CONCEPT NOTE

The 9th meeting of the International Working Group on Research of Competition Issues in the ICT Sector

19 September 2017

Veliky Novgorod, Russia

The International Working Group on Research of Competition Issues in the ICT Sector (hereafter – ICT Working Group) was formed upon a FAS initiative together with Turkish Competition Authority in 2012. At that period, it was the "International Working Group for Research of Competition Issues in the Market of International Telecommunications (Roaming)". Representatives of competition authorities and sectoral regulators from more than 30 countries took part in the meetings of the Working Group. The major objective was to enhance transparency and competition on telecommunications markets in the countries, involved in the Working Group activities, and to reduce tariffs in roaming. Thus, by the end of 2016 the objectives of the Working Group was reached successfully, and at the 7th session of the Working Group at the International Event «The Russian Competition Week» on 26 September 2016 in the Moscow region its members decided to expand the scope of activities of the Roaming Working Group to develop competition in the field of information and communications technologies (ICT).

The expediency of expanding the activities of the Working Group was related to the wave of international cases against transnational digital companies on violating the antimonopoly law. To increase enforcement efficiency at both the national and international levels it is necessary to eliminate the gaps in the competition law related to "digital" market analysis, improving efficiency of cooperation between the antimonopoly bodies throughout the world, particularly, cross-border investigations, etc. These issues were discussed by the participants of the ICT Working Group during its 8th session that was held on May 24, 2017 in Istanbul (Turkey).

Under the modern conditions of dynamically developing markets in the digital economy it is essential to consider the current convergence processes. In particular, convergence between telephony, data transfer, TV- and radio-broadcasting, OTT-services.

In these conditions, on the one hand, the government policy should be consistent and built up on the new basic principles, such as the principle of technological neutrality or the principle of network neutrality. On the other hand, the government policy should be flexible - the basic principles should be developed in line with the procedures of coordinating common understanding of the essence and directions of developing new markets with use of new technologies.

The Working Group's participants are invited to discuss two main issues:

1. The necessity to change the antimonopoly legislation in the digital environment

Introduction of digital technologies into all areas of activity transforms conditions of turnover in commodity and financial markets. These sectors are mainly developing due to efficient competitive initiatives and realization of consumer potential. At the same time, market "takeover" happens because of market power that appears or grows exponentially as a result of transnational corporations having the possibility to access and gain control over big data, to use intellectual property rights and to implement pricing algorithms.

In several sectors (including energy, banks, etc.), new digital companies adopted dominating positions and influence significantly the real economy.

At the moment, a combination of a real and virtual reality is prevailed in the world. Success in this respect (sometimes due to appearance or strengthening of market power) depends on access to large consumer databases, direct marketing, use of digital algorithms, intellectual property rights, artificial intelligence, etc.

It appears that state regulation needs to account for the features of production in all branches of industry and services in the digital environment; in this respect, antimonopoly measures should be implemented at the level of legislation. Competition community should assess the current situation in every sphere; determine the benefits and risks of digital processes development; develop a list of measures aimed at finding of optimal methods of obtaining benefits and minimizing risks.

The antimonopoly legislation is one of the basic legislations applied in all spheres of activity.

We invite you to discuss whether changes to the antimonopoly legislation are necessary or whether special recommendations would be enough, in regard, inter alia, to:

- determination of a product, a commodity market, implementation of new definitions (multi-sided commodity markets, adjacent commodity markets);

- implementation of quantitative category for evaluation of business entity's dominance, mandatory criteria for assessment that characterize digital markets;

- introduction of new approaches in considering transactions.

2. Approaches to assessment of intersubstitutability of goods in conducting an analysis of the commodity market in digital environment

Determination of product boundaries of the commodity market is one of the fundamental stages of market analysis.

Nowadays, in the era of digitalization, there are new products in the markets that due to its innovativeness can create certain markets, as well as qualitatively change already existing ones.

Notably, a supplier of the new product generally differs from a supplier of the traditional product; there is another, radically different group of suppliers and customers, other ways of monetization and other value chains.

The main method of intersubstitutability's determination - the hypothetical monopolist test – is often not applicable.

In those circumstances, it is necessary to develop methodological approaches to evaluation of goods' intersubstitutability.

In particular, the FAS Russia will introduce its practice of determination of goods' intersubstitutability, as well as proposals for legislative consolidation of the methodology.

Participants of the Working Group are invited to share their experience and discuss the necessity for guidelines development.