

**Explanatory note
to the draft Federal Law "On Amendments to the Federal Law on Protection
of Competition"**

The FAS Russia has developed a draft Federal Law "On Amendments to the Federal Law on Protection of Competition".

Technologies (primarily digital technologies), information, digital and information platforms, and intellectual property form the basis of the modern market system.

Information and technologies can be spread and used among economic agents as part of legitimate cooperation or with intent to prevent, restrict or eliminate competition. In practice, the intensive development of information technologies apart from benefits also leads to the creation of "advanced" anticompetitive practices.

In some spheres, new digital companies dominate exercising significant influence on the real sector of economy.

The FAS Russia can provide more and more examples of how the structure of modern markets is changing.

Evaluating the market position of a certain company, competition authorities have to take into account such phenomenon of the IT sector of the economy as direct and indirect network effects.

Direct network effects result in increased demand for a product as a consequence of an increase in the number of users. Such effects can serve as a serious obstacle to market entry. Achievement of a certain level of demand, a certain number of customers, comparable to the network effect achieved by a competitor becomes the condition for entering the market.

Indirect network effects, also referred to as network externalities, result in increasing demand for products and applications that come in addition to the core product.

In order to align with the evolving social relations in the digital economy, it is necessary to update antimonopoly legislation.

Laws that stipulate regulation in the light of modern challenges should appear in the antimonopoly legislation.

The draft law considers introduction of the additional criteria to the Law on Protection of Competition that allow to designate owners of digital platforms as dominant players if such a digital platform has a share of more than 35 percent in the market of substitute services delivered using digital platforms related to ensuring interaction between economic entities - sellers and buyers, and if network effects based on the number of users of the digital platform, give such an economic entity the opportunity to exercise a dominant influence on the general conditions for the commodity circulation in the relevant market and (or) to eliminate other economic entities from this market, and (or) to impede access of other economic entities to this market.

At the same time, in order to support the development of new projects based on the use of digital platforms, the draft law proposes to institute a rule stating that the owner of a digital platform, or several similar (interchangeable) digital platforms, whose revenues for the last calendar year did not exceed 400 million rubles cannot be designated as dominant player.

In order to implement the proposed provisions, the draft law also defines the digital platform as an infrastructure located in the information-telecommunication network Internet, which is used to organize and provide interaction between sellers and buyers.

It is also proposed to define the concept of "network effect" - the dependence of the consumer value of goods on the number of consumers of the same group (direct network effect) or the change in the value of the goods for one group of consumers with a decrease or increase in the number of consumers in another group at the same time (indirect network effect).

Under conditions of the modern "digital" markets, approaches to controlling transactions of economic concentration should change as traditional criteria based on the amount availed or operations and value of their assets may not reflect the real

impact on the economic conditions of a transaction carried out as part of economic concentration and related to the regulation of intellectual property rights.

Considering the above, a new condition should be introduced in the first place to control transactions of economic concentration - if the volume of the transaction exceeds seven billion rubles.

Taking account of successful foreign practice, it is proposed to specify in the Law on Protection of Competition the rules for involving trustee for the purpose of monitoring and facilitating the execution of a ruling issued under economic concentration, which includes the transfer of rights to intellectual property and technology.

In order to protect the interests of market participants, the draft law proposes to determine additional consequences of failure to comply with the ruling of the competition authority issued as part of monitoring economic concentration and associated with the use and transfer of intellectual property rights.

Thus, it is proposed to establish that in case of non-compliance of the ruling of the competition authority, if such non-compliance leads or can lead to the prevention, restriction or elimination of competition, the competition authority has the right to:

- 1) file a claim in court for the exemption to use in the territory of the Russian Federation in the interests of competition development the results of intellectual activity and equivalent means of personalization belonging to the person to whom the ruling was issued if the ruling was related to the exercise by such person of the exclusive rights to the results of intellectual activity and equivalent means of personalization, under conditions of the ruling;

- 2) file a claim in court with the request to prohibit (restrict) the turnover in the territory of the Russian Federation by the person to whom the ruling was issued, of goods produced using the results of intellectual activity, the exercise of exclusive rights to which is associated with the implementation of this ruling.

Adoption of the draft law will make it possible to ensure the effectiveness of antimonopoly compliance in the context of modern "digital" markets, increase the

protection of the rights and interests of bona fide participants in such markets from possible manifestations of monopolistic activity, and create legal mechanisms to counter market power abuse of "digital monopolies".