

JSC "Kaspersky Laboratory"

Leningradskoye sh, 39 A, bld. 3,
Moscow, 125212

Microsoft Corporation

1 Microsoft Way, Redmond WA
98052, USA

RULING
ON SCHEDULING A CASE No. 1-00-168/00-11-16 ON VIOLATION
OF ANTIMONOPOLY LEGISLATION
FOR HEARING

"18" November 2016 r.

Moscow

Chairman of the Commission of the Federal Antimonopoly Service on consideration of a case on violation of antimonopoly legislation based on the Order of the Federal Antimonopoly Service dated November 10, 2016 No. 1583/16 on initiation of a case and creation of the Commission on consideration of a case on violation of antimonopoly legislation on signs of violation by Microsoft Corporation (1 Microsoft Way, Redmond WA 98052, USA) of Part 1 Article 10 of the Federal Law dated July 26, 2006 No. 135-FZ "On Protection of Competition", in non-provision by Microsoft Corporation of RTM-versions of Operational System (OS) of Windows 10 (OS version providing to developers of software for assuring compatibility with OS), in the timeframe necessary for adaptation of antivirus software of the third-party developers for correct work with Windows 10 OS, guiding Part 13 Article 44 of the Federal Law dated July 26, 2006 No. 135-FZ "On Protection of Competition",

RULED:

1. To schedule the Case No. 1-00-168/00-11-16 for hearing on December 20, 2016 at 14:00 am/pm at 11 Sadovaya Kudrinskaya St., Moscow, 123995, D-242, GSP-3, Room No. 140.
2. To add as defendants for the case: Microsoft Corporation (1 Microsoft Way, Redmond WA 98052, USA) (hereinafter - Microsoft).
3. To add as complainant for the case: JSC "Kaspersky Laboratory" (the Russian Federation, 125212, Moscow, Leningradskoye sh, 39 A, bld. 3, (hereinafter – JSC "Kaspersky Laboratory").
4. Microsoft is requested to submit the following documents and information

before December 10, 2016:

4.1. A group of persons in accordance with the Order of the FAS Russia of dated November 20, 2016 No. 293 "On Approval of the Submission of the List of Persons Belonging to the Same Group of Persons";

4.2. Identify the person of the Microsoft group of persons that owns the exclusive rights to the Windows 10 and a version (build) of said operating system that provides third-party developers of antivirus software, for testing and adaptation (with copies of the documents and information which confirm that the exclusive rights to the results intellectual property are granted to this person);

4.3. Identify the person of the Microsoft group of persons that is entitled to provide to the third-party developers of antivirus software of the version (build) of Windows 10, if it does not match with the person who owns the exclusive rights to the results of intellectual activity (with a copy of the documents, in accordance with which such rights are granted);

4.4. The documents, which determine the order of transfer to the third-party developers of antivirus software of the version (build) of Windows 10 for the adaptation, indicating the provisions of these documents, which stipulate exclusive rights to the results of intellectual property;

4.5. Copies of the letters of JSC "Kaspersky Laboratory" on the subject of providing of versions (builds) of Windows 10 OS for the adaptation of the antivirus software and responses to them;

4.6. Copies of letters from the other anti-virus software developers about providing of versions (builds) of Windows 10 OS for the adaptation of the antivirus software and the responses to them;

4.7. Identify the person of the Microsoft group of persons that owns the exclusive rights to Windows Defender (for Windows 10 OS), together with the documents and information that confirm affiliation of exclusive rights;

4.8. List of functions of Windows Defender (for Windows 10 OS) and specify whether Windows Defender is able to replace the anti-virus software of the third-party developers, i.e. whether Windows Defender is anti-virus software; to clarify whether Windows Defender is compatible with versions (builds) of Windows 10 OS, implemented for use by end users and hardware manufacturers (PCs, laptops), indicating the names of builds and dates of the begging of their implementation / providing to end users, hardware manufacturers;

4.9. Explain what are the reasons to reduction of the time between the release of the versions (builds) of Windows 10 OS for testing/adaptation of antivirus software for Windows 10 and the release of Windows 10 OS for end users and (or) hardware manufacturers compared to previous versions of OS Windows (XP, Windows 7, Windows 8, Windows 8.1);

4.10. If the version of the anti-virus software of the third-party developer, installed on the computing device (PC, laptop), is incompatible with the Windows 10 OS wither the user is informed in the process of the upgrade to Windows 10 OS that the version of the antivirus software is not compatible with the Windows 10 OS. If not, then explain for what reasons and for what purposes, and indicate what versions of Windows 10 upgrade, this information was not presented;

4.11. If the version of the anti-virus software of the third-party developer, installed on the computing device (PC, laptop), is incompatible with the Windows 10 OS wither the user is informed in the process of the upgrade to Windows 10 OS that Windows Defender was switched on (describe the procedure for informing, the content of messages and time slots). If not, explain the reasons and purposes for which such actions are exercised.

4.12. If the version of the anti-virus software of the third-party developer, installed on the computing device (PC, laptop), is incompatible with the Windows 10 OS is available whether the user at the time of switching on the Windows Defender after upgrading to Windows 10, the user has an opportunity to refuse the switch-on. If not, explain the reasons and purposes for which such action are exercised;

4.13. position on the merits.

5. JSC "Kaspersky Laboratory" is requested to submit the following documents and information before December 10, 2016:

5.1. Copies of the letters of JSC "Kaspersky Laboratory" with a request to provide copies (builds) of the Windows 10 OS for the adaptation of the antivirus software for Windows 10 and refusals of Microsoft (including in electronic form);

5.2. Whether JSC "Kaspersky Laboratory" at the moment or before the transmission of versions (builds) Windows 10 for testing/adaptation of antivirus software for Windows 10, that the transmitted versions (builds) of Windows 10 are the results of intellectual activity, exclusive rights to which are belong to Microsoft or a company (companies) within the Microsoft group of persons; to indicate the sources from which it is followed (enclose copies of documents, screenshots of the pages on the Internet, etc.);

5.3. Document that establish the procedure of transmission to the third-party application software developers, including antivirus software, of the versions (builds) of Windows 10 for testing/adaptation and specify the provisions that stipulate the exclusive rights to the results of intellectual activity;

5.4. Clarify whether the same versions (builds) of Windows 10 OS were used for testing/adaptation of all versions of antivirus software of JSC "Kaspersky Laboratory", if not, explain what were the differences and their causes;

5.5. Present evidence proving that JSC "Kaspersky Laboratory" objectively did not have enough time for testing/adaptation of the remaining antivirus software versions for Windows 10 OS;

5.6. Position on the merits.

Attendance of the Defendant in the Case No. 1-00-168/00-11-16 or its representative (with power of attorney for participation in the case hearing) is mandatory.

Chairman of the Commission

A.N. Golomolzin

Notes:

1. Case files are available for inspection at the FAS Russia in Room 107, contact tel. 499-755-23-23, ext.: 088-387, 088-182.
2. Copies of any documents submitted to the case files which are not notarized must be legalized in one of the following ways:
 - Every page is certified by the CEO's signature and a corporate seal or a signature of the empowered person (legal entity);
 - The pages are stitched, numbered and certified by the CEO's signature and a corporate seal or a signature of the empowered person (legal entity).
3. If submitted in the electronic form they must be legalized by the appropriate electronic signature.
4. Any documents and information in a language other than Russian must be submitted in the state (official) language of the Russian Federation and certified pursuant to the Russian Federation laws.
5. Please order entry passes to the Russian FAS building for representatives of parties to the case three days in advance at the above telephone numbers.

Dmitry A. Shirokov
495-725-23-23 ext. 088-182