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# Issues of proving violations of the antimonopoly legislation, connected to the setting and (or) maintenance of monopolistically high prices on the regional markets by the economic entities

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**The Federal Law dated 26 July 2006 No.135-FZ “On Protection of Competition” (hereinafter – Law on Protection of Competition) restricts activity (inactivity) of the dominant economic entity, which results or can result in prevention, limitation or elimination of competition and (or) impairment of interests of other individuals (economic entities) in the sphere of entrepreneurial activity or undefined circle of customers, including setting and maintaining of monopolistically high or low product price (Clause 1 Part 1 of the Article 10 of the Law on Protection of Competition).**



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**Qualification of violation of  
Clause 1 Part 1 of the Article 10  
of the Law of the Law on  
Protection of Competition**

**Establishment of dominance  
(Article 5 of the Law on  
Protection of Competition)**

**Substantiation of the  
monopolistically high  
product price (Article 6 of  
the Law On Protection of  
Competition)**

**Method of comparable  
commodities markets**

**Rate of return method  
(ROR method)**



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**Regional commodities market – sphere of the products' circulation, formed under the influence of supply and demand of each territorial administrative establishment including state influence and other considerable factors (market for the Internet access services, market of bus stations, airports; market of collection, removal and dumping of the household waste; market of realization of oil products, fuel, diesel oil and other).**



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**Typical mistakes made by the antimonopoly authorities in defining the commodities market and establishing of the dominance of the economic entity:**

- 1) Incorrect definition of product boundaries of commodities market;**
- 2) Incorrect definition of geographical boundaries of commodities market;**
- 3) Incorrect definition of temporal span of research;**
- 4) Incorrect definition of structure of economic entity;**
- 5) Incorrect definition of economic entity's share on commodities market.**



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## **Incorrect definition of product boundaries of commodities market**

**The Federal Arbitrage Court of West Siberian District in Regulation dated March 7, 2012 on the case No. A27-4602/2011 indicates that during investigation the antimonopoly body based its decision on opinion of one consumer. The census papers, included in the case's materials, do not provide the date of compilation, information on individuals, who conducted the survey, corresponding signatures and all that put in doubt the capability of the antimonopoly authority to base on this data. The absence of proper analysis of the consumers' opinion in defining the product boundaries of the commodities market does not allow making a conclusion on correctness of the defined boundaries.**



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## **Incorrect definition of geographical boundaries of commodities market**

**The Arbitrage Court of West Siberian District in the Court Order dated June 2, 2015 on the case No. A81-2757/2014 concluded that the antimonopoly authority had defined the temporal span of research incorrectly. The Court indicated that the considered time length does not correspond to the requirements to the temporal span of the research. During the analysis and evaluation of the state of competition on the corresponding market the antimonopoly authority was to choose a longer time interval and to consider factors, indicated in the Clause 2.3 of the Order No.220.**



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## **Incorrect definition of temporal span of research**

The Arbitrage Court of West Siberian District in the Court Order dated June 2, 2015 on the case No. A81-2757/2014 concluded that the antimonopoly authority had defined the temporal span of research incorrectly. The Court indicated that the considered time length does not correspond to the requirements to the temporal span of the research. During the analysis and evaluation of the state of competition on the corresponding market the antimonopoly authority was to choose a longer time interval and to consider factors, indicated in the Clause 2.3 of the Order No.220.





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## **Incorrect definition of structure of economic entity**

**Thus, the Federal Arbitral Court of the Volga Region in the Order dated April 15, 2013 on the case No.A72-6157/2012 concluded that the analytical report of the antimonopoly authority cannot be considered corresponding to the requirements of the Order No.220, because the presented by the antimonopoly body list of individuals acting within the indicated product and geographical boundaries, is not full or objective, which does not let to make a conclusion on the appropriate evaluation of the market for service of collection, removal and dumping of the household waste, including information on the total value of the conducted services within the considered period and on the share of each of the market's participant.**



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## **Incorrect definition of economic entity's share on commodities market**

**The Court Orders on the cases No. A21-4754/2009, No. A21-9847/2009, No. A21-2026/2011 conclude that the antimonopoly body does not have legal or factual basis for making decision on recognition of violation of Clause 1 Part 1 of the Article 10 of the Law on Protection of Competition resulting from the unproved dominance of the accused economic entity. The Courts indicated that the antimonopoly authority did not present any evidence that the considered actions of the Entity were based on its dominance on the researched market, but not on its production and financial policy.**



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**The monopolistically high price is the price, set by the dominant economic entity, which is higher than the sum of the necessary for the production and realization expenses and then the price, formed on the comparable market, in case this market exists on the territory of the Russian Federation or outside its territory (Part 1 of the Article 6 of the Law On Protection of Competition).**



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## Method of comparable markets

**The comparable market is meant to be not fully identical market, compared to the considered commodities market, but the market, similar by characteristics of its operating economic entities and the level of the sales, as well as by the principles and character of the state regulation of such markets.**



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**Typical mistakes, made by the antimonopoly authority in defining of the comparable commodities market:**

**1) Incorrect definition of the comparable commodities market;**

**2) Incorrect conduct of comparable analysis of prices, set on the researched and compared commodities market;**

**3) Indication in decisions on cases on violation of Clause 1 Part 1 of the Article 10 of the Law On Protection of Competition of the absence of the comparable market in case of its presence.**



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## **Wrong definition of the comparable commodities markets**

**The Federal Arbitrage Court of the Ural District in the Order dated November 2, 2010 on the case No. A60-7312/2009-C9 indicted, that the courts of the first and second appellate authority would not be given the appropriate evaluation of the circumstances, connected to the definition by the antimonopoly body of the comparable commodities market at qualification in the actions of the economic entity of violation of Clause 1 Part 1 of the Article 10 of the Law On Protection of Competition. From the content of the said court act it follows that the comparable market, indicated by the antimonopoly body in the decision on the case, is not comparable with the researched commodities market by the number of substantial factors.**



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## **Incorrect conduct of comparable analysis of prices, set on the researched and compared commodities market**

**The Federal Arbitrage Court of the Volga Region in the Order dated January 16, 2014 on the case No. A60-6921/2013 indicated, that the antimonopoly authority did not establish the price, formed within the competitive conditions on the comparable commodities market because it compared the commodities market with only one operating economic entity, as to say the markets which are not competitors, and this conflicts with provisions of Part 1 and Part 4 of the Article 6 of the Law On Protection of Competition.**



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## **Indication in decisions of the absence of the comparable market in case of its presence**

**The Federal Arbitrage Court of the West Siberian District in the Order dated March 7, 2012 on the case No. A27-4602/2011 concludes that the antimonopoly body did not established the presence of the existing commodities market and made a decision on the case on violation of the antimonopoly legislation without conducting an analysis on the order of the price formation on the same product in the comparable conditions, not taking into account its economic components.**





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## Rate of Return Method (ROR method)

The Rate of Return Method (ROR method) is a method of defining the expenses and profit, necessary for production and realization of the products by comparing the level of profitability of the dominant economic entity with the same level of other economic entities, realizing the identical products on the market with comparably developed competition state.



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**Typical mistakes, made by the antimonopoly authorities in using of the ROR method:**

**1) Incorrect estimation of evidences, presented by the economic entity in order to justify its economic costs and expenses, arisen during conduct of the particular works;**

**2) Insufficiency of the analyzed evidences, allowing to conclude on the presence of the violation of Clause 1 Part 1 Article 10 of the Law On Protection of Competition in the actions of the economic entity.**



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**Incorrect estimation of evidences, presented by  
the economic entity in order to justify its  
economic costs and expenses**

**The Order of the Federal Arbitrage Court of the Volga**

**Region dated October 10, 2013 on the case No. A72-1389/2013**

**indicates that the price, set by the economic entity on methane (gas) is not monopolistically high. Conclusions, made by the antimonopoly authority based on results of the analysis of the presented economic calculations are incorrect. The antimonopoly body did not prove which baseless expenses factually participated in the price forming and in which value; which expenses are not essential for production and realization of the oil products, whereby the profit, earned by the Entity from the gas realization, appeared to be higher than it was needed.**



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**The Federal Arbitrage Court of the Volga Region in the Order dated June 10, 2015 on the case No. A-06-5672/2014 concluded that the antimonopoly authority did not prove the fact of establishment of monopolistically high price by the economic entity on services on dumping of non-household solid waste. As it is indicated in the Court Order, the antimonopoly authority erroneously concluded that the price, established by the Entity for services on dumping of the non-household wastes, higher than the prices for dumping of the household wastes, established by the regulator, taking into account the covering of the economically based expenses of the Entity from the current activity and expenses on improvement of the effectiveness of the activity and improving the quality of the services, is not economically justified.**



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## **Insufficiency of the analyzed evidences**

**The Federal Arbitrage Court of the North West Region in the Order dated March 21, 2011 on the case No. A05-9792/2010 indicated, that the courts of two authorities came to the rightful conclusion on that the antimonopoly body did not investigated the Entity's order of pricing on the ferry line services and did not present enough evidences of contingency of this price above the sum necessary for production and realization of the disputable service of expenses and profit.**



## Main issues of proving

- ! The absence of the objective appraisal of the consumers' opinion during the conduct of the analysis of the competition state.
- ! Allowance of expansive or narrow explanation of the provisions of the Order No.220
- ! Comparable commodities market searching
- ! Issue of the full and comprehensive appraisal of real justification of economic calculations, presented by the economic entities



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## Possible ways of problem solution

- Issuing of explanations of the Plenum of the Supreme Court of the Russian Federation on the question of application of Clause 1 Part 1 of the Article 10 of the Law On Protection of Competition;
- Creation of the unified information base on situation on the regional markets of the constituent territories of the Russian Federation which is to allow systematizing information, being at the disposal of the authorized public authorities in different spheres.



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**Thank you!**