

Oracle case and first waiver

Case

FAS Russia decision and determination on the case of 10 March 2010 (Russian version only)
<http://solutions.fas.gov.ru/documents/1267-d9db5599-1af0-4cf0-9179-ad94b4ca0464>

Parties

Oracle Corporation, Sun Microsystems

Jurisdiction

Federal Antimonopoly Service, European Commission

Type

M&A

The Federal Antimonopoly Service of the Russian Federation (FAS Russia) has held its first consultations with the European Commission Directorate General for Competition on examining a transaction substance concerning the acquisition of the company by Oracle Corporation, whereby waiver (confidentiality form)¹ was applied by these companies.

Requests on transaction were submitted for examination to the European Commission and to the antimonopoly bodies of different countries, including Russia.

According to the European Commission rules, the preliminary condition for holding consultations with competition authorities is getting a waiver from the company that is subject of the consultations to confirm its agreement on their organization.

After receiving a waiver of confidentiality from Oracle, the FAS Russia organized consultations with the EU Commission. It was the first time when the Service used waiver, which seems to be the most reasonable for use in cases where the exchange of confidential information is impossible due to national legislation of the parties in examinations of concrete cases of antimonopoly law violation and of control over transactions involving the EU and Russia's business entities.

In 2009, Oracle completed a \$ 7.4 billion dollar acquisition of Sun Microsystems Inc., after receiving an approval from the U.S. Department of Justice. On 21 January 2010, the European Commission approved the transaction without any conditions.

When it comes to the FAS Russia, the competition authority has granted the Oracle's request for consolidation of the Russian subsidiaries of Sun Microsystems Inc. (Sun Microsystems SPB Ltd., Sun Microsystems CJSC and MySQL Ltd.) after issuing the prescription² stating that the company must not commit actions that might lead to restriction of competition on the database management market.³

Oracle was prescribed to retain and to improve periodically the MySQL storage tools' architecture (a free system of database management).

¹ Waiver or confidentiality waiver means permission granted by a party under investigation or a third party in a case/investigation that enables investigating agencies in different jurisdictions to discuss and/or exchange information, protected by confidentiality rules of the jurisdiction(s) involved, that has been obtained from the party in question. The undoubtable advantage of such waivers is that they allow to decrease the authority time and efforts costs while getting necessary information and consultative advice. Waiver of confidentiality must contain the name of the body aimed at using the information; an indication that the information will not be transferred to the third party; an indication that the information is to be used only in a given case; the requirements to retain confidentiality of the information.

² See FAS Russia decision and determination on the case of 10 March 2010 (Russian version only)
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³ The Decision for the admission of request is in force only on the condition of following the above-mentioned prescription. The prescription's validity constituted 4 years after the transaction.

Besides that, Oracle has to improve and develop new MySQL versions in the frame of commonly accessible license, as well as not to oblige customers to buy support services from Oracle by setting it as a condition to get a MySQL commercial license.