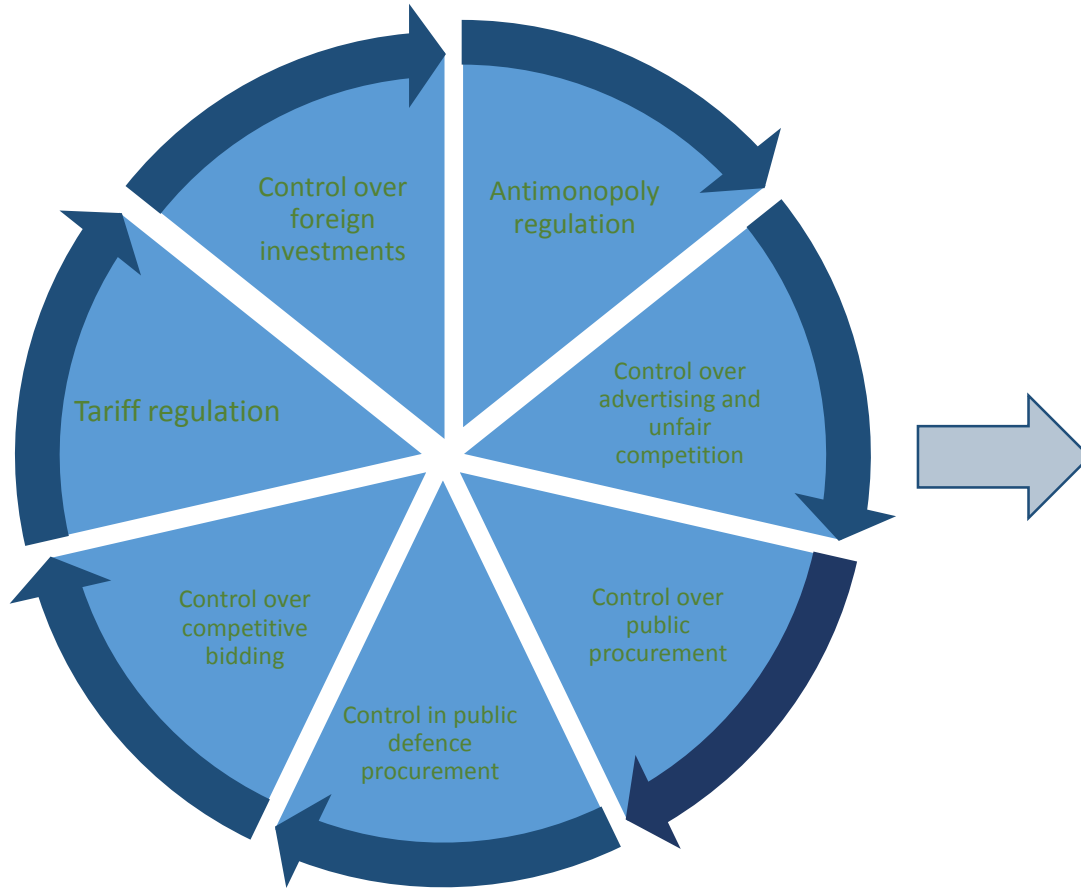


**FEDERAL ANTIMONOPOLY SERVICE**

# **Pressing issues and prospects of developing the antimonopoly law**

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Deputy Head of FAS  
2016**

# FAS as a macro-regulator



- Pro-competitive nature of regulation
- Optimizing expenses in the regulated sectors
- Commitment to consumer interests
- Unified approaches to regulation
- Making infrastructure accessible under non-discriminatory conditions

## **FAS exercises state control in the following areas:**

- Observing the antimonopoly law
- Operations of natural monopolies
- Government regulation of prices (tariffs) for goods (services)
- Observing the law on advertising
- Public and municipal procurement
- Control (oversight) in public defence procurement
- Foreign investments in strategic industries
- Observing the law on trade
- Tenders for allocating property, resources, rights (the Urban, Water, Forestry Codes, etc.)

**Abusing market dominance  
by economic entities and  
anticompetitive agreements (cartels)  
are the most widespread violations  
in antimonopoly practice**

## “CARTELS ARE A THREAT TO RUSSIAN NATIONAL ECONOMIC SAFETY”

All over the world **cartels are considered some of the most dangerous economic violations** causing the most harm to the interests of the state.

In the Russian Federation cartels are highly pervasive in all sectors of the economy, including those of strategic importance:

- ❖ Public defence procurement
- ❖ Producing and selling natural resources
- ❖ Providing medicines and food products to the population
- ❖ Public procurement and procurement by partially government-owned companies.

In recent years **FAS has exposed around 200 cartels** and other anticompetitive agreements of economic entities **annually plus approximately 200 anticompetitive agreements involving the authorities.**

Every year FAS holds **up to 1500** economic entities administratively liable for taking part in such agreements; the administrative fines reach **4 billion RUB per year.**

On 5 January 2016 came into effect the amendments to No.135-FZ Federal Law “On Protection of Competition”, introduced by No. 275- FZ Federal Law “On Changes to Federal Law “On Protection of Competition” and Some Legislative Acts of the Russian Federation” of 05.10.2015

1

Excluded recognizing dominance of an economic entity with the market share not exceeding 35 %, except cases of collective dominance

2

Clarifications to Article 10 of the Federal Law "On Protection of Competition"

Abusing dominance is prohibited  
IF

The result is or can be preventing, restricting, eliminating competition

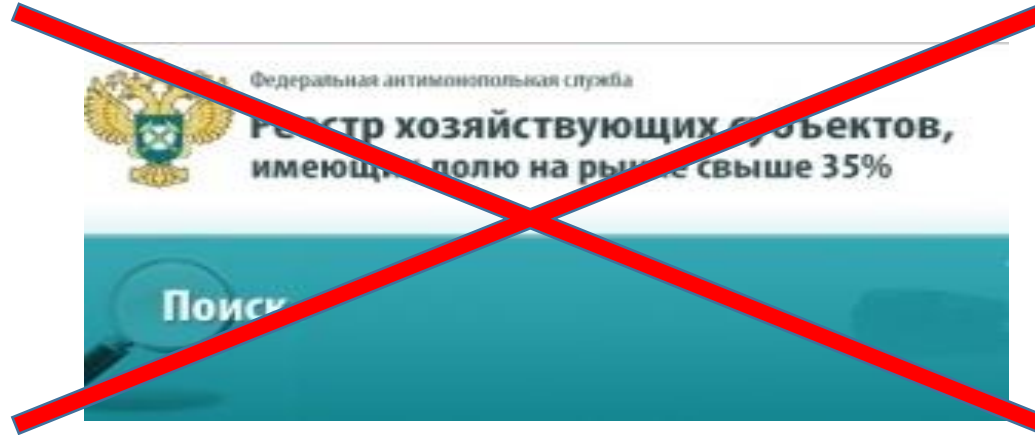
The result is or can be infringing the interests of other persons (economic entities) in business operations

The result is or can be infringing the interests of indefinite range of consumers

**Indefinite range of consumers** means a scope of persons that cannot be individualized (identified) and all of them cannot be brought into the process as claimants or interested persons, listed in a decision, and the rights and responsibilities of each of them cannot be specified in a particular case.



3



4

The powers of the RF Government to set the Rules for non-discriminatory access are expanded

A company has the dominant position and is not a natural monopoly

Its market share is more than 70%

A fact of abusing dominance is ascertained in a FAS decision that came into effect

Totality of conditions

The Rules for non-discriminatory access to the services of financial organizations are approved by FAS in coordination with the Central Bank



# Control over economic concentration

1

Pre- or post-merger notices can be filed to an antimonopoly body **in an electronic form** under the procedure established by the federal antimonopoly authority

2

Information on approving a transaction, other action with regard to a notice filed to an antimonopoly body must be published on the official web-site of the antimonopoly body **in the Internet**

3

Persons can approach an antimonopoly body to inform about a forthcoming transaction or other action prior to filing a pre- or post-merger notice to the antimonopoly body.

An antimonopoly body **takes into account** submitted documents and information.

4

Economic entities intended to conclude a joint operation agreement, if their total asset value does not exceed the statutory threshold, can petition to an antimonopoly body before entering into the agreement to seek approval and the antimonopoly body **is obligated to consider the petition.**

# Unfair competition

<b>Article 14: the current version</b>	<b>The “ forth antimonopoly package”</b>
1. Disseminating false, inaccurate or deceptive information	<b>14.1.</b> Discrediting
2. Misleading with regard to the goods or manufacturers	<b>14.2.</b> Misleading <b><u>(specified)</u></b>
3. Inappropriate comparison of own goods vs. competitor’s goods	<b>14.3.</b> Inappropriate comparison <b><u>(specified)</u></b>
4. Introducing goods into circulation, unlawfully using the results of intellectual activity and means of individualization	<b>14.5.</b> Introducing goods into circulation, unlawfully using the results of intellectual activity and means of individualization <b><u>(including know-how)</u></b>
5. Unlawfully obtaining, using, disclosing secret information	<b>14.7.</b> Unlawfully obtaining, using, disclosing secret information
6. Unlawfully acquiring and using an exclusive right for means of individualization	<b>14.4.</b> Unlawfully acquiring and using an exclusive right for means of individualization (specified)
	<b>14.6.</b> <b>Creating confusion</b>
7. Other forms of unfair competition	<b>14.8.</b> <b>Other forms of unfair competition</b>

# Expanding the institution of warnings

The current edition

**Sent to an executive  
of an economic entity**

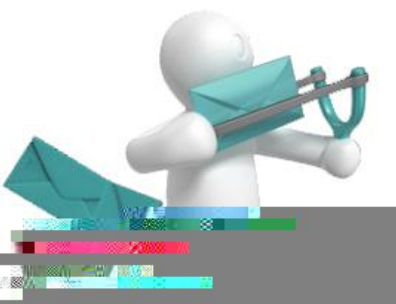
**Grounds – a public statement on  
an expected market conduct**

New powers

**Sent to an official of a federal  
executive body, an executive body  
of a constituent territory of the  
Russian Federation, a local self-  
government body, an organization  
involved in rendering state and  
municipal services, a state extra-  
budgetary fund**

**Grounds – a public statement on  
an expected market conduct**

# Expanding the institution of warnings



**Actions (omissions) – elements of a violation**

**- Clauses 3,5,6,8 Part 1  
Article 10  
- Articles 14.1, 14.2, 14.3,  
14.7, 14.8  
- Article 15**

**WARNING**

**Executing a warning**

**10 days**

**Failure to execute a warning**

1. An antimonopoly case is not initiated  
2. A person is not subject to administrative liability.

**Opening an antimonopoly case  
Obligation (10 working days)**

The Commission recognizes a fact of violation

**Holding the violator liable**

The Commission does not recognize a fact of violation

**Terminating a case**

# Liberalizing the law



- ✓ **A legal status of FAS Presidium** is being determined.
- ✓ FAS Presidium studies, summarizes and gives explanations on enforcement practice of the antimonopoly law

# Liberalizing the law



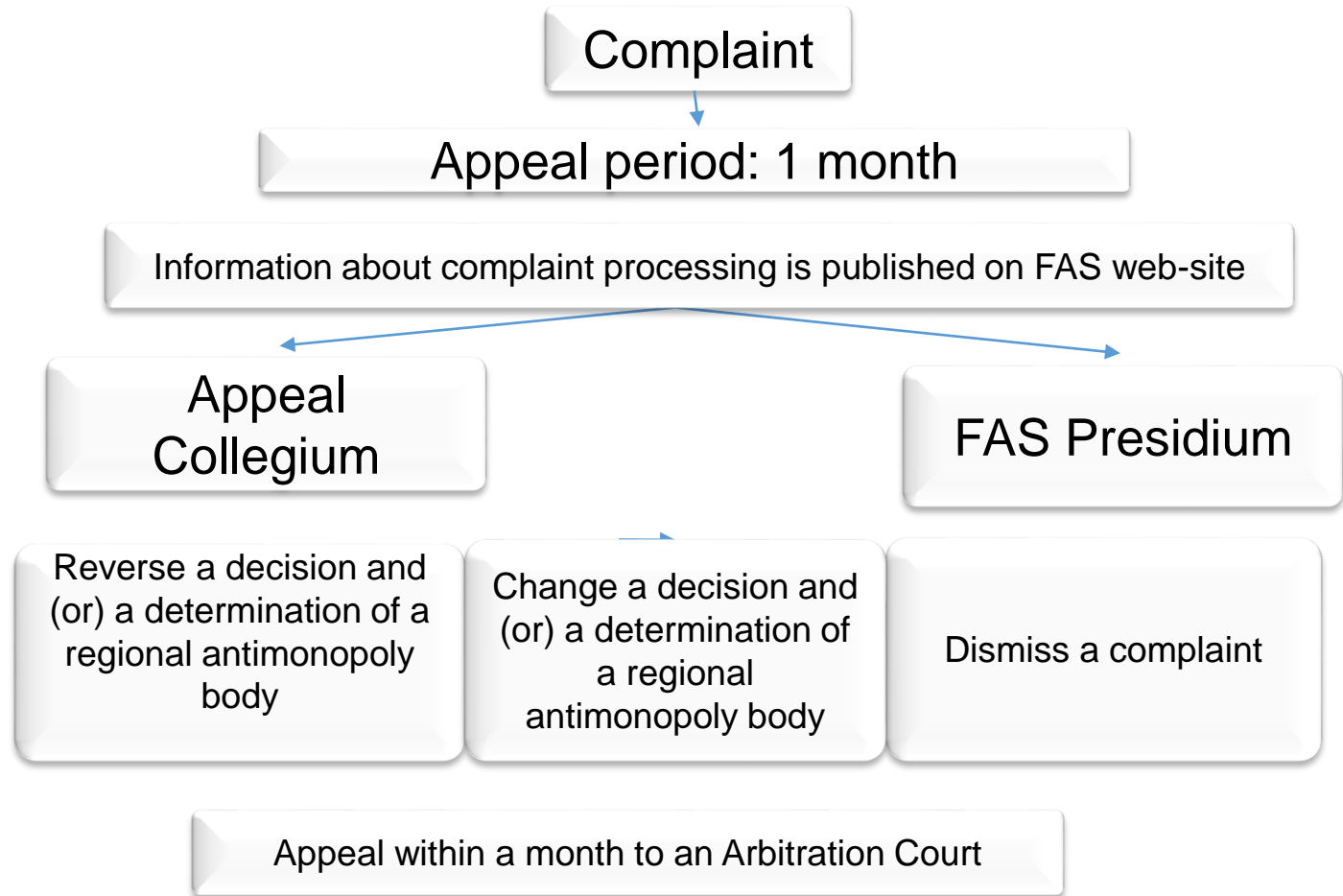
✓ **FAS Presidium is given the powers to review decisions on antimonopoly cases** if

such decisions breach uniformity of interpreting and applying the norms of the antimonopoly law by the antimonopoly bodies.





# The procedure on reviewing decisions and determinations



Grounds for changing or reversing a decision of a regional antimonopoly body: breached uniformity in applying the norms of the antimonopoly law by the antimonopoly bodies

# Case consideration procedure



Decision on an antimonopoly case

Introduction

Descriptive part

Statement of reasons

Substantive provisions

Commission acts can be signed with enhanced encrypted and certified digital signatures of the Commission Chairman and members

# Case consideration procedure



## Determination on the case circumstances (Article 48.1)

**Prior to completing consideration of a case** on violating the antimonopoly law, ascertaining actions (omissions) of a respondent in an antimonopoly case, the Commission passes a determination on the case circumstances.

A determination on case circumstances is drawn up as a separate document, signed by the Commission Chairman and members and must contain:

- 1) Facts and other case circumstances ascertained by the Commission
- 2) Evidence, on which the Commission based its determination on the case circumstances, reasons why the Commission rejected particular evidence, accepted or rejected the arguments used by the parties to the case to substantiate their requests and objectives.

**If a determination on the case circumstances is adopted, the case must be adjourned.**

# Transferring revenue to the budget or fines

## Part 3 Article 51 of the Federal Law “On Protection of Competition”

A person that is issued a determination to transfer revenue, gained through monopolistic activity or unfair competition, to the federal budget **cannot be held administratively liable** for violating the antimonopoly law, if the determination is executed.

## Clause 5 of the Notes to Article 14.31 of the Code on Administrative Violations

A person that is issued a determination to transfer revenue, gained through monopolistic activity or unfair competition, to the federal budget, **cannot be held administratively liable** under Article 14.31, [Articles 14.32](#) and [14.33](#) of the Code if the determination is executed.

In July 2015 FAS was assigned the functions to adopt regulations and requirements and to control compliance with the law on state regulation of prices (tariffs) for goods (services)



# The new tariff policy strategy

Transition of some sectors to market relations (telecommunications, stevedoring companies in ports, competing ports and airports) instead of preserving them as natural monopolies

Priority of consumer interests rather than natural monopolies

Introducing market principle of competitive markets instead of government price regulation

Introducing the principle of competition management team (officially) procurement and competition among projects (technologies) when approving investment programmes

## The areas of FAS work in 2016:



- 1) The balance of intellectual property rights and antimonopoly regulation
- 2) Statutory definition of antimonopoly compliance and the consequences of its bona fide practice
- 3) Changing the tariff regulation strategy: complete review of the regulatory framework
- 4) Abolishing the Law “On Natural Monopolies”
- 5) Introducing “parallel import”
- 6) The system of class actions and compensation of damage.

**The synergy of the powers exercised by the antimonopoly regulator will enhance efficiency of Russian economy**





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