the same group of persons) that sell identical goods on the markets with a relatively developed competitive environment.

A case of “Gazpromneft-Omsk” OJSC: economic performance was compared with companies from the same group of persons that operate in other markets.

- The level of industry profitability by types of activities.

Can be used in exceptional circumstances when:

- Identical goods are not circulated in other geographic areas
- Retrospective analysis is impossible.

The “comparable markets” method

Goods price **>** Prices that formed on a comparable market under competitive conditions

! An optional method: used only when such a market exists in the Russian Federation or outside RF

This method involves **Pricing analysis + price comparison:**

- Analyzing data on the costs of a dominant entity required to produce and sell the goods
- Analyzing data on the profit of a dominant entity gained from producing and selling the goods
- Identifying a comparable market
- Comparing the prices of a dominant entity with the price on a comparable market.

The “comparable markets” method

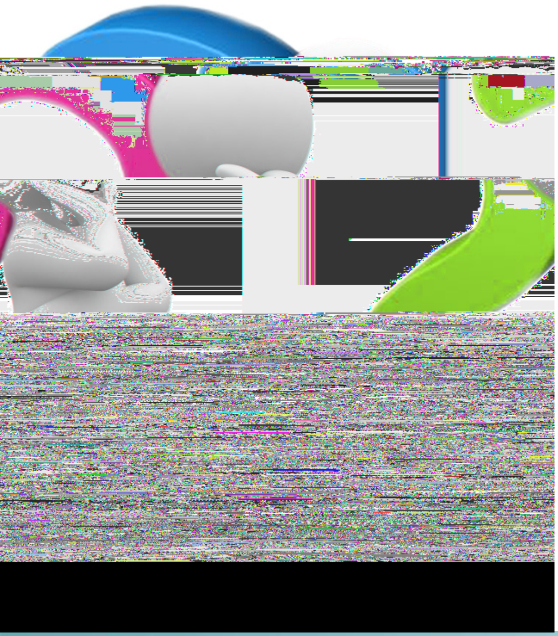
Identifying a comparable market: HOW?

<u>Comparable market:</u>

➢Has similar features with the market in question:

- Categories of buyers and sellers
- Goods circulation conditions
- Market entry conditions
- Government regulation (taxation and customs-and-tariff regulation).

➢ This is a market where price is formed under competitive conditions.



It suffice to establish **<u>absence</u>** of any regulation of economic activity on the market in question and on a comparable market directly influencing the price level, such as:

- Direct subsidizing of the goods price
- Restricting goods export / import
- Tax benefits for goods export / import
- Legislative setting of the goods price
- Administrative restrictions of a possibility for consumers to switch to different goods or suppliers, etc.

Comparing methods

Evidence from a case against a group of persons of “NLMK” OJSC

(the market of transformer steel)

The “comparable market” method	The “costs” method
	
Analyzed <u>prices formed on a comparable market</u>, for instance, in Italy, Turkey, India, China. P(It) – the price of producers and suppliers in Italy P(C) – the price of producers and suppliers in China P(RF) – NLMK price in the Russian Federation	Compared <u>prices and pricing for the NLMK goods</u> for buyers from different regions : Price = Costs + Profit. Price in the Russian Federation > Price for foreign buyers. Costs = const (do not depend on a destimation). Profit from selling in Russia > Profit from selling to foreign buyers. No economic justification of the price difference, and, accordingly, profit difference.

Sources of information

To compare prices, the following information can be used :

- Indices of Russian and foreign information-and-analytical databases on prices for particular goods
- Russian and foreign exchange indices

Price indices should:

- Characterize the situation on a market with relatively developed competition
- Be formed in the area that receives the highest actual volume of export sales.

Fixing monopolistically high price

Monopolistically high price can be fixed by:

- Increasing an earlier fixed price if the costs of producing and selling the goods remain unchanged or changes do not match the changed price

  Profitability is increased through an increased price.

- Maintaining or not reducing an earlier fixed price if the costs of producing and selling the goods decreased considerably

  Profitability is increased through reduced production costs.

- Otherways

  For instance, in a period of economic crisis, when economically justified profitability level changes regardless of the level of production costs.

Judicial evaluation of pricing analysis methods used by antimonopoly bodies to expose monopolistically high prices

Positive judicial evaluation Allowed	No.A46-7410/2009 Case “Gazpromneft-Omsk” OJSC Economic parameters of a dominant entity should be compared vs. these parameters for other companies from the same group of persons but operating on other markets.
	No.A40 – 2206/07-79-21 Case “Caustic” OJSC Costs not associated with production of particular goods must not be included in the production costs for these goods.
	No.A40-33466/07-120-170 Case “Silvinit” OJSC The “costs” method is applied if a comparable market is not identified.
Questionable Court findings	No.A40-63566/12-72-439 Case “NLMK” OJSC and “Viz-Steel” Ltd. Profitability of the dominant entity was compared with profitability of the same entity observed within different geographic boundaries.

Thank you your attention!

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