

Roundtable scenario

“Code of Conduct of Automobile Manufacturers: creation of fair play rules at the automobile market”

September 8, 2014

11.30-13.00

(Corinthia Hotel, Saint Petersburg)

During the meeting Heads of BRICS and European Competition Authorities together with representatives of Association of European Business (AEB) will discuss a possibility of extending the FAS Russia’s experience on implementation of the best practices (Code of Conduct of AEB Automobile Manufacturers Committee) in BRICS, Eurasian Economic Space (EAES) and CIS countries.

Moderator:

Mr. Maxim Ovchinnikov – Head of the Department for Control over Industry and Defense Complex.

Key speakers:

Mr. Igor Artemiev – Head of the FAS Russia,
“Code of Conduct: creation of precompetitive rules at the automobile market”;

Mr. Ashok Chawla – Head of the Competition Commission of India,
“Implementation of the FAS Russia experience (Code of Conduct) in the BRICS countries”;

Dr. Frank Schauff – AEB Chief Executive Officer,
“Code of Conduct of AEB Automobile Manufacturers Committee: business assessment”;

Mr. Joerg Schreiber - Chairperson AMC, AEB, President and Managing Director of Mazda Motor Rus LLC;

Mr. Dag JOHANSSON – Policy Co-ordinator, Directorate General for Competition of the European Commission,
“Experience of the EU on implementation of the unified rules and best practices in different EU jurisdictions”;

Mr. Nurlan Aldabergenov – Eurasian Economic Commission, Member of the Board – Minister in charge of Competition and Antitrust regulation,
“Extension of the FAS Russia experience (Code of Conduct) at the United Economic Space and SIC countries.

Questions to discuss:

- 1) Implementation of procompetitive standards of companies activity at commodity markets;
- 2) Code of Conduct of AEB Automobile Manufacturers Committee: business assessment;
- 3) Experience of the European Union on implementation of the unified rules and best practices in different EU jurisdictions;
- 4) Issues on concerted law enforcement policy of competition authorities as well as measures which could be implemented by regulators in the context of alteration of unfair practices exercising by huge companies at BRICS, EAES and CIS markets of social importance (in particular, amendments to legislation and adaptation to existing economic conditions, activity aimed at unification of law enforcement and court practices, competition advocacy matters).

Discussion: Key objectives

In the frameworks of the Session it is supposed to study possibilities of implementation of the FAS Russia's experience (Code of Conduct of AEB Automobile Manufacturers Committee) in other BRICS, EAES and CIS countries as well as possibility of elaboration of similar regulatory measures at other markets of social importance of BRICS and EAEC countries.

The FAS Russia experience

International huge companies are currently applying unfair competition practices at the growing BRICS, EAEC and CIS markets. The FAS Russia faced with unfair practices conducted by huge automobile companies at the market of the Russian Federation. Trade practices of selling cars and after-sale services as well distribution of spare parts exercising by huge international companies in the Russian Federation had discriminatory character in regards of dealers and service stations and led to increase in the cost of spare parts and after-sale services. (q.v. attachment*). In 2013 due to eliminate negative practices Association of European Businesses in Russia (AEB) together with methodical support of the FAS Russia elaborated the Code of Conduct which determined major principles of cooperation between car manufacturers and distributors with dealers and independent service stations. The major objective of the Code is creation of transparent and nondiscriminatory principles of cooperation between cars distributors and dealers.

Further development of the Code and its self-regulatory market mechanisms will lead to establishment of special Agency aimed at pre-trial settlement between distributors, authorized dealers and independent service stations. Such self-regulatory mechanism became precedent in Russia.

***The FAS Russia**
Law enforcement at the automotive industry market of the Russian Federation

Actions of automotive producers and their exclusive distributors on selling cars and car parts as well as providing after sales services in the Russian Federation are of discriminating character in respect of dealers and service stations. Their behavior increase prices for parts and after sales warranty services.

An analysis of the existing relations between distributors and dealer/service centers made by the Federal Antimonopoly Service determined that many distributors:

1. Require partners to combine the functions of car sales and servicing. These requirements make it difficult to enter the market of existing independent service centers, since they have to make significant investments into the construction of dealer service stations to get the status of an authorized service center and perform warranty services. As a result there is a shortage at this market in regions of high service demand, which negatively affects the quality of services and their costs;

2. Do not determine clear rules and requirements for the selection of counterparties (dealers), artificially limit the validity of dealer agreements as well as unreasonably dissolve them, deny to prolongate dealer agreements, unilaterally terminate contracts on supplying spare parts to authorized dealers. All these actions cause significant damages to the existing business entities operating at the market;

3. Create discriminating conditions to certain dealers while supplying of new vehicles and spare parts to them within a one dealer network (short deliveries, establish different supply conditions, including car packaging and terms of delivery, require an additional investments into service facilities and equipment, set different payment terms);

4. Restrict authorized dealers and service stations to select suppliers of equipment and materials which are necessary for dealers and service centers, that ultimately increases cost of such equipment and materials;

5. Prohibit the authorized service centers to repair vehicles of competing brands, that causes a restriction of competition at the service markets;

6. Unreasonably withhold contracts on supplying of original spare parts and accessories to independent service centers;

7. Supply special maintenance equipment for vehicle's diagnostics, as well as software to authorized service centers only;

8. Set resale prices of original spare parts and accessories for dealers.

Such practices cause harm not only for the profit of business entities operating at the car retail markets, but also restrict competition at such markets by establishing high barriers to entry.

Negative effects on restricting competition at the market are increasing of the cost of services, as well as reducing the quality of such services.

Experience of the EU

In accordance with the EU acting regulation on providing vehicle sales and services, manufacturers must select dealers and service centers under non-discriminatory conditions following transparent and objective criteria. In the frameworks of the European Commission decisions (Judgment of 2007 against DaimlerChrysler, Fiat, Toyota and GM) it was established that car producers or their exclusive distributors have to ensure non-discriminatory access conditions to car parts, technical documentation, diagnostic hardware and software for independent service stations in order to create an equal competition conditions between independent and authorized service centers.

In order to ensure a sufficient competition level between service centers, the European Commission prohibited automakers to require a mandatory auto sales infrastructure from service centers. Commission proceeds from the presumption of the rights of service centers to determine independently the necessity and feasibility of exercising sales activities besides providing services, it helps significantly reduce entry barriers into the service market and creates favorable conditions for the competition development between market participants.

In addition, the Commission prohibits car manufacturers / producers of car parts to impose resale restrictions against consumers located at any other territory. Dealers independently determine to whom and what areas sell goods, it creates favorable conditions for the development of competition at vehicle and parts sales markets.

These approaches are appropriate to be applied in the Russian Federation, both in the creation of the institutional environment and within the application of existing antimonopoly legislation.

The FAS Russia's cases

Following are the negative practices of interaction between car manufacturers and their distributors with dealers at the territory of the Russian Federation:

1. The case against the RENAULT TRUCKS, SAS (France) company. On March 30, 2012 the FAS Russia finalized investigation of the case against the RENAULT TRUCKS, SAS company and its 36 service stations operating at the territory of the Russian Federation upon violation of the antimonopoly legislation. The FAS Russia discovered that in February 2010 the RENAULT TRUCKS, SAS and LLC "AMINA" concluded a contract on providing service station activities by LLC "AMINA", in accordance with the contract LLC "AMINA" obliged not to engage in any competing activity during the validity of the contract, and for one year after its termination. According to the contract LLC "AMINA" could not provide any repair services for the competitors of the RENAULT TRUCKS, SAS at the same market segment without the written consent of RENAULT TRUCKS, SAS.

Later the FAS Commission found that in 2009 - 2011 RENAULT TRUCKS, SAS concluded several other service station contracts, the wording of which was similar to the contract concluded with "AMINA" Ltd.

Upon the investigation, RENAULT TRUCKS, SAS admitted that certain provisions of service station contracts can restrict competition, and eliminated the violation by renegotiating all existing service station contracts. Also RENAULT TRUCKS, SAS upon its own initiative reviewed all dealer contracts in the Russian Federation, and excluded controversial provisions from them.

In course of consultations with the European Commission the FAS Russia discovered that European antimonopoly bodies suppress such practices of support service on the car market; therefore, the FAS Russia's decision is fully in line with the international standards. The FAS Russia expects that the precedent of RENAULT TRUCKS, SAS eliminating anticompetitive provisions in contracts with dealers and service stations will be a good example for other participants of the car market. Otherwise the FAS Russia will have to take necessary measures of antimonopoly enforcement up to turnover fines.

Part 2 Article 11 of the Federal Law "On Protection of Competition" (revised of 18th July 2011, with amendments of 21st November 2011) prohibits other agreements between economic entities or other concerted actions of economic entities, if such agreements or concerted actions lead or can lead to restricting competition. Currently such prohibitions are set by Part 4 Article 11 of the Federal Law "On Protection of Competition".

2. On 17th May 2012, the FAS Russia found "BelAZ" OJSC violated Part 5 Article 11 of the Federal Law "On Protection of Competition". The company coordinated activities of its dealers for supplying quarry trucks in the Russian Federation, which restricted competition.

Having investigated the case, FAS discovered that the dealer network of "BelAZ" OJSC in the Russian Federation strictly divides activities of dealer centres according to the geographic principle.

The official web-site of "BelAZ" OJSC has information about the area of operations of every dealer, outside which this dealer cannot supply products. "BelAZ" OJSC sent letters to customers, where the company informed them about the dealers operating in the nearby area and specified that products should be purchased only from these dealers.

The FAS Russia revealed the facts of "BelAZ" OJSC sending letters to consumer organizations that the products of "BelAZ" OJSC must be purchased directly from certain dealers, whom the company granted such a right, particularly, by drawing up written permissions to supply products to them. Otherwise, "BelAZ" OJSC would not guarantee supplying the products and providing after-sales services.

The sales practice of "BelAZ" OJSC, when dealers are prohibited to supply products and take part in competitive bidding outside their designated area, eliminates potential competition between them, which, in its turn, also restricts the freedom of customers to choose suppliers of the products of "BelAZ" OJSC.

3. On December 2, 2013 the FAS Russia initiated a case against “Mercedes-Benz RUS” CJSC upon signs of violating the antimonopoly law.

Earlier FAS received a complaint from an official dealer of cars and spare parts to “Mercedes-Benz” in the Russian Federation – “Avilon AG” CJSC that a distributor – “Mercedes-Benz RUS” CJSC attempted to impose disadvantageous contracts of cooperation and changing the sales structure to the benefit of the distributor.

According to the received information, FAS established that “Mercedes-Benz RUS” CJSC concluded additional agreements with the main dealer agreement under which dealers rejected independent actions towards free sale of cars and spare parts to them as well as taking part in the tenders for their supplying to certain categories of customers (government structures).

In the opinion of the antimonopoly body these contract provisions can restrict competition on the markets of spare parts to Mercedes-Benz cars in the Russian Federation.

The Law “On Protection of Competition” prohibits agreements between economic entities (except “vertical; agreements”) if established that such agreements can result in restricting competition.

The analysis of the situation at the market discovered that practices implemented by automakers and their exclusive distributors in the field of cars and car parts sales are often discriminatory towards dealers and service centers. It causes a substantial increase in the cost of original spare parts and warranty services.

To eliminate negative practices, the Association of European Businesses in Russia (AEB) and FAS decided to devise a “Code of Conduct for car manufacturers”. The Code determined the main principles of cooperation between car manufacturers and distributors with dealers and independent service stations. The main goal of the Code is to establish transparent non-discriminatory rules.

To efficiently implement principles specified in the Code and develop self-regulation in this field, the special body for pre-court examination of disputes between car distributors, official dealers and independent service stations will be established.

Such special body for pre-court examination will become a precedent for Russia.

Currently, according to the AEB data, the Code was signed by the following car producers and retailers: Chrysler Russia, Ford Sollers Holding, General Motors, Hyundai Motor, Honda Motor Rus, Jaguar Land Rover, Kia Motor Rus, Mazda Motor Rus, Mercedes Benz ZAO, MMC Rus LLC, Nissan Manufacturing Rus, Porsche Russland, Renault Russia, Subaru Motor, Suzuki Motor RUS, Toyota Motor, Volkswagen Group Rus, Volvo Cars.

Currently the FAS Russia is monitoring the application of the Code due to report on the results of its implementation to Igor Shuvalov, the Head of the Government Commission on Competition and Development of Small and Medium-sized businesses.