

Yandex vs Google

Case

FAS Russia decision and determination of 18 September 2015 № 1-14-21/00-11-15 (Russian version only)

<http://solutions.fas.gov.ru/ca/upravlenie-regulirovaniya-svyazi-i-informatsionnyh-tehnologiy/ad-54066-15>

FAS Russia definition of 15 March 2016 № 4-14.31-6/00-11-16 (Russian version only)

<http://solutions.fas.gov.ru/ca/upravlenie-regulirovaniya-svyazi-i-informatsionnyh-tehnologiy/11-15403-16>

Parties

Yandex vs Google

Jurisdiction

Federal Antimonopoly Service

Assessment of fines

Google may pay a fine in the amount from 1% to 15 % of their revenue on the Russian market in 2014

On 18 February 2015, FAS Russia has received a complaint from Yandex company indicating the presence of antitrust law violations in Google (Google Inc. and Google Ireland Ltd) actions.¹

The reason for complaint was rejection of Android OS smartphone and tablet producers who were operating on territory of the Russian Federation to use Yandex internet browser as a default, to pre-install Yandex applications and as a result, to continue cooperation with Yandex company. According to Yandex, this issue bases on restrictions and prohibitions by Yandex competitor – Google corporation for its contractors (mobile devices producers).

FAS Russia has ordered to initiate proceedings on grounds of Google violating Part 1 Article 14 of the Federal Law № 135-FZ from 26.07.2006 “On Protection of Competition” (hereafter – The Law on Protection of Competition) in the form of actions, aimed at creation of particular conditions for mobile phones producers to refuse to continue contract relations with business entities which are competitors.

The term of consideration of the case were extended to December 2015 given the need to receive additional information.

To support its claim Yandex indicates the fact that Google is an owner of the Android OS, designed to ensure the functioning of mobile devices and to be redistributed under an open license that applies to basic elements of user interface. According to the information provided by Yandex, Android OS share on Russian mobile device market is steadily above 50% since 2012. At the same time, Android is strengthening its position on world market in general and on the Russian market in particular.

¹ See «FAS opened a case against Google», FAS Russia press release of 20 February 2015 <http://en.fas.gov.ru/press-center/news/detail.html?id=39082>

Google is also an owner of Google Play applications store – an app for searching, buying, downloading and updating other applications on the Android OS. The large amount of applications available for users through Google Play and its popularity among the users, considering Android OS market share, are making this app store highly demanded for mobile devices producers who are aiming to success on this market.

Google Play store distributes under the Mobile Application Distribution Agreement, within the GMS² apps package, which includes only Google applications and services.

Google binds Google Play, a product that dominates the app stores market, with some other products – single applications inside GMS package, which makes it impossible to acquire applications separately from each other.

Binding of Google Play (dominating product) with other GMS applications (products traded on competitive markets) creates obstacles for Google competitors to access the market. In particular, it affects mobile browser market, where Google requires to pre-install its browser as non-alternative default browser.

Google sets additional restrictions for mobile phone producers regarding pre-installation of apps that compete with GMS apps on Android OS.

According to Google prospective, company does not agree with its actions considered as an antitrust violation.

Basing on case materials, FAS Russia Commission (hereafter – Commission) has discovered that Google corporation has a more than 50% market share of pre-installed application stores localized for redistribution on Russian markets and according to Part 1 Article 5 of the Law on Protection of Competition has a dominant position on the market. The Commission also takes note of the fact that Google owns the rights to Android OS, which strengthens its dominant position.

During the proceedings, violation of Part 1 Article 10 of the Law on Protection of Competition was detected in Google actions. In order to access Google Play app store Google contractors should follow a number of Google restrictive requirements:

- Obligatory purchase of the entire Google Mobile Services application package as a condition for receiving Google Play;
- Obligatory setting/pre-setting of Google search as a default search in all internet keyword search areas;
- Conditions for the preferential placement of Google applications on device screen;
- Prohibition of Google competitors' applications pre-installation, ensured through rewards from Google corporation.

² Google Mobile Services (GMS) – is a collection of applications, services and system services including Google Play provided by Google.

The presence of restrictive conditions is confirmed through the existing Google agreements and is presented in the case file.

Without any technological reasons, practice of Google corporation to bind together currently dominating on the market Google Play app store with other GMS applications, that are generally in competitive conditions, is limiting the Google competitors access to the GMS apps market, and that may then lead to exclusion of Google competitors from this market. Particularly, there are high entrance and expansive barriers for applications on Android OS with Russian localization, which are hard to overcome.

The described effects are possible due to the fact that pre-set is the most efficient way to promote mobile applications, covering the largest part of target audience and the largest amount of mobile applications due to the following factors:

- Guaranteed presence on a large amount of devices;
- High usage frequency;
- Passive user behavior.

Product binding as a form of product promotion is not violating the law except the case of including a dominating product into a package, that customer is unable to buy separately. For example, Yandex was also promoting its own apps package Yandex Kit. However, along with Yandex Kit, customers were also able to buy applications from this package separately.

According to Part 1 Article 10 of the Law on Protection of Competition, actions of an economic entity occupying a dominant position, which result or can result in prevention, restriction or elimination of competition, are prohibited.

The Commission has not found evidence of dominant position abuse in Google actions.

Since the Commission found that Google corporation actions, which is currently occupying a dominant position on the market of pre-installed app stores for Android OS localized for distribution on the territory of the Russian Federation, lead to restriction of competition on the adjacent product markets (app stores), the acts of this company should be considered under Part 1 Article 10 of the Law on Protection of Competition.

The case under Part 1 Article 14 of the Law on Protection of Competition has been dismissed.

On 18 December 2015, FAS Russia has found Google Inc. and Google Ireland Ltd. violated the antimonopoly legislation and issued a determination to eliminate a violation of the Federal Law “On Protection of Competition”.³

However, Google disagreed with the decision of the competition authority and appealed to the Arbitration Court.

The Arbitration Court of Moscow fully supported the FAS Russia decision.⁴

The fact of violation of Article 10 of the Law on Protection of Competition is a basis for imposing a penalty under Article 14.31 of the Code of the Administrative Offences of the Russian Federation.

On 14 March 2016, an administrative case was initiated against Google.⁵ The American corporation may pay a fine in the amount from 1% to 15 % of their revenue on the Russian market in 2014.

³ See FAS Russia decision and determination on the case № 1-14-21/00-11-15 of 18 September 2015 (Russian version only) <http://solutions.fas.gov.ru/ca/upravlenie-regulirovaniya-svyazi-i-informatsionnyh-tehnologiy/ad-54066-15>

⁴ See “The Court: Google violated antimonopoly legislation”, FAS Russia press release of 14 March 2016 <http://en.fas.gov.ru/press-center/news/detail.html?id=44968>

⁵ See FAS Russia definition № 4-14.31-6/00-11-16 of 15 March 2016 (Russian version only) <http://solutions.fas.gov.ru/ca/upravlenie-regulirovaniya-svyazi-i-informatsionnyh-tehnologiy/11-15403-16>