



FEDERAL ANTIMONOPOLY SERVICE

Software and algorithms as instruments for creating cartels

Andrey Tenishev
Head of the Anticartel Department
FAS Russia

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The use of "auction robots" WHAT?

- **The auction robot** is an optional (special program module) function of the personal cabinet of the auction participants on the electronic platform, allowing (on the basis of the electronic order document with the settings of the auction robot filled and signed by the participant's EDS) the automatic submission of price proposals on a specific electronic auction on behalf of the auction participant to the specified limit of the price offer.



The use of "auction robots" WHY?

- The application is submitted strictly in accordance with the set parameters, which excludes the percentage of error connected with the "human factor";
- The settings of auction robot could not be changed. If you need to change previously created auction robot, the user of auction participant turn off this robot and turn on a new one. Correspondingly, robot operates with specified command;
- You can run several robots at the same time on several bidding, which will simplify the process of bidding (at any time of day).

NB! The use of "auction robot" is not a violation!

«Auction robots»: possible violations

- When creating auction robots, colluded companies used to program for them reduction limits in the range from **0.5% to 1%** of the initial (maximum) price of the contract, depending on which of them should win the auction.
- The robot could successfully use in trade process of the three different firms (the scheme also known as “taran”).



Murmansk RO of the FAS Russia

(case № 05-03-16/6, decision of
03.06.2016)

Qualification – violation of clause 2 part 1 article 11 of the Law on Protection of Competition.



The merits of the case – conclusion of the agreement between LLC "ORKO-invest" and LLC "Management company "Center for waste management", which resulted in maintaining prices at the auction. The antimonopoly body established that in the conduct of 25 electronic auctions participants of the anticompetitive agreement did not reduce the initial (maximum) price of the contract, allowing each other to win a tender in accordance with a predefined strategy.

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AUCTION ROBOTS: PRACTICE

Comment – One piece of evidence of awareness of the participants about each other's actions was the participation of economic entities in the auctions on the electronic trading platform CJSC "Sberbank-AST" through programmed robots. Limits for reducing MSPC for auction robots are set when they are created, i.e. the entities involved in an anticompetitive agreement determine who will be the winner of the auction, and to what extent each of them will reduce the MSPC before the electronic auction starts .

Judicial protection – the courts of two instances approved the decision of the Murmansk RO of the FAS Russia.

The decision of the Arbitration Court of Murmansk Region of 13.01.2017 on case № A42-6006/2016: ***“...the Murmansk RO identified that they used integrated infrastructure –the same IP address 46.235.219.218, namely price proposals were submitted from this address by both organizations in 8 auctions, for other 7 auctions the bids were made on behalf of both organizations by auction robots, for 10 remaining procurements the auction robot for one participant was programmed to a limit of 0.5 %, while another participant from the same address manually made a bid on a 1 % (L. D. 91-93 vol. 1). In other words, LLC “UK “TSOO” and LLC “ORKO-invest” deliberately pre-determined the winner”***

"Price robots" as a tool for big data collection and violation of antimonopoly legislation

- The collection of **big data** (and control over prices) is carried out using the so-called «**Price robots**».
- The program (script), which allows the computer to "read" - compare the proposed words with those available on the Internet, - is called a parser. **The parser** is a program used to collect automatically the necessary information on the Internet. The "Price robots" can automatically collect information on prices (at the same time, tens of millions of competitors' prices can be controlled).
- As such programs now was identified the following: **Competera, Priceva, MapMonitor, Profitero, Wiser.**

«Price robots»

Programs for the collection and / or analysis of information on prices of competitors, the lines of goods and other information

Programs for automatic pricing and / or automatic price fixing based on user-uploaded data

Pricing Optimization Programs

Programs for collecting and / or analyzing information on the prices of competitors, on the lines of goods and other information and for automatic calculation of prices and / or automatic pricing based on the data collected by the software product

Programs for the collection and / or analysis of information on the prices of resellers for products of specific brands, automatic comparison of retail prices with recommended / minimum prices
(These programs are used by vendors to control retail prices of resellers)

Pricing algorithms in a case on LG

Legal proceedings on violation of antimonopoly legislation were initiated against LLC "LG electronics RUS" - the authorized importer of LG products in the territory of the Russian Federation for violation of paragraph 5 of article 11 of the Law on Protection of Competition, which, presumably led to the establishment and maintenance of prices for LG smartphones. **The company is suspected in illegal coordination of economic activities of resellers of LG smartphones, which, according to the FAS Russia included the following elements:**



- setting recommended retail prices for LG smartphones;
- exercising control by employees and regional managers of LLC "LG electronics RUS" over the prices set by resellers for LG smartphones, with using of a price algorithm ;
- inducing resellers to adhere to recommended retail prices;
- exercising control by resellers over competitors pricing using price algorithm and reporting on the prices of competitors

PRICING ALGORITHMS: INVESTIGATION

Herewith, **widespread using of pricing algorithms** by a coordinator and coordinated parties **contributed to** coordination of the resellers of the LG smartphones.

The pricing algorithm used by LLC "LG electronics RUS" **collected and analyzed information on retail prices of resellers of LG smartphones, and formed the report. Data obtained with this program has since been used by employees of the company for the "alignment" of prices in the market.** Thus, the algorithm was the instrument of illegal coordination of economic activities of resellers.

Various pricing algorithms were used by a number of resellers of LG smartphones for tracking deviations of competitors' prices. Data obtained using pricing algorithms were passed by coordinated party to coordinator and was often accompanied with a requirement to adopt measures for changing competitors' prices.

IMPLEMENTATION OF AGREEMENT BY CONCLUSIVE ACTIONS

Legislative initiative:

“Introduction of the concept of agreement in the form of conclusive actions.”

Comment:

In accordance with paragraph 18 of article 4 of the Law on Protection of Competition an agreement may be concluded both in written and in oral form. However, it is obvious that the intention of the legislator to consider as the agreement any arrangements which implies the will of the parties to follow these agreements.

In order to create a comprehensive list of ways to conclude the agreement, it is proposed to supplement it with a form of conclusive action.

Moreover, under the Civil Code of the Russian Federation conclusive actions are one of the possible oral forms of transactions. The conclusions that the agreement may be in the form of conclusive actions are contained in the judicial practice (Decision AC MO of 30.09.2015 No. F05-18782/2015 in the case №A40-13775/2013, etc.)

Legislative initiatives

- To tighten the responsibility for conclusion and implementation of anti-competitive agreements and unlawful coordination of economic activities with using software (pricing algorithms and auction robots);
- To prohibit and to establish responsibility for complicity in illegal coordination of economic activities (development and dissemination of pricing algorithms with potentially unlawful functionality; using of pricing algorithms for generation of reports on prices in the market, used by a coordinator for establishing control over prices and bringing them to a certain level);
- To ban and to establish responsibility for using the same algorithm by some of competitors to determine retail prices for the same products when each user of this algorithm knows that this algorithm is used by his competitor, in the case of anticompetitive effects;
- To ban and to establish responsibility for authorization of one organization by several competitors to determine the retail price of the same products when each of these persons knows that his competitors are also addressed this organization to determine the retail price, in the case of anticompetitive effects.

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