

### ***Enforcement Activities***

*1. Please describe your experience in terms of enforcement activity at any level of the road fuel supply chain. This may involve the assessment of mergers and acquisitions (please refer any merger cases blocked or cleared with remedies) or investigations on possible anticompetitive conduct (please describe the types of anticompetitive conduct investigated and what levels of the supply chain were investigated).*

1) Consideration of cases on violations of the antimonopoly legislation.

**The wholesale market of oil products.** During 2008-2012, in the Russian Federation, the FAS Russia considered three “waves” of cases of violations of the antimonopoly legislation in the federal wholesale market of oil products in relation to the largest vertically integrated oil companies: “ANK “Rosneft”, JSC, “Gazprom Neft”, JSC, “LUKOIL”, JSC, “TNK-BP Holding”, JSC, and Bashneft ANK, JSC. In addition to the situation on the physical market (oil products), the subject of these cases was the activities of the electronic trading platform (ETP). It should be noted that based on the results of the consideration of these cases the fines imposed amounted to more than 500 million Euros, and, what is more important, the instructions were issued to begin exchange trading in physical commodities (oil products).

Besides, in 2011, the FAS Russia jointly with the Federal Service for Financial Markets of Russia made inspections of the operations of Closed Joint-Stock Company Saint-Petersburg International Mercantile Exchange (JSC “SPIMEX”), the Non-Commercial Partnership “Interregional Oil and Gas Complex Exchange” (NP “MBNK”), and Closed Joint-Stock Company “Exchange “Saint-Petersburg”. In the course of the inspections it was established that the conditions needed for price formation were not created, including: lack of anonymity of trades, transactions made between entities-members of the same group of persons, bidding by sellers of large lots of goods, violations of the winner determination proceedings of exchange trades in oil products, which were established by the exchange trading rules of respective commodity exchanges.

By the results of consideration of cases initiated against NP “MBNK” and “SPIMEX”, JSC, the Federal Antimonopoly Service found that the exchanges violated the antimonopoly legislation. The entities violated the law by creating preferential conditions for separate trades’ participants and by violating the proceedings of determining trades’ winners which were established by the exchange trading rules. Such actions of “SPIMEX”, JSC violated Paragraphs 2 and 3, Part 1, Article 17 of the Law on Protection of Competition. NP “MBNK” also violated the exchange trading rules which led to the

violation of the proceedings of determining trades' winners (Paragraph 3, Part 1, Article 17 of the Law on Protection of Competition). Thus, the consideration of this case on violation of the antimonopoly legislation by the exchanges resulted in issuing the instruction on terminating violations detected and taking necessary organizational decisions.

**Information:**

**The first "wave" of cases in relation to VIOCs.** In 2008, the FAS Russia recognized that, in the 4th quarter of 2007 and the 1st half of 2008, the largest vertically integrated oil companies ("Gazprom Neft", JSC, "TNK-BP Holding" JSC, «ANK "Rosneft", JSC and "LUKOIL", JSC) violated Part 1 Article 10 of Federal Law of 26.07.2006 No.135-FZ "On Protection of Competition". The violation consisted in setting monopolistically high prices of petroleum products; creating discriminatory conditions for the buyers in the wholesale markets of petroleum products in the Russian Federation; establishing economically, technologically and otherwise unreasonable different prices to oil products.

**The second "wave" of cases in relation to VIOCs.** In 2009, the Federal Antimonopoly Service established, that in the beginning of 2009, "TNK-BP Holding", JSC, "Gazprom Neft", JSC, «ANK "Rosneft", JSC and "LUKOIL", JSC carried out the withdrawal of goods from circulation, which resulted in an increase of goods' prices. The FAS Russia considered these actions as regular violations of the Law on Protection of Competition.

**Judicial Review.** All decisions and instructions of the FAS Russia in relation to the first and second "waves" of cases were disputed by the oil companies in commercial courts. On 25.05.2010, the Presidium of the Supreme Commercial (Arbitration) Court confirmed the legality and validity of the decisions and instructions of the FAS Russia in regard to "TNK-BP Holding", JSC. On 15.02.2011, the Presidium of the Supreme Commercial (Arbitration) Court confirmed the legality and validity of the decisions and instructions of the FAS Russia in regard to "Gazprom Neft", JSC (withdrawal of goods from circulation and creation of discriminatory conditions). The interpretation of legal provisions contained in the Decision of the Presidium of the Supreme Commercial (Arbitration) Court is mandatory and is subject to enforcement by commercial courts when considering analogous cases.

**The third "wave" of cases in relation to VIOCs.** In the middle of 2011, the FAS Russia found the fact of violation of the antimonopoly legislation in actions of the group of persons "LUKOIL", JSC, «ANK "Rosneft", JSC, and "Gazprom Neft" JSC. The violation resulted in the establishment of a monopolistically high price to diesel fuel and jet fuel in the period of the 4th quarter of 2010 and the beginning of 2011, as well as in the creation of discriminatory conditions in these markets.

In the end of 2011, the FAS Russia held that Bashneft ANK, JSC had violated Paragraph 1 Part 1 Article 10 of the Law on Protection of Competition. This violation consisted in creating discriminatory conditions in the wholesale market of motor fuel and establishing and maintaining monopolistically high prices on the wholesale market of motor fuel during the period from April to September 2011.

### **Regional (small wholesale and retail) markets of oil products.**

In 2008-2012, the FAS Russia's regional bodies considered a significant number of cases on violations of the antimonopoly legislation by oil companies and independent participants in the regional oil products markets. The vast majority of violations were detected in the retail segment of oil products. The vast majority of cases concerned the abuse of a dominant position (setting monopolistically high prices for oil products, creating discriminatory conditions, refusing to conclude contracts unreasonably)' the minority concerned concerted actions of economic entities for the establishment and maintenance of prices of oil products.

#### 2) Control over economic concentration.

Within the control over economic concentration the FAS Russia takes the following decisions:

a) On **granting consent** on the application to exercise a transaction, if such a transaction does not lead to restriction of competition.

b) On **prolongation** of the period of examination of the application **for up to two months** because additional examination and information are needed, if it is established that the transaction declared in the application may lead to restriction of competition. In this case information on the transaction is placed at the official website of the FAS Russia and the interested parties may submit information on impact the transaction may have on competition.

c) On **prolongation** of the period of examination of the application for approval of a merger, accession, and formation of a commercial organization **in connection with defining the conditions upon which once performed by the applicants the FAS Russia takes the decision on granting consent to the application**, and determines the period for fulfillment of these conditions which may not exceed nine months.

d) On refusal to grant consent to the application to exercise the transaction, if the transaction may lead to restriction of competition and if in the process of examination of the filed documents it is established that the documents contain unreliable information.

e) On granting consent for the transaction and issuing an instruction on performance of actions aimed at ensuring competition.

The requirements may be:

- behavioral (to perform specific actions or to refrain from certain actions);
- structural (requirements related to change in the structure of assets of a person which performed the transaction).

▪ Thus, in the end of 2012, by the results of the application of "NK "Rosneft", JSC on acquisition of the group of persons of "TNK-BP Holding", JSC, the FAS Russia took the decision on issuing an instruction to "NK "Rosneft", JSC and the entities-members of the group of persons of "NK "Rosneft", JSC to perform certain actions aimed at ensuring competition, as follows:

- Upon receiving offers from businesses not included in the group of persons of "NK "Rosneft", JSC and "TNK-BP Holding", JSC – to provide the opportunity for them to conclude direct contracts for the wholesale distribution of motor fuel and diesel fuel under

non-discriminatory conditions compared with economic entities included in the group of persons of “NK “Rosneft”, JSC and “TNK-BP Holding”, JSC;

- oil products companies within the group of persons of “NK “Rosneft”, JSC, and “TNK-BP Holding”, JSC, in the presence of offers from third parties (owners of oil products), or persons authorized by them, and if technically possible, shall prevent unjustified refusal to conclude contracts for the storage of oil products; they shall enter into contracts for the provision of services for the storage of oil products on the conditions not allowing the unequal status of these businesses with the organizations belonging to the group of “NK “Rosneft”, JSC, and “TNK-BP Holding”, JSC, in the regions, in which oil products companies within the group of “NK “Rosneft”, JSC, and “TNK-BP Holding”, JSC, have a dominant position in the markets of oil products storage.

- To ensure the distribution in the domestic market of the Russian Federation of not less than 10% of the monthly volume of production of gasoline, diesel fuel, jet fuel, and fuel oil produced by the group of persons of “NK “Rosneft”, JSC on a commodity exchange, according to the criteria of regularity and uniformity of the goods’ distribution on the exchange for individual product markets in which oil and (or) oil products circulate, approved by the Government of the Russian Federation on 11.10.2012 No. 1035.

- Within three months from the date of the transaction to submit for the FAS Russia’s approval the “Procedure of pricing and general principles of selling of gasoline and diesel fuel in the wholesale markets in the Russian Federation,” by the group of “NK “Rosneft”, JSC, based on the following principles:

- priority needs for oil products in the domestic market of the Russian Federation, fairness and an equal playing field for all transactions counterparties;
- one pricing system for all counterparties;
- publicity and accessibility of information on the procedure for pricing;
- unacceptability of economically and (or) technologically unjustified refusal to enter into contracts with customers.

-Prior to the approval of the Procedure, to ensure (not to discourage) the use by “TNK-BP Holding”, JSC, of the “Procedure of pricing and general principles of selling motor fuel in the wholesale markets in the Russian Federation” of 07.06.2012 approved by “TNK-BP Holding”, JSC, and the “Procedure of pricing and general principles of selling motor fuel in the wholesale markets in the Russian Federation” approved by “TNK-BP Holding”, JSC.

-Within 2 months from the date of the transaction “NK “Rosneft”, JSC, shall apply to the FAS Russia to obtain information about the regions of the Russian Federation in which the results of the transactions show that the cumulative share of sales of motor fuel and diesel fuel of the group of persons of JSC “NK “Rosneft” and the group of persons of “TNK-BP Holding”, JSC, exceeded 50%.

- Within one year from the date of receipt of the above information – to organize trades for the sale of gas stations in the regions in order to bring the cumulative share of sales of motor fuel and diesel fuel to a level no greater than 50%. At the same time, it is allowed to preserve the cumulative share of sales of motor gasoline and diesel of the group of persons of “NK “Rosneft”, JSC and group of “TNK-BP Holding”, JSC in the amount

of shares of JSC “NK “Rosneft”, which existed at the time of the transactions stated in the application, regardless of its size.

-Not later than 6 months from the date of the transaction “NK “Rosneft”, JSC – to develop and to submit to the FAS Russia the methodology that defines the conduct of the organizations-members of the group of persons of “NK “Rosneft”, JSC, and engaged in distribution of oil products, separate accounting of costs and revenues by type of sales (wholesale and retail), and the main types of oil products (motor fuel, diesel fuel, etc.).

Not later than 6 months from the date of approval of the FAS Russia of the methodology - to ensure its implementation and use by the economic entities-members of the group of persons of “NK “Rosneft”, JSC.

-To ensure compliance with the instructions previously issued by the FAS Russia in relation to “TNK-BP Holding”, JSC and economic entities within its group of persons, including the implementation of the activities on the re-branding of “TNK-BP Holding”, JSC and economic entities within its group of persons.

▪Based on the analysis conducted within the consideration of the application of “ANK “Bashneft”, JSC regarding the acquisition of 100% of the voting shares of “Ufa Oil Refinery”, JSC, “Ufaneftekhim”, JSC, and “Novoil”, JSC (oil refineries) in the Republic of Bashkortostan, the FAS Russia issued a decision on its satisfaction and imposed the following behavioral requirements: the presence of offers from third parties (owners of oil), or persons authorized by them, and if technically possible, to prevent unjustified refusal to enter into contracts for the provision of services in oil refining; to enter into contracts for the sale or contracts for the provision of services in oil refining under conditions preventing the unequal situation of economic entities within the group of persons of the applicant.

▪In addition, in 2012, under the consideration of applications of a company-member of the group of persons of “Lukoil”, JSC, on the acquisition of 17 petrol stations in the Republic of Mordovia and the Nizhny Novgorod Region it was established that these transactions would result in the increase of the applicant's presence in the Republic of Mordovia and the Nizhny Novgorod Region and the decision was taken to issue an instruction.

- to notify the FAS Russia and the Regional Offices of the Federal Antimonopoly Service of the Republic of Mordovia and the Nizhny Novgorod Region on the execution of the transactions indicated in the applications no later than ten calendar days after the date of the transaction, together with supporting documents.

- within one year from the date of the transactions the applicant shall organize tenders for the sale of six stations located within the boundaries of the city of Nizhny Novgorod and the Republic of Mordovia owned by the applicant and / or economic entities within the applicant’s group of persons, to a person (s) which is (are) not included in the same group as the applicant.

- to notify the FAS Russia and the Office of the Federal Antimonopoly Service of the Republic of Mordovia and the Nizhny Novgorod Region on the implementation of actions

mentioned above no later than ten calendar days after the date of implementation of the above actions, together with submission of supporting documents.

▪ In addition, in 2012, by results of the analysis of the state of competition in the retail oil products markets of the Ulyanovsk Region within the consideration of the application of a company within the group of persons of JSC “NK “Rosneft” on the receipt of the fixed production-related assets into the ownership of the economic entity carrying out activities in the retail market of the Ulyanovsk Region, the FAS Russia found that this transaction could adversely affect the state of competition in the oil market of Ulyanovsk, as the applicant had a dominant position and the actions alleged in the application would result in restriction of competition, for example as a result of strengthening of the dominant position of the applicant on the relevant market.

Based on the above, the FAS Russia took the decision not to give the consent to this transaction.

*2. In case you have found parallel pricing behavior in road fuel, please discuss whether this has led to an antitrust investigation and whether it has resulted in sanctions. Have other justifications rather than anticompetitive unlawful conduct been found to justify parallel pricing in road fuel? Please also describe any horizontal or vertical restrictions or cases of unilateral conduct which you have found to be anticompetitive and may have led to the imposition of sanctions.*

The majority of cases on violations of the antimonopoly legislation in the oil product markets initiated by the FAS Russia and its regional offices concerns abuse of a dominant position. There is a smaller amount of initiated cases on violations of the antimonopoly legislation by way of concluding agreements and performing concerted actions by economic entities limiting competition in the markets of oil products.

Such statistics of initiated proceedings can be explained with a market structure (in the majority of regions of the Russian Federation there are either several large suppliers of oil products which are collectively dominating in the market (the oligopolistic structure of the market), or one large supplier occupying a considerable share of the market), a complexity of preparation of evidence, and careful behavior of participants of the market in view of existence of a threat of administrative and criminal liability for participation in cartels.

*3. Please describe whether the anticompetitive conduct cases investigated were initiated by a complaint, originated in the context of an immunity/amnesty/leniency program or resulted from your own initiative. If your agency may set priorities in its enforcement activities, please discuss the importance of road fuel markets in priority setting by your competition agency.*

In 2012, antimonopoly bodies received 1 165 applications on violations of the antimonopoly legislation by way of concluding agreements and performing concerted actions by economic entities limiting competition in the markets. The largest quantity of applications is submitted in connection with the imposing of unprofitable contractual

terms (22%), the establishment (maintenance) of prices (tariffs), discounts, extra charges (surcharges), margins (16%), increase, decrease or maintenance of prices in the tenders (16%). 294 cases were initiated, from which 91 cases were initiated by antimonopoly bodies. 187 cases resulted in decisions on violations and 321 instructions. 80 decisions, which were made in 2012, were disputed in court, and from those cases 4 decisions are declared as fully valid, 4 decisions are declared fully invalid, 1 decision is declared as partly invalid, and the rest of the decisions are at the stage of judicial appeal.

From the total amount of cases initiated 7 percent of cases were initiated because of signs of violations of the antimonopoly legislation by way of concluding agreements and performing concerted actions by economic entities limiting competition in the oil product markets.

*Enforcement of release from administrative liability for violations (a leniency program)*

The leniency program has been operating in Russia since 2007.

According to the Russian legislation only the first applicant may receive the release from administrative liability for participation in a cartel.

In 2012, the FAS Russia received 13 leniency applications.

The main markets, which were investigated on the basis of applications received, were the notary services market, the pharmaceutical market and other.

4. *Please describe the kind of evidence that was used to prove the existence of anticompetitive behavior. Please discuss how important was direct evidence and circumstantial evidence in the context of your investigations.*

In conducting the antimonopoly investigations it was important to obtain both indirect and direct evidence of a violation. Indirect evidence may be obtained, particularly, because of the results of the data analysis of all segments of the oil market. Direct evidence can be received in the framework of alleged violations of the antimonopoly legislation, the information obtained by request of the antimonopoly body, joint activities, including unscheduled inspections conducted by the competition body, including with the involvement of the interior affairs bodies.

*Market Studies*

1. *Please describe whether your agency has conducted market studies to analyze the road fuel sector and which were the main objectives of these studies, the main issues under research and the main results of these studies.*

The FAS Russia, within its powers, regularly conducts the analysis of the competition state in the commodity markets, including the oil product markets. Within the framework of the analysis an economic analysis is conducted which serves as the grounds for markets' regulation. In addition, informational bases of the commodity market's analysis

and methods of the economic analysis are used, product and geographical boundaries are determined, the evaluation of the competition state is conducted in the market with participation of vertically integrated entities under monopsonical conditions, the time interval of the commodity market's investigation is assessed, the entry barriers are determined and the competition state in a respective commodity market is evaluated.

Within the framework of preparation to the initiation of cases on violation of the antimonopoly legislation by the major vertically integrated oil companies the FAS Russia conducted analyses of the competition state in the wholesale markets of motor fuel, diesel fuel, jet fuel, and furnace fuel oil.

The time interval of the market research is 2008-2011. The product boundaries of the market are wholesale markets of motor fuel, diesel fuel, jet fuel, and furnace fuel oil. It should be taken into consideration that motor fuel and diesel fuel are not substitutable goods. Jet fuel does not have any substitute. The territory of the Russian Federation has been defined geographic boundaries of the market, as oil products were sold in all regions of the Russian Federation jointly by dominant vertically integrated entities<sup>1</sup>.

During 2008–2011, the market analysis issues were considered in the context of consideration of cases on abuse of a dominant position in the major VIOC's market (three waves of cases on violation of the antimonopoly legislation) and in the process of control of major mergers and acquisitions transactions.

The essence of the debate that raged in the courts in relation to the assessment of the product boundaries was the difference in the composition of buyers and sellers in the wholesale and retail market. The oil products market is divided into three main segments based on the composition of buyers and sellers and the intended use of fuel – large wholesale, small wholesale and retail. The wholesale market is different from the retail market because of the composition of sellers and buyers and the intended use (Fig. 1)<sup>2</sup>.

Vendors in large wholesale are oil refineries of large vertically integrated companies, and buyers are large wholesale buyers, foreign buyers, tank farms, including tank farms which perform revision of fuel, and large industrial enterprises. In the retail market, buyers are mainly persons purchasing fuel for private or industrial needs.

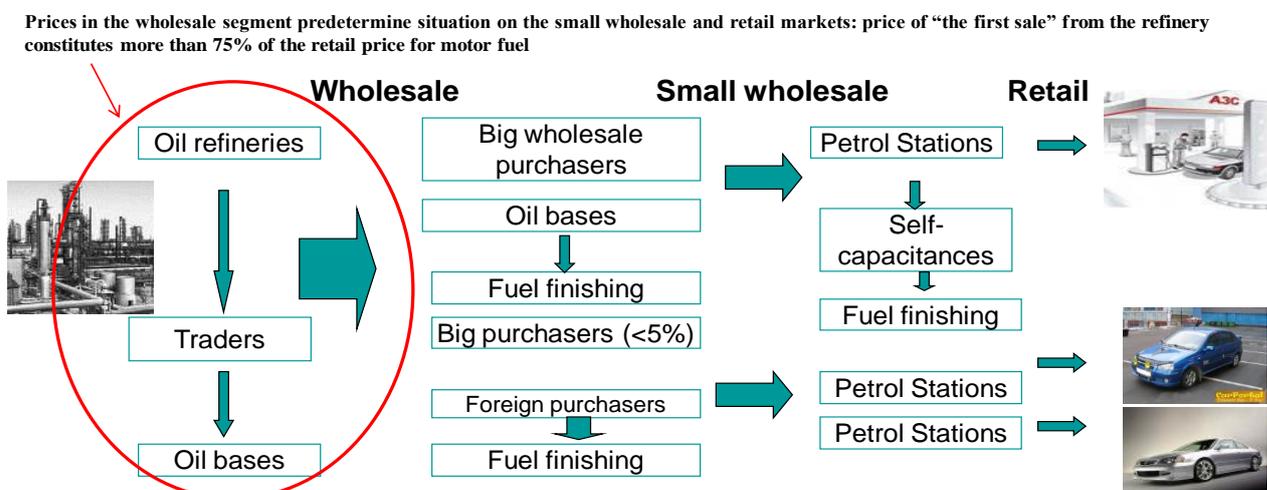
On the basis of this difference in the structure of the participants in the wholesale market motor fuels are a product group and in retail motor fuel is divided into two categories – low-octane and high-octane fuels. In the overall structure of oil products motor fuel is characterized by a stable share of the growth of production. The share of low-octane fuel is reduced, and the proportion of high-octane is increasing. There is a collective dominance situation for motor fuel in general, and also in the high-octane and low-octane segments.

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<sup>1</sup> Oil refineries of open joint stock companies “NK Rosneft”, “NK “Lukoil”, “Gazpromneft”, “TNK-BP Holding”, and ANK “Bashneft” are located in different regions of the Russian Federation and the products manufactured by these companies are delivered both to consumers of a region, where a respective refinery is located, and to buyers of other regions.

<sup>2</sup> Retail — mostly for personal needs.

Fig. 1. Oil Products Market Structure in the Russian Federation



The oil and oil products market of the Russian Federation is oligopolistic. The VIOCs have the main share in all segments of the market: extraction and refining, storage, wholesale, small wholesale, and retail sales of oil products.

The oil products market is characterized by opaque pricing through the chain of sales by major segments of the market. Much of the oil refining is carried out on a five-and-take basis. The wholesale market of oil products within the Russian Federation is characterized by presence of (collectively) dominant economic entities dominant. Prices of the wholesale segment determine the situation in the small wholesale and retail markets: the “first sale from a refinery” price is more than 70% in the retail price of motor fuel.

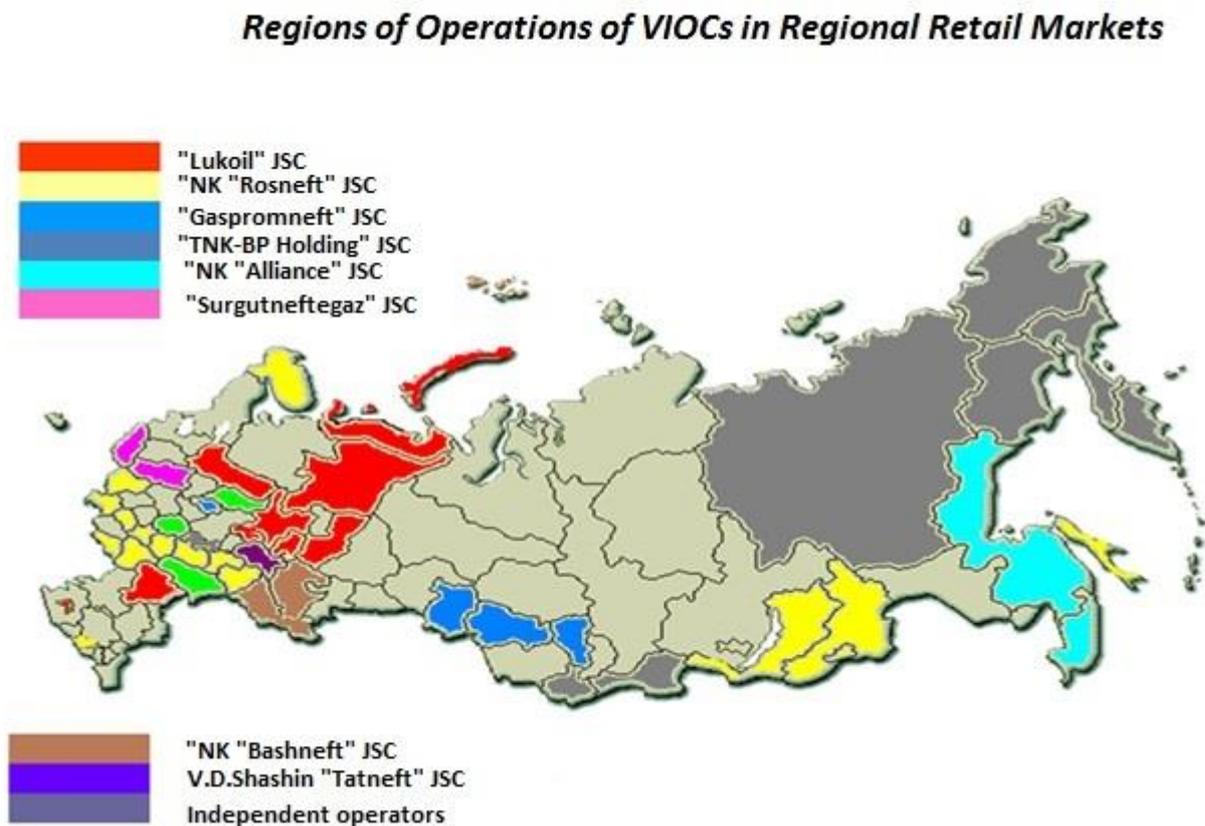
There are economic barriers activities, market access restrictions, discriminatory conditions between companies that are part of vertically integrated companies, and that are not part of vertically integrated companies.

### The Short Characteristics of the Oil Products Market

The degree of presence of the VIOCs in the regional markets in the retail segment is significantly lower than in the wholesale market in comparison with the other segments of the oil and oil products markets. The share of independent companies in the oil extraction is 11.72%, and in the manufacturing of oil products is 6.76%.

According to the analysis of the retail market of oil and oil products conducted by the FAS Russia, more than 21000 fuel stations operate in the Russian Federation, from which around 14000 fuel stations belong to independent participants of the market. From the analysis of data received from the weekly monitoring on movement of motor fuel in the regions of the Russian Federation and from the volume of sales of oil products by independent economic entities it may be concluded that the share of sales by the VIOCs of motor fuel AI-92 to independent market participants is 33 percent, motor fuel AI-95 – 23%, diesel fuel – 50%. It is worth noting that industrial consumers, agricultural producers and other market participants, which are not in the VIOCs' groups of persons, are also within the consumers of diesel fuel.

**Fig.2**



A significant number of cases were considered by the FAS Russia's regional offices in 2008-2012. Within the framework of investigations the analysis of the competition state was made in the small wholesale and retail markets of oil products (geographical boundaries are a region or respective local markets).

## **The Federal Wholesale Market of Oil Products**

The geographical boundaries of the wholesale market of oil products are determined in the boundaries of the Russian Federation. 3–5 VIOCs hold dominant positions in the federal market. Consumers strive for selecting a supplier across the territory of the country. In a number of cases, suppliers, by overestimating selling prices, discriminating independent buyers, and creating obstacles to direct contracts, seek to localize the market.

Oil products are easily stored and transported over long distances using rail and pipeline transport. If one of the regions increases the demand because of certain circumstances, the motor fuel is delivered there from the neighboring regions.

In practice, a full range of oil products (fuel oil, diesel fuel, jet fuel, motor gasoline) is available in almost all regions of the country. Transportation costs are not a limiting factor for deliveries within the federal market. Accordingly, the wholesale market of oil products is federal. Case study: the consumer (an independent trader) does not acquire light oil products at an inflated price at a nearby refinery; it buys the goods at a distant refinery at an efficient price (fig.2).

Attempts to segment the wholesale market by the supplies from refineries (that is, from the perspective of sellers) contradicts the requirements of competition law, and in practice such attempts may lead to the division of the market among VIOCs on a territorial basis.

At the federal wholesale market of oil products change in conditions of consumption in one place leads to a change in the freight in the market as a whole. Similarly, in global markets: change in terms of sales in one of the major trading centers (ARA, MED, SING) leads to a change of general conditions of sales.

Wholesale markets for oil products (including fuel oil, gasoline, jet fuel, and diesel fuel) are the world markets. These products are relatively free to move through various modes of transportation: pipeline, rail, sea, river, and automobile transport. In many countries motor fuels are subject to foreign trade.



Half of all crude oil extracted in the Russian Federation is exported. A half of the oil products manufactures from the remaining processed crude oil are also exported. Of those, there are over 80% of the produced fuel oil, and 50-60% of diesel fuel. Earlier, 15-25% of the produced jet fuel and gasoline were steadily exported. However, the last two or three years, the share of exports of jet fuel and gasoline declined, and the bulk of these fuels are consumed within the country. The import of oil products is insignificant (less than 1% of the market).

Thus, the  $\frac{3}{4}$  of the entire “basket” of crude oil in the country and produced oil products are exported; therefore, the export is evidently raw. Even exported oil products, as a rule, are exported to overseas markets for further processing. The situation in the domestic market is determined by the situation in foreign markets to a large extent. Such substantial exports predetermine the results of financial and economic activities of the oil companies. In this situation the foreign market has a decisive influence on the situation in the domestic market.

According to the results of the analyses of competition in the wholesale markets of oil products, which were conducted in 2008-2011, the FAS Russia established the following:

- Each of the economic entities, such as «Gazpromneft», JSC, JSC “NK “Rosneft”, JSC “Lukoil”, «TNK-BP Holding”, JSC, and JSC “ANK “Bashneft”, holds a dominant position in the wholesale markets of motor fuels and diesel fuel in the Russian Federation.

- Each of the economic entities, such as «Gazpromneft», JSC, JSC “NK “Rosneft”, JSC “Lukoil”, and «TNK-BP Holding”, JSC, holds a dominant position in the wholesale market of jet fuel in the Russian Federation.

- Each of the economic entities, such as «Gazpromneft», JSC, JSC “NK “Rosneft”, and JSC “Lukoil”, holds a dominant position in the wholesale markets of furnace fuel oil in the Russian Federation.

In accordance with the Work Plan of the FAS Russia on the analysis of commodity markets in 2013 it was planned to analyze the state of competition in the wholesale, small wholesale and retail markets of motor fuel and diesel fuel, and the crude oil market. The completion of the analysis of the state of competition in all segments of the oil market is scheduled for the end of 2013.

2. *Only a relatively small proportion of road fuel prices are generally subject to national or local competition – the gross margins for refining, wholesaling and retailing road fuel. Please discuss, if this issue was addressed by your studies, the contribution of margins by refiners, wholesalers and retailers to changes in pump prices*

The markets of oil products are characterized by the opaque pricing on a chain of sales in the main segments of these markets. Considerably oil processing is performed on a give-and-take basis. The market of wholesale distribution of oil products within the borders of the Russian Federation is characterized by presence of (collectively) dominating economic entities. The prices of a wholesale segment predetermine a situation in the small wholesale and retail markets: the price of “the first sale from an oil refinery” makes more than 70% in the retail price of motor fuels.

Within hearing of cases on violation by the oil companies of the antimonopoly law, the FAS Russia analyzes the dynamics of the value of oil processing at oil refineries (the “processing” cost) and the size of a wholesale and retail extra-charge (“margin”) along with other factors influencing the final price of oil products.

Since April 2009, the FAS Russia and its regional bodies continuously perform a monthly monitoring of the average size of a wholesale extra charge.

3. *Please describe how relevant are taxes and duties in pump price formation in your country.*

The component of taxes in the final price of each liter of motor fuel sold in the Russian Federation is around 55-60% (the tax on extraction of mineral resources, the value added tax, and excise duties). It should be noted that in 2011-2012 there was an increase in the excise tax on fuel: the excise duties on the motor fuel, which is not corresponding to the class 3, 4 or 5, increased by 2.81 times in 2012 compared with 2010; on the class 3 motor fuel – by 1.97 times; on the class 4 motor fuel – by 1.71 times; on the class 5 motor fuel – by 1.29 times; the excise duties on the diesel, which is not corresponding to class 3, 4 or 5, and on the Class 3 diesel fuel increased by 3.62 times in 2012 compared with 2010; on the class 4 diesel – by 2.99 times, on the class 5 diesel fuel – by 2.49 times.

On January 1, 2013, there was another increase in the excise tax on motor fuel and diesel fuel: the excise tax on motor fuels of all classes, except for class 5, increased by 1.24 times in 2013 compared with 2012; the excise tax on diesel of all classes, except for class 5, increased by 1.37 times in 2013 compared with 2012; the excise tax on the class 5 diesel fuel increased by 1.46 times.

Currently, the FAS Russia developed a bill amending the tax legislation of the Russian Federation. The purpose of these amendments is to stimulate the production of motor fuels of a higher quality and to reduce the negative impact of the dynamics and the level of world prices on the price situation in the domestic market by incorporating a mechanism of flexible change in the excise tax on fuel (motor fuel and diesel) into the system of tax, depending on the dynamics of world prices for oil and oil products.

With the adoption of this bill all major taxes in the oil and gas sector will change in the balanced way at intervals of 1 month. Now this practice is applied in respect of customs duties on oil and oil products, as well as in respect of the tax on extraction of mineral resources, the rates of which depend on the level and dynamics of prices in the international market. The use of a similar mechanism for setting excises unifies the tax practice.

- 4. Please describe whether you have identified regulatory constraints in the road fuel sector which may have a possible impact on the level or flexibility of road fuel prices (e.g. constraints which may hamper access to logistics infrastructures – such as ports, pipelines or storage depots –, issues relating to licensing or to the granting of concessions to operate relevant infrastructure or service stations, regulation which may affect competitive conditions in highways).*

The problems related to the rendering of services by natural monopolies in the fuel and energy complex, transport, and communications, the guarantees for non-discriminatory access to these services and the services provided with the use of public infrastructure, and the economic, organizational, and regulatory requirements of the organization of these activities are crucial for the functioning of the economy.

In order to ensure non-discriminatory access to services of natural monopolies for transportation of crude oil (petroleum) through pipelines in the Russian Federation, in 2011 the Government of the Russian Federation approved the rules of non-discriminatory access to services of natural monopolies on transportation of oil (oil products) by main pipelines in the Russian Federation. This document defines the procedure for providing all persons carrying out activities in the territory of the Russian Federation, with the non-discriminatory access to services of natural monopolies for transportation of crude oil (oil products) through pipelines for the purposes of consumption in the domestic market of the Russian Federation and supply beyond the territory of the Russian Federation.

It should also be noted that according to statistics of the Russian Federation the violations of the antimonopoly legislation in the markets in key infrastructure sectors (electricity, heat, gas, oil and oil products, rail, water and air transport, electricity and postal services, and utilities) are about 85% of the total number of such a violation as the abuse of a dominant position. Almost half of them are in the sphere of natural monopolies.

▪ For example, in 2011 and 2012, the FAS Russia considered two cases, by results of which the group of persons of JSC “AK “Transneft” has been found to have violated the antimonopoly legislation. As a part of the case, the FAS Russia found that services on oil draining / loading at the loading stations were rendered by the group of persons of JSC “AK “Transneft” not directly to consumers, but under the agreement through its subsidiary-member of the same group. In this case, the size of the tariff applied differentially to different customers. These actions have led to inflation of the cost of services provided to end-users, subject to state regulation.

The FAS Russia considered such actions illegal and found that the group of persons of JSC “AK” Transneft” violated Article 10 of the Law “On Protection of Competition”, including the violation of the statutory procedure on pricing of services for handling, loading, and draining oil and the unjustified refusal to sign the agreement on the provision of services for handling and loading of crude oil, which led to the infringement of the interests of consumers.

▪ In June 2012, the FAS Russia has also initiated another case of violation of the antimonopoly law by the group of persons of JSC “AK “Transneft”. The basis for initiating the case was the application received by the FAS Russia from JSC “AK “Transneft” on making obstacles by JSC “AK “Transneft” to «TNK-BP Holding», JSC to access the services of the oil transportation through main pipelines, including by imposing to sign the agreement for the provision of services on the organization of oil transportation, owned by «TNK-BP Holding», JSC at the oil loading station “Krotovka” of the Kuibyshev railway road.

During the hearing of the case the FAS Russia decided to grant a group of persons of JSC “AK “Transneft” a warning to stop the actions that led to the denial of the rights and legitimate interests of «TNK-BP Holding», JSC.

In order to perform the warning of the FAS Russia, the group of persons of JSC “AK “Transneft” sent «TNK-BP Holding», JSC an offer to conclude a contract for the provision of services of transportation of oil by railway road from the station “Krotovka” with economic entities-members of the group of persons JSC “AK “Transneft”, or other third parties at the discretion of «TNK-BP Holding», JSC. In view of the above, the FAS Russia issued a decision to dismiss the case against the group of persons, including JSC “AK “Transneft”, JSC “Privolzhsknefetprovod”, and JSC “Transneft-Logistics”, because of the warning of the Federal Antimonopoly Service was duly performed.

5. *Please describe if you have found evidence of „asymmetric price adjustments”, also known as „rockets and feathers”, and what you have found to explain such asymmetries in the length or pattern of price adjustments.*

World pricing has essential impact on domestic prices of oil and oil products in the Russian Federation. Within hearing of cases on violation of the antimonopoly legislation the FAS Russia established, that there is an asymmetry of the domestic and world prices, it concerns both a size, and a time delay. Upward tendencies are broadcasted without special delays and with a greater degree of correlation. Downward tendencies are broadcasted with a considerable delay and with a lesser degree of correlation. It may be reasoned by

the competition conditions in the national markets, including issues of non-discriminatory access to objects of infrastructure and logistics. The FAS Russia qualified the above actions of the oil companies as a violation of the antimonopoly legislation.

6. *Please describe the resources needed to conduct such kind of market studies. In this context, describe the human resources involved in the research developed by your agency (economists, lawyers, financial analysts, paralegals, research analysts, personnel with specialized expertise in the petroleum industry, external consultants).*

The structure of FAS comprises: the Central Office and 83 regional Offices operating in 83 constituent territories of the Russian Federation. Employed at the Central FAS Office - 578. The number of employees at the regional bodies - 2 436.

As of 31.12.2012 the FAS personnel included:

- *Economists*: 692 (the figure is tentative since some FAS officers exercise the functions of both lawyers and economists). 51 employees have a doctorate degree in economics.

- *Lawyers*: 736 (the figure is tentative since some FAS officers exercise the functions of both lawyers and economists). 24 employees have a doctorate degree in economics

- *Other Professions*: 397 (persons with technical and other education as well as incomplete college education).

- *Supporting Personnel*: 1189

- *Total employees*: 3014.

The total number of members of staff involved in enforcements is 2338. FAS does not gather statistical data with breakdown by different types of practices and enforcement areas.

The organizational structure of the Central FAS Office is built upon an industry principle, so it is not easy to specify the exact number of officers involved in enforcement in a particular area of antimonopoly regulation. For instance, the FAS Russia has the Department for Control over Fuel-and Energy Complex, which has 21 employees.

At the same time, the FAS Russia has a special Anti-Cartel Department that exposes cartels of special and precedent importance at the federal and interregional levels. In 2012 the Department had 21 staff members. The Department is also responsible for cooperation with law enforcement bodies on the issues of gathering evidence in the course of cartel investigations.

Additionally, the regional bodies of the FAS Russia deal with suppressing all types of violations of the antimonopoly law, including cartels, and exercise control over economic concentration. Thus, the number of staff members performing the analysis of the competition state in the oil products markets is considerably higher than the staff of the Department for Control over Fuel-and Energy Complex.

7. *Please describe any particular difficulties which you might have faced while conducting market studies in road fuel markets, such as in gathering the necessary data, how important was cooperation with other agencies in your jurisdiction and if international cooperation was also relevant in carrying out such market studies.*

Within hearing of cases on violation of the antimonopoly legislation, and when carrying out the analysis of the state of competition in the markets of oil and oil products, the FAS Russia and its regional bodies, within their powers, forward requests for providing necessary information. Requests go to all market participants depending on the investigation purpose: it may be authorities, economic entities, infrastructure organizations (including the exchanges), the scientific/expert organizations, etc. Administrative liability is imposed for failure to submit documents and information upon a motivated request of the antimonopoly authority.

For example, within hearing of cases on violation of the antimonopoly legislation by the oil companies, more than 15 administrative proceedings failure to submit documents and information requested by the FAS Russia were initiated against one of the largest oil companies. By results of consideration of the administrative case all necessary information was submitted in full.

It should be noted also that in October 2012 the FAS Russia made the agreement on interaction with the Investigative Committee of the Russian Federation. The agreement establishes the general order of interaction of the Investigative Committee of the Russian Federation and the Federal Antimonopoly Service at implementation of their functions in the sphere of criminal legal proceedings, the antimonopoly law and in other fields of activity, and also provides for regular exchange of information on the questions within their competence which represent mutual interest.

Earlier, in December 2004 the joint order also approved the provision on interaction between the FAS Russia and the Ministry of Internal Affairs of Russia which is directed on increase of overall performance according to the prevention and suppression of violations of the law in the commodity markets, in the market of financial services, legislation on natural monopolies and legislation on advertizing within which regular exchange of information on the questions within their competence and which represent mutual interest, including the possibility to receive operational search information by the FAS Russia.

The stage of analyzing the competition state in the commodity market when carrying out an antimonopoly investigation is also very important. For an assessment of the competition state, including in the markets of oil and oil products, it is necessary to carry out a set of procedures of research of the commodity market. The definition of product and geographical boundaries of the commodity market is one of the most difficult and significant procedures.

Discussion which we had in courts in relation to an assessment of product borders consisted in distinction of structure of sellers and buyers in the wholesale and retail market. Sellers of the large wholesale market are oil refineries of large VIOC, and buyers are large wholesale buyers, foreign buyers, oil depots, including those finalizing fuel, and the large industrial enterprises. In the retail market buyers are mainly the persons getting

fuel for personal or production needs. Proceeding from such distinction on structure of market participants motor fuels make one product group in the wholesale market, and in retail motor fuels make two categories: low-octane and high-octane automobile fuels.

The issue of geographical boundaries was also a subject for discussion in courts. The position of the FAS Russia is that the large wholesale market is federal. The conditions of the goods' circulation on this market differ from the conditions of the world market taking into account the measures of customs and tariff regulation. A half of all manufactured oil products are sent for export. The change in price in the world markets has a decisive impact on dynamics of the prices in the domestic market.

In view of that the prices of the world market have direct impact on quotations of the domestic market, on results of financial and economic activity of the oil companies, and on receipt of funds in the income of the federal budget, the FAS Russia holds that it is necessary to research the existing approaches of the international experience of antimonopoly bodies to antimonopoly investigations, the analysis of a condition of the competition and monitoring of the markets of oil and oil products.

The International Working Group on Investigating Issues on Pricing at the Oil Product Markets and Methods of their Functioning actively started its work at the initiative of the Federal Antimonopoly Service (the FAS Russia) and the Austrian Federal Competition Authority in October 2011.

Up till now, the Working Group held five sessions. They were dedicated to the methodologies of determining the oil and oil products markets, and to consideration of characteristics of the wholesale and retail trade and the oil and oil products markets stipulated by the oligopolistic market structure and by chains of vertically integrated links among participants. Also, another subject of the Working Group's discussion was the monitoring of the oil and oil products markets, which the Working Group's participants constantly observe both by direct use of competition authorities' resources and means and within the system of the state and branch departmental statistics, taking into account social and economic importance of these commodity markets. The Working Group also researched the issues of price formation in the world markets and impact of world prices on wholesale prices in the national markets for oil and oil products.

8. *Please discuss how important are international comparisons in the elaboration of market studies in the road fuel sector and whether comparisons with economies of similar size are eventually of more importance.*

World prices have an impact on prices in national markets, both of large and small countries, and both of importing countries and exporting countries. Owing to the social importance of the commodity markets the antimonopoly bodies continuously conduct monitoring, and which analyze the oil and oil product markets within hearing of cases on violations of antimonopoly legislation, within performance of control over large mergers and acquisitions, and within country and intercountry analyses of the oil and oil product markets.

Experience of interaction of the antimonopoly authorities within the International Working Group on Investigating Issues on Pricing at the Oil Product Markets and Methods of their Functioning created in 2011 at the initiative of Federal Antimonopoly

Service and the Austrian Federal Competitive Authority showed importance and need for exchange of information on experience on antimonopoly investigations, the analysis of a condition of the competition and monitoring of the markets of oil and oil products.

Following the meeting, the Oil Working Group agreed on the establishment of a common database, which would include monitoring data and statistical surveys, summarize the main developments in the methodology and practice of competition law, etc. This platform will become the tool for competition authorities to exchange basic information on national markets for oil and oil products. It may increase efficiency of interaction of competition authorities, including within investigation of cases on violations of the antimonopoly law.

### *Advocacy*

1. Please describe the advocacy activities relating to road fuel competition developed by your agency.

Please describe any recommendations you have issued to improve competition and competitive conditions in the road fuel sector. Please describe who were the destinataries of such recommendations.

Competition advocacy is the most important component of the Federal Antimonopoly Service's work. This term designates activities of the FAS Russia on explanation of advantages of fair competition and free market to state authorities, business, mass media, and citizens.

Information openness and transparency of the FAS Russia's and its territorial bodies' operations along with modernization of the legislation, improvement of enforcement practice, and fight against cartels are priorities of the antimonopoly body.

The instrument of advocacy is actively used by the FAS Russia along with the enforcement practice related to identification and suppression of violations of the antimonopoly legislation.

To advocate competition the FAS Russia and its regional bodies use various ways and mechanisms: competition promotion through mass media, advisory councils and legislative initiatives. All of them are focused on different target audiences.

Advocacy of competition represents practice performed by the antimonopoly body to create competitive conditions for economic activity on the basis of interaction with other state departments, the business community and to increase public awareness of advantages which competition presents.

The solution of a problem of development and protection of competition in Russia, creation of favorable conditions for its effective introduction practically to all spheres of life of the Russian society are impossible without intensive change of consciousness of citizens, businessmen, authorities, increase of competitive culture in our country, and introduction of the principles of competitive behavior to all spheres of economic life.

In this regard, to increase the society's awareness to competition problems, to promote free and fair competition, and to inform on a state of competition in Russia and the measures taken by the President of the Russian Federation, the Government of the

Russian Federation, the Federal Antimonopoly Service, in particular on development and protection of competition in Russia, work on competition advocacy is of a great significance.

In order to prevent violations of the antimonopoly legislation, to modernize it, and to prevent competition in the markets of oil products, including reduction of deliveries to the domestic market and infringement of interests of consumers, the FAS Russia actively pursues a policy of competition advocacy.

### Public Consultations

One of the forms of public consultations is direct interaction with representatives of the largest organizations speaking for the interests of the business-community under the framework of specially organized working groups. To formalize public consultations, in the near future public consultations will be also offered through a special web-site. The Regulations on public consultations are being drafted by the Chamber of Commerce and Industry of the Russian Federation jointly with the Russian Union of Industrialists and Entrepreneurs and non-government organizations – “OPORA Russia” and “Business Russia”.

In order to increase predictability and objectivity of pricing mechanisms in the oil products market of the Russian Federation, the FAS Russia elaborated bills of the federal laws “On Market Pricing of Oil and Oil Products in the Russian Federation” and “On Turnover of Oil and Oil Products in the Russian Federation”. The bills of laws are directed at formation of effective and stable pricing mechanism in the oil and oil products markets inter-related with measures for development of competition.

The law bill “On Market Pricing of Oil and Oil Products in the Russian Federation” proposes to use three basic indices of market prices, including: exchange quotations to oil and main oil products, OTC prices of oil and main oil products, and comparable prices in foreign markets. The price arbitration between the listed three indices will allow to focus prices of oil products on a market level and not to allow their unreasonable growth.

The bill of the federal law “On Turnover of Oil and Oil Products in the Russian Federation” additionally formulates a range of requirements of a structural and behavioral character, which promote creation of real competitive conditions in domestic market. In particular, it is a question not to allow transactions of mergers and acquisitions or allocation of the land plots for fuel stations’ construction to those companies the market share which already exceeds a threshold value. The requirement for organizational isolation for the kinds of activity of the enterprises which are engaged in wholesale and retail distribution of oil products is also established. Independent fuel stations have to buy fuel on the same conditions, as the sales companies – owners of fuel stations which are a part of VIOCs. The separate accounting of expenses and income on primary activities will become mandatory. Besides, the bill establishes an obligation to publish information on the residues of oil products in oil storages.

To carry out public discussions the FAS Russia published the bills on its official website. The federal executive authorities and the organizations involved, including the oil companies, were notified about this publication. All the federal executive authorities and the organizations involved forwarded their proposals and comments on the bills. The FAS

Russia organized public hearings of bills during which representatives of authorities, participants of the market, and representatives of scientific communities discussed the proposals received. The FAS Russia made changes and additions according to the proposals which arrived following the results of carried-out public discussions and the bills were sent to the Government of the Russian Federation.

*Public Advisory and Expert Councils.*

One of examples of public consultations is the activity of the public advisory and expert councils created at authorized bodies in the sphere of competition policy and antimonopoly regulation which structure. Representatives of authorities, market participants and representatives of non-commercial associations participate in such councils.

For the purposes of public discussions of the issues of antimonopoly regulation in various fields and objectivity and transparency of decision-making, and to engage professional market participants in resolving the problems of developing competition on the markets, FAS is actively developing a system of Public Advisory and Expert Councils (Competition Councils). Such Councils at FAS Russia and its regional bodies comprise over 730 representatives of the Public Chamber of the Russian Federation, regional public chambers, “OPORA Russia”, “Business Russia”, the Chamber of Commerce and Industry of the Russian Federation, the Russian Union of Industrialists and Entrepreneurs, other organizations and associations.

In order to invite professional market participants to the solving of issues of the development of competition in the commodity markets the FAS Russia has established a number of Expert Councils. At present, the FAS Russia created 29 Expert Councils, including the Expert Council for Development of Competition in the Oil and Oil Products Market, and the Expert Council for Developing Competition in the Financial Markets.

The last joint meeting of the Expert Council for Development of Competition in the Oil and Oil Products Market and the Expert Council for Developing Competition in the Financial Markets (the securities’ market section) was dedicated to the issues on the state of the exchange trading in oil and oil products and the measures on its development and on the draft of the Regulation of the Government of the Russian Federation “On Approving the Guidelines on Forming the Initial Price in the Sale of the Goods in the Commodity Exchange”.

*Cooperation with the legal society.* In 2012, the FAS Russia was advancing cooperation with “Promoting Competition” Non-Commercial Partnership, an organization formed upon the initiative of the FAS Russia. The purpose of the Partnership is to pursue an active dialogue between the FAS Russia and the legal community on improving competition law and establishing efficient enforcement practice. The Partnership was formed in 2007. Currently, the Partnership has over 50 members – lawyers and economists specializing in the antimonopoly law and policy, and representing large international and Russian law firms as well as business companies.

In 2012, the FAS Russia jointly with “Promoting Competition in the CIS Countries” Non-Commercial Partnership organized the seminar “The Legal and Economic Bases of

the Analysis of a Competition State in the Commodity Market and Determination of Dominant Position”. The purpose of the seminar is formation of unified approaches and standards of legal and economic analysis of the competition state, including the markets of oil and oil products.

*Cooperation between authorities.*

In 2012, by the joint order of the FAS Russia and the Federal Tax Service (the FNS Russia) the interdepartmental Working Group for pricing issues for application of the legislation on taxes and fees and the antimonopoly law was created. One of the main objectives of the Working Group is development and preparation of proposals on improvement of the legislation on taxes and fees and the antimonopoly legislation regarding the determination of market prices, and also concerning other issues relating to a subject of regulation of the legislation on taxes and fees and the antimonopoly law.

The last meeting of the Working Group was devoted to condemnation of approaches to the determination of market prices in the markets of oil and oil products. The FAS Russia and FNS Russia made the decision to state proximity of positions of two Authorities concerning determination of compliance of the prices to market prices at the conclusion of transactions, and also to continue work on the analysis of the applied methods used by the FNS Russia at definition for the taxation of the income (profit, revenue) in the transactions the parties of which are interdependent persons, and the FAS Russia at determination of exclusively high/low prices for the purpose of detection of possible distinctions and their further elimination.

Организация и участие в конференциях, в том числе международных.

In January 2012, the III International Forum “The Exchange and OTC Markets of Oil and Oil Products in Russia”, at which Igor Artemiev voiced one of the tasks of the FAS Russia in the nearest two years – to create a market mechanism of the oil products pricing at the exchange.

In March 2012, at RIA RBC Anatoly Golomolzin, Deputy Head of the FAS Russia, held the press-conference “the Third Wave” of the cases against oil companies: “Results and Conclusions”. At this press-conference, he talked about the main moments of work of the antimonopoly body in this area.

Such public speeches is positive for competition advocacy and give the idea about the steps taken by the FAS Russia to stabilize the situation in the market of oil products.

The event in Kazan (Republic of Tatarstan) was attended by representatives of competition authorities from the CIS member-states and from other countries across the world, several international organizations and integration associations (OECD, BRICS, the European Commission, the Eurasian Economic Commission, and the CIS Executive Committee) and the leadership of the Republic of Tatarstan.

Within the framework of the Russian Competition Day in Kazan (Russia), the third session of the International Working Group on Investigating Issues on Pricing at the Oil and Oil Product Markets and Methods of their Functioning was organized, which concerned the issues of the monitoring of the oil and oil products markets.

The purpose of Competition Days is to advocate competition both at the national level in Russia and in the provinces, attracting attention to the issues of competition development, devising approaches to resolving them in view of the best world practices and intensifying integration of the Russian Federation in the global economic area.

*The Electronic Research-to-Practice Journal “Russian Competition Law and Economics”*

The Electronic Research-to-Practice Journal “Russian Competition Law and Economics” is published at the electronic resources of the FAS Russia.

The main objective of the electronic publication is to facilitate development of competition in Russia as well as across the entire space of the Customs Union of Russia, Belarus and Kazakhstan. From the journal, the readers learn first-hand news about the antimonopoly law and enforcement practice, about the most complex and interesting cases heard at Courts.

The target audience of the journal includes officers of the antimonopoly bodies, representatives of the business-community, experts, consultants and members of the general public.

In 2012, this Journal placed a number of publications: “The Methodology of Definition of Commodity and Geographical Boundaries of the Wholesale and Retail Markets of Oil Products” and “The monitoring and analysis of the wholesale and retail markets of oil products”.

Opening of the FAS Russia’s Training Centre in Kazan.

A landmark event in 2012 was the opening of the FAS Russia’s Training Centre in Kazan, the capital city of the Republic of Tatarstan. It is expected that apart from training sessions, the Centre will host international conferences, workshops and meetings aimed at approximating the antimonopoly law of Russia and the CIS states as well as foreign countries to achieve better practical results in conducting competition policy, at both national and international levels.

In 2013, in the FAS Russia’s Training Centre a two-day seminar was organized for the staff of regional bodies of the FAS Russia. The subject of the seminar was to discuss the existing approaches on performing the analysis of the competition state in the market of oil products, exchange of law-enforcement practice and discussion of available questions.

Creation of the Exchange Council.

The FAS Russia has developed the draft agreement on improvement of mechanisms of selling of oil products (further – the Agreement), which may be concluded among federal executive authorities and participants of the market involved (the Exchange Council). The purpose of the Agreement is preparation of suggestions for improvement of mechanisms of formation of representative price indicators in the markets of oil products,

and also the basic principles of the organization of the exchange auction of oil products. The agreement is open for signing by interested parties.

Interaction of participants of the Agreement within the cooperation directed on formation of the favorable competitive environment in the markets of oil products will allow to improve application of the legislation in the oil sector and, therefore, to provide transparency of pricing, standardization of the demands made to economic entities in relation to the organization and implementation of trade activity, and also to create a basis for formation of market and non-discriminatory mechanisms of realization of oil products. Now participants of the market (including the oil companies, the exchanges, information and analytical agencies) and FNS Russia agreed to sign this Agreement. The discussion with the Ministry of Energy of the Russian Federation and the Federal Service for Financial Markets of Russia is currently under way.

### International Cooperation

To enhance international cooperation among competition authorities of different countries in 2011 the FAS Russia initiated a range of working groups, which actively dealt with issues of development of competition in the socially significant markets. One of such groups was the International Working Group on Investigating Issues on Pricing at the Oil and Oil Product Markets and Methods of their Functioning (the Co-Chairs are Russia and Austria).

The purpose of their activity is elaboration of the coordinated approaches to implementation of antimonopoly regulation in the relevant commodity markets, preparation of recommendations on competition development on the basis of experience of various jurisdictions, development of specific measures for elimination of the factors limiting competition development, and carrying out joint investigations, if necessary.

In particular, the International Working Group on Investigating Issues on Pricing at the Oil and Oil Product Markets and Methods of their Functioning (hereinafter referred as the Oil Working Group) was created at the initiative of the Federal Antimonopoly Service (the FAS Russia) and the Austrian Federal Competition Authority in October 2011. Since the Working Group's formation, representatives of around 20 countries on three continents, including Russia, Austria, Portugal, Germany, Kazakhstan, Ukraine, USA, UK and other countries, took part in its sessions.

The objectives of the Oil Working Group are to assist formation of pricing indices reflecting fair prices to oil and oil products formed in the market conditions and to ensure competitive pricing within the framework of organized forms of trade with oil and oil products.

*2. Please describe whether and how you monitor the recommendations issued and describe if any of the recommendations issued have already been followed and if you have assessed its impact in the markets.*

Upon consideration of the cases of violation of the antimonopoly legislation and within the control over concentration, of FAS Russia, within its powers, issues binding

instructions to violators, in particular to perform actions aimed at ensuring competition. Administrative liability may be imposed for failure to perform an instruction.

1) Development of exchange trade. Upon consideration of the cases of violation of the antimonopoly legislation by major oil companies the FAS Russia issued instructions to begin the exchange trade in physical commodities (oil products).

The important fact is that the legal framework that promotes trading began forming taking into account practice of competition law enforcement. The following legal acts were adopted:

✓ The Federal Law of 21.11.2011 No. 325-FZ “On Organized Trading”, in accordance with which since 2014 the Federal Service for Financial Markets of Russia will regulate, supervise and license the operations of the electronic trading platforms (ETP) as the organizer of trades.

✓ The Federal Law of 26.07.2006 No. 135-FZ “On Protection of Competition” was amended (the “Third Antimonopoly Package”), which became valid since January 6, 2012. The amendments establish the requirements for formation of market prices at the exchange trades. Fulfillment of these requirements will form an objective market indicator to oil products.

It should be noted that the “Third Antimonopoly Package” includes a number of regulations that govern the selling of oil products at the exchange:

❖ The Proceedings of submission to the exchange of a list of affiliate persons of economic entities holding dominant position in a respective commodity market which are accredited and/or participate in the trades (including by way of submission of bids to a broker) approved by the Order of the FAS Russia dated 26.07. 2012 No. 409.

❖ The Criteria of regularity and uniformity of goods’ distribution at the exchange for separate commodity markets, in which oil and/or oil products circulate approved by the Regulation of the Government of the Russian Federation dated 11.10.2012 No.1035.

❖ On April 30, 2013, the Ministry of Energy of the Russian Federation and the FAS Russia signed the Joint Order “On the minimum value of oil products traded on the exchange, which are produced and (or) sold by an economic entity occupying a dominant position on the relevant market, and on approval of the Requirements to exchange trading, during which deals are made between companies occupying with a dominant position on the relevant product markets” (hereinafter referred as the “Joint Order”) elaborated in accordance with Paragraph 5 Part 5 Article 6 of the Federal Law of 26.07.2006 No. 135-FZ “On Protection of Competition”.

The Joint Order (Paragraph 1) establishes the minimum value of oil products traded on the exchange, which are produced and (or) sold by an economic entity occupying a dominant position on the relevant wholesale market, and by persons forming one group of persons with such an economic entity, and/or by participants of exchange trades, which act in the interest and on the account of such persons. This means the oil products of the following types:

- motor fuels in the amount of 10 percent;
- diesel fuel in the amount of 5 percent;
- jet fuel in the amount of 10 percent;

- fuel oil in the amount of 2 percent of the total production.

The signing of the Joint Order and its entry into force finalizes the preparation of the legal basis, which forms the requirements to market pricing to oil products at the exchange.

At the end of 2012 one may speak about a qualitative improvement in the structure of exchange trading. The volume of sales on the exchange in 2012 amounted to 9.6 million tons with the turnover of 254.5 billion rubles. The number of transactions has increased significantly: from 12.6 million transactions in 2011 to 16.9 million in 2012 (up to 34.9%). The average volume of transactions amounted to 565 tons (922 tons in 2011).

In the structure of oil products diesel fuel continues to be the leader of sales; its share was 44.2% in the total commodity turnover (48.2% - in 2011), motor fuel - 25.9% (23.5%). The proportion of jet fuel significantly increased: 17.3% vs. 14.7% in 2011; the volume of fuel oil, on the contrary, decreased from 12.7% to 11.7%.

In 2012, the Derivatives Market Section of the St. Petersburg International Mercantile Exchange (SPIMEX ) 1290 transactions were made, the total of which exceeded 3.5 billion rubles (\$ 119.3 million futures contracts). In the structure of the futures market for about 70% of turnover accounted for staging futures on summer diesel fuel. The share of settlement of futures on SPIMEX indexes was 30%, including REG 92 - 24%, summer diesel fuel - 3%, jet fuel - 2%, oil fuel - 0.5% of turnover.

The Resolution of the Government of the Russian Federation of 10.02.2011 No. 65 “On approval of the Regulation for registration by the mercantile exchange of OTC transactions with exchange goods, including long-term supply contracts, as well as on the maintenance of the register of such transactions and the provision of information to the Registry” established the procedure for registration by dominant economic entities of long-term oil and oil products supply contracts on mercantile exchanges.

At the end of 2012, more than a fivefold increase in the number of registered transactions was recorded at doubling their total volume. If in 2011 since March there were 20,477 transactions with a total volume of 20.1 million tons, in 2012, these figures increased to 110,994 and 41.3 million tons respectively.

In addition, OTC contracts for coal must be registered now by major players in the market. The registration of transactions in other commodities (metals, grain, etc.) is under discussion now.

Following the results of 2012 the trading volumes of physical commodities (motor fuel and diesel) at SPIMEX are comparable to the volumes used by Platts at definition of the oil product prices, and the trading volumes of jet fuel three times exceed those of Platts. Therefore, data under contracts registered at SPIMEX multiple times (almost a sequence higher) exceed the volumes of transactions used by Platts. By number of considered transactions SPIMEX considers a bigger number of transactions in 4-6 times. Exchange auctions comply with the provisions of antimonopoly law and the legislation on the organized trading, and registration of transactions is mandatory in accordance with acts of the Government of the Russian Federation and the Administrative Code of the Russian

Federation. This makes the Russian estimates much more reasonable, representative and reflecting the actual prices in the market of the physical commodities (oil products).

The measures taken allowed to generally create the commercial infrastructure of the oil and oil product market. Exchange trade in physical commodities and registration of the actual off-exchange transactions at the exchange were developed. Thereby, reliable information about the market of oil products of fundamental character was received.

2) Increasing the industry's transparency. The development of "trade practices" by oil companies.

Upon review of the cases of violation of the antimonopoly legislation in 2012 the FAS Russia handed in the instruction to «TNK-BP Holding», JSC to perform the actions aimed at promoting competition. Thus, «TNK-BP Holding», JSC had to provide an opportunity for economic entities, which were not in the group of persons of «TNK-BP Holding», JSC to enter into direct supply contracts of motor gasoline on an equal footing with economic entities-members of the same group as «TNK-BP Holding», JSC, and to ensure changes to the information posted on the official website of «TNK-BP Holding», JSC online, including the criteria imposed on persons who have the intention to conclude direct contracts with «TNK-BP Holding», JSC for the supply of motor fuel, prices, discounts, alternative logistics capabilities, delivery volumes and other conditions that are essential for the circulation of motor fuel in the markets of the Russian Federation.

As part of measures aimed at promoting competition «TNK-BP Holding», JSC provided the FAS Russia with the Procedure for pricing and general principles of the motor fuel sale in the wholesale markets in the Russian Federation. The Procedure contains the formation by «TNK-BP Holding», JSC of a unified approach to the conditions of the motor fuel in the wholesale markets in the Russian Federation, as well as the establishment of uniform pricing principles for the motor fuel sale in the Russian Federation.

The Procedure is based on the following principles: priority needs for oil products in the domestic market of the Russian Federation, fairness and equal treatment for all trades contractors, one pricing procedure for all counterparties, publicity and accessibility of information on the procedure for pricing; economic and (or) a technologically unjustified refusal to enter into contracts with customers is unacceptable. Three basic indices of market prices will be used, such as: exchange quotes and OTC prices to oil products as well as prices of comparable foreign markets; the ensuring of non-discriminatory access to the wholesale market of motor fuel and the provision of services for the storage of oil products; marketing of oil products under conditions allowing to observe regularity and uniformity of supply from refineries, including the provision of logistics capabilities for customers.

Also, in 2012 «TNK-BP Holding», JSC provided the FAS Russia with a similar procedure enshrining the pricing system and the general principles of diesel fuel in the wholesale markets in the Russian Federation.

On December 26, 2012, the FAS Russia agreed on a similar procedure "The Procedure for pricing and general principles of the motor fuel in the wholesale markets in the Russian Federation" provided by ANK "Bashneft".

On February 25, 2013, the FAS Russia agreed on the rules of the trade policy of JSC “Gazprom Neft”.

The purpose of signing the trade practices are, as follows:

- ensuring maximum transparency in the marketing of the Company to existing and potential customers, regulators, employees, and other stakeholders;
- prevention of violations of the laws of the Russian Federation;
- information about the Company's policy in the field of oil products in the wholesale markets in the Russian Federation, including the order of selection of contractors and pricing.

Rules of trade practices in respect of oil products in the wholesale markets in the Russian Federation establish the principles, conditions, methods, directions of oil products sale by the Company, the qualifying requirements for customers, and they provide the basic information on how to determine the price, logistics capabilities of delivery, order of concluding purchase-sale (supply) agreements of oil products.

It should be noted that the trading practices of JSC “Gazprom Neft” also reflected the willingness of the FAS Russia to create the structural conditions for the development of a competitive market of oil products, and the willingness of JSC “Gazprom Neft” to improve the effectiveness of corporate governance. The result of the trade practices would be the separation of sales activities in the field of motor fuel and diesel fuel at wholesale, small wholesale, retail and storage (the so-called “soft division”). This will help to increase the openness and transparency of sales, and will ensure non-discriminatory admission of consumers at the retail and wholesale market of oil products.

It is the first time when the trade policy in the field of aviation fuel was also approved. Trade practices with respect to jet fuel sales in the wholesale markets of the Russian Federation are aimed at consolidating the operating conditions of the competitive market of aviation fuel. The priority will be granted to the implementation of trade practices of jet fuel in the civil and military aviation. No less than 10% of aviation fuel will be sold on the exchange. Airlines also have the right to purchase jet fuel through direct contracts. Fuel sales through direct contracts in order to meet the needs of airlines is an equal priority with the ability to purchase fuel through the subsidiaries and affiliates of a company.

These documents and their implementation will be an important step in the formation of a civilized market based on the non-discriminatory conditions in the markets of oil and oil products in the Russian Federation.

### *Market Monitoring*

1. *Please describe whether you keep regular monitoring of fuel markets and how regularly are markets monitored. Please also describe if the results of the monitoring activity are publicly made available. In this context, does the competition agency publish data on the markets?*

The FAS Russia together with its regional offices continuously monitors the prices of oil products by region (including municipalities) of the Russian Federation on a vertically integrated oil companies (its subsidiaries), and independent market participants, the movement of motor fuel in the regions of the Russian Federation and sale of the oil

products by independent economic entities, and the weighted average of the wholesale extra-charge (margin) in the context of companies.

As of May 2013 the FAS Russia performs the following types of monitoring:

- since May 2007 – weekly monitoring of small wholesale and retail prices to oil products by region of the Russian Federation.
- since May 2007 – weekly monitoring of dynamics of change in price of jet fuel, services of fuelling, and storage in the regions of the Russian Federation, where there are federal airports.
- since April 2009 – monthly monitoring of the weighted average of the wholesale extra-charge (margin).
- since April 2011– daily monitoring of wholesale prices (selling prices of factories) to oil products of major VIOCs.
- since May 2011 - weekly monitoring of movement of motor fuel in regions of the Russian Federation and of sale of oil products to independent economic entities.

In addition to monitoring the situation in the oil markets in the regions the FAS Russia monitors the exchange and OTC prices and indicators of the external market compatible with the internal market of the Russian Federation.

The results of monitoring of retail prices of oil products in the Russian regions are placed weekly on the official website of the Russian Federal Antimonopoly Service online for public access.

Information on the values of exchange and OTC price indexes for oil products are also available in the public domain on the official site of “SPIMEX” (Exchange).

Information, which is used by the FAS Russia within the daily monitoring of the wholesale prices (selling prices of factories) to oil products of large vertically integrated oil companies and within the weekly monitoring on the movement of motor fuel in the regions of the Russian Federation and the sale of oil products by independent business entities, is available at the FAS Russia with the notification “trade secret” and is not placed in the public domain.

*2. Please describe the process of data gathering and whether other government agencies are also involved in the monitoring process. Please describe whether information is also gathered through information requests to players in the markets. Please also describe whether data gathered from monitoring activities is or can be used for future enforcement, being helpful to the agency’s efforts to police conduct in the petroleum industry and to detect possible anticompetitive behaviour.*

The Central Office of the FAS Russia independently performs the daily monitoring of wholesale prices (selling prices of factories) to oil products of major VIOCs, and the monitoring of exchange and OTC prices to oil products and comparable prices of foreign markets (Net Back).

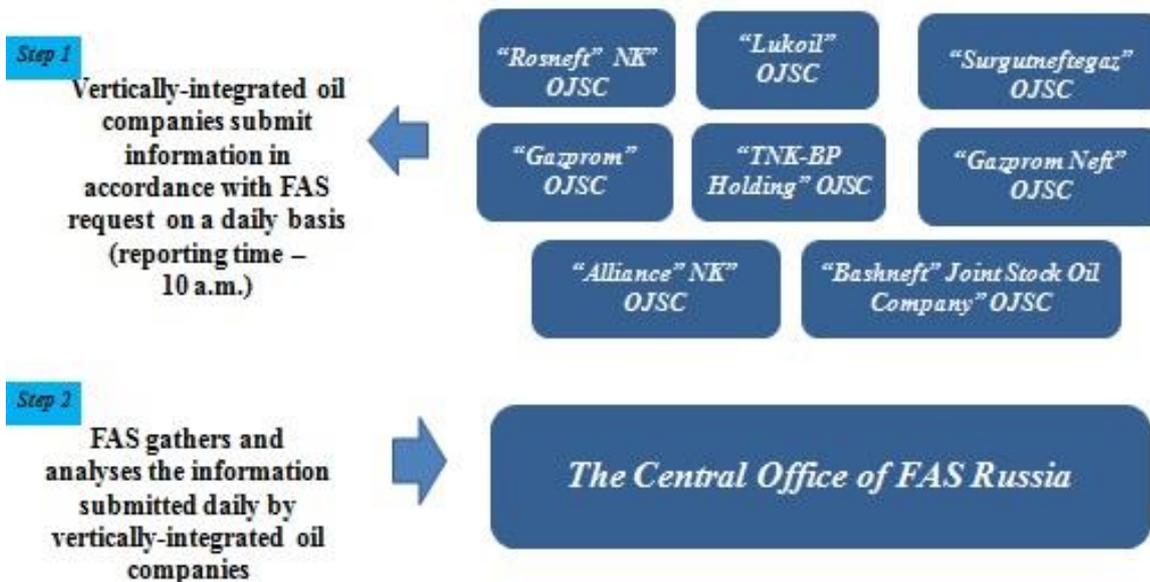
The Central Office of the FAS Russia together with its regional offices also performs the weekly monitoring of the wholesale and retail prices to oil products by region of the Russian Federation, weekly monitoring of dynamics of change in price of jet fuel, services of fuelling, and storage in the regions of the Russian Federation, where there are federal

airports, monthly monitoring of the weighted average of the wholesale extra-charge (margin) and weekly monitoring of movement of motor fuel in regions of the Russian Federation and of sale of oil products to independent economic entities.

### **Large-Wholesale Segment of the Oil Products Market**

This is carried out by the Central Office of FAS. Oil companies submit the following information to FAS on a daily basis by 10 a.m. (Moscow time) (for the day preceding the date when the information is submitted) :

- The price of oil products offloaded from refineries, under the contracts as at the reported date (addendums, additional agreements specifying the contract number). Such information must be submitted for all types of oil products and their modifications (motor gasoline, diesel fuel, aviation kerosene).
- The volume of oil products offloaded from refineries as at the reporting date, specifying the date and contract number (addendums, additional agreements with the contract number) according to which offloading took place.
- Regional wholesale prices of their subsidiaries as at the reporting date (addendums, additional agreements specifying the contract number).



**Small Wholesale Market of Oil Products.**

Monitoring is exercised weekly by the regional FAS offices. The Central Office of FAS Russia gathers, processes and analyses the data supplied by the regional FAS offices.

To monitor small wholesale prices, FAS selects economic entities that sell products on the second-level wholesale markets: regional markets of oil products.

The objects of the monitoring are small wholesale sellers that buy oil products on the large wholesale market, warehouse products for storage at an oil depot (or buy warehoused oil products) and offload oil products from an oil depot to small wholesale buyers.

To monitor wholesale prices, the FAS Russia selects economic entities that operate on the second-level wholesale markets in the regions and meet any of the following conditions:

- they are members of a group of persons or are affiliated with vertically-integrated oil companies;
- their share of the market of a particular oil product is 5% or more.

### **Retail Market of Oil Products.**

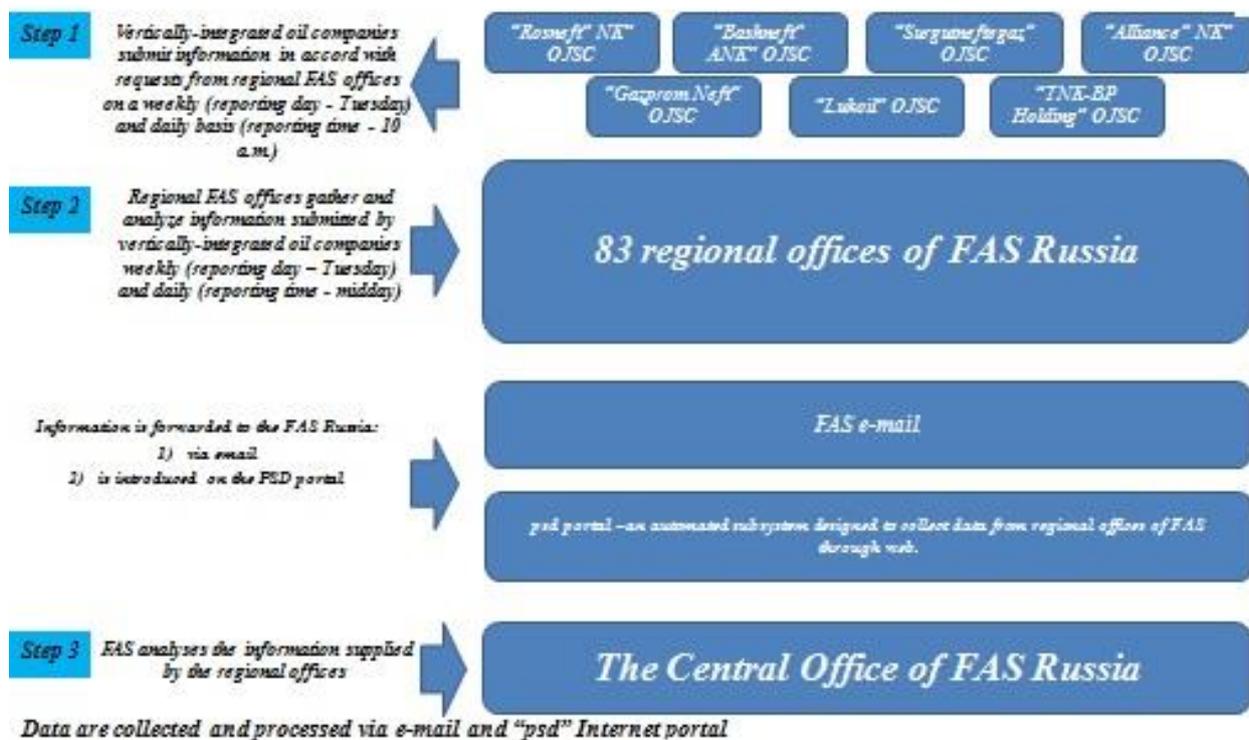
Monitoring is exercised weekly by the regional FAS offices. The Central Office of the FAS Russia gathers, processes and analyses the data supplied by the regional FAS offices.

To monitor retail prices, the FAS selects economic entities that operate on retail markets in the regions and meet any of the following conditions:

- they are members of a group of persons or are affiliated with vertically-integrated oil companies;
- their share of the market of a particular oil product is 5% or more;
- they use (own; on lease; on the basis of operative management contracts and other contracts) a pool of fuel filling stations that constitutes 5% and more of the operative management contracts for the whole pool of fuel filling stations in the region.

Prices are monitored at three fuel filling stations per each of the companies selected for monitoring : fuel filling stations in a town, on a highway and in a municipality (district).

### **Weekly Monitoring of Retail and Small Wholesale Prices for Oil Products as well as Monitoring of Movement and Remains of Oil Products at Oil Depots:**



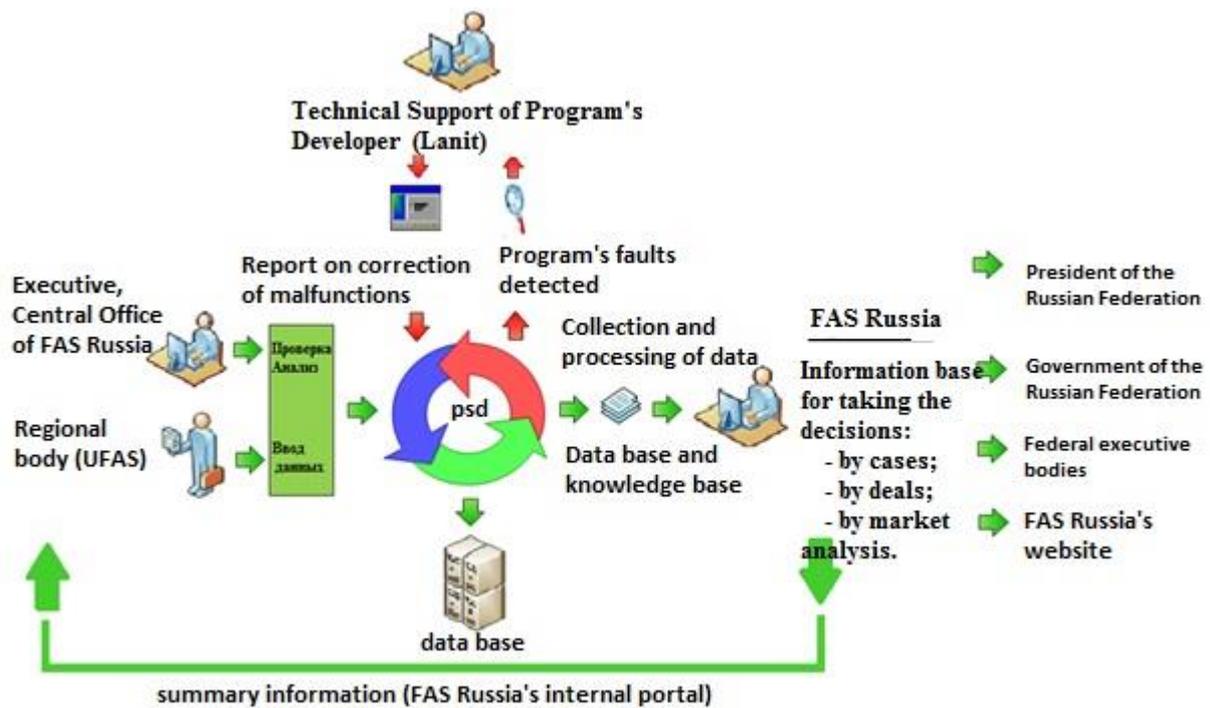
Use of the acquisition subsystem eliminates the manual work on the verification and harmonization of data in an acceptable form.

The regional offices of the FAS Russia enter the data directly in the form of the collection system, provided that all of the types defined in the phase of the form's design and rules' validation are fulfilled.

Rules of the data collection are clearly defined by the system. Each regional office of the FAS Russia sees a list of forms that must be filled shortly in their work area. The Central Office of the FAS Russia supervises the implementation of these rules. In order to supervise the implementation of the rules of the data collection the Central Office has several different management reports.

Further the PSD Portal accumulates the collected data and provides them to external customers - both information systems and specific individuals.

## Daily Monitoring of Oil Products Prices (psd portal):

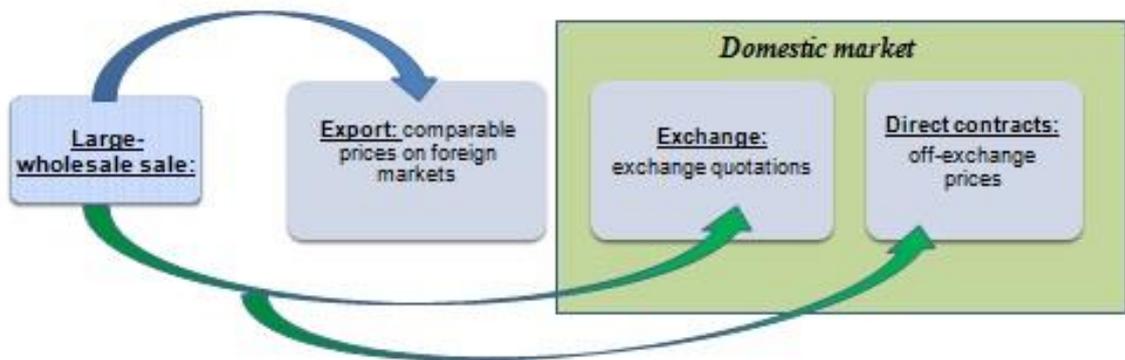


**The FAS Russia also continuously monitors exchange and OTC prices indexes for oil products and comparable prices in foreign markets (Net Back).**

Exchange and OTC price indices are published with the Company “SPIMEX” (exchange) on a permanent basis in the public domain. These indices are analyzed on an ongoing basis by the FAS Russia. If one needs background information, which are formed on the basis of the indices (data on the transactions, accounts, amounts, prices, etc.), the FAS Russia sends these requests to the exchange.

The FAS Russia signed an agreement with “MICEX-RTS” OJSC (the Exchange), according to which the Exchange shall provide information to FAS about present and historic values of price indices for oil products on comparable foreign markets (eight main groups of oil products). The FAS Russia also uses data from the leading research-and-information agencies (the Antimonopoly Service signed agreements with “Argus Media” and “Kortes” Information Centre). Also, the FAS Russia continuously uses data provided by Platts.

The FAS Russia takes into account these indices analyzing whether market players fixed monopolistically prices for oil products. Part 4 Article 6 of No.135-FZ Federal Law “On Protection of Competition” of 26<sup>th</sup> July 2006 specifies that prices shall not be recognized monopolistically high if they do not exceed the price formed under competitive conditions on a comparable market.



*Price arbitration between reference indices of comparable foreign markets, off-exchange transactions and exchange prices will form a price indicator for domestic market of oil products.*

During more than 5 years in the framework of the existing antimonopoly legislation and powers the FAS Russia monitors all indicators of the oil product market, which is detailed and becomes an information base for decision-making in cases of violations of the antimonopoly legislation in pending transactions within the control of economic concentration, as well as in the ongoing market analysis on the oil markets.