

## **REPORT OF THE FEDERAL ANTIMONOPOLY SERVICE ON COMPETITION POLICY IN 2009**

### **Executive summary**

In 2009 the “second antimonopoly package of laws” was adopted. It would allow the FAS Russia to conduct competition enforcement more effectively and to reduce administrative barriers for business.

Great attention was paid to dissemination of Program on Competition Development on the regional level in order to improve competition environment on all the markets in different regions of the Russian Federation.

A special achievement of the FAS Russia in 2009 was introduction of antimonopoly regulation of retail that would allow eliminating all the opportunities for imposing unjustified terms and abuse of their position by retail networks.

Moreover, in order to increase effectiveness of its activity the FAS Russia concluded a number of agreements on cooperation with other local and state authorities and non-commercial organizations.

In 2009 there was launched a process on elaboration of the “third antimonopoly package of laws” aimed at specification of certain provisions of the law, in particular, at liberalization of the severest regulations of competition legislation. Presently it undergoes the interagency approval and gaining of the public opinion and comments.

In 2009 the FAS Russia imposed billion rubles fines on the four Russian oil companies for abuse of dominance on the wholesale oil product market where they jointly hold dominant position. The FAS Russia decision was upheld by the Highest Arbitrage Court creating a precedent for consideration of similar cases in future. As Mr. Igor Artemyev, the Head of the FAS Russia, said, “This case is worth 1000 cases the FAS Russia considered earlier”.

In public procurement sphere the FAS Russia carried out comprehensive reforms – now all the public procurements are to be allocated through 5 electronic spots instead of hundreds of small tenders throughout Russia.

The FAS Russia also contributed to the reduction of administrative barriers. Now state property can be sold only through auctions with observance of requirements that ensure competition.

Successful activity of the FAS Russia during the recent years contributed to the fact that the FAS Russia gained additional half stars in the Global Competition Review Rating Enforcement for the results of 2009 placing the FAS Russia, amid alia, on the same rate with competition agencies of Sweden, Austria and Switzerland.

## **1. Changes to competition laws and policies, proposed or adopted**

### ***1.1 Summary of new legal provisions of competition law and related legislation***

2009 was marked for the FAS Russia by “the second antimonopoly package of laws” – a set of amendments to the legislation that promote competition on markets of the Russian Federation. On July 17, 2009 the President of the Russian Federation signed the Federal Law № 164-FZ “On Introducing Amendments to the Federal Law “On Protection of Competition” and Some Legal Acts of the Russian Federation” and the Federal Law № 160-FZ “On Introducing Amendments to the Code of the Russian Federation on Administrative Violation and Some Legal Acts of the Russian Federation”. On July 29, 2009 the President of the Russian Federation signed the Federal Law № 216-FZ “On Introducing Amendments to the Article 178 of the Criminal Code of the Russian Federation”. These amendments entered into force in the end of August and October 2009 respectively.

These amendments will provide for more effective disclosing of cartels, which is one of the priorities of the FAS Russia activities, for suppression of abuse of dominance, for fighting illegal provision of preferences to certain companies by state authorities and for prevention of other violations of competition legislation.

The notion of “dominant position” was more precisely defined. The economic entity can be admitted as dominant provided his market share is less than 35 % and he can significantly impact general conditions on the market. This admission can be made only after competition assessment by the competition authority and meeting of certain requirements established by the law.

The notion of “monopolistically high (low) price” was also made more accurate. There can be used a cost-is-no-object approach if there is no comparable market on the territory of the Russian Federation.

The notion of “state or municipal preference” (concept of state aid) was expanded. The order and purposes of granting of preferences, and order of gaining permission on that was also made more accurate.

The list of agreements (concerted actions) that are per se prohibited was shortened.

The new laws considerably reduce administrative barriers for entrepreneurship, in particular thresholds for merger notification were increased from 120 mln US dollars to 280 mln US dollars. Moreover, preliminary control of transactions within one group of persons was eliminated which will lead to significant reduction of burdens both on business and competition authority.

Units that are under the state ownership now can be sold only through auctions with observance of requirements that ensure competition.

The leniency program was also made more accurate.

The administrative liability for anti-competitive coordination and anti-competitive conduct on power energy market was introduced.

Notion of “disqualification of officials” was specified as administrative sanction, administrative liability for anti-competitive acts, actions and agreements of state and local authorities was introduced.

Moreover, punishment for violation of antimonopoly legislation was also made more severe. The new formulation of Article 178 of the Criminal Code of the Russian Federation envisages criminal liability for cartels with imprisonment up to 7 years and disqualification for repeated abuse of dominance.

The Resolution of the Government of the Russian Federation № 386 of 30.04.09 “On adoption of block exemptions with regard to agreements between credit and insurance organizations” envisages that agreements concluded between the credit and insurance organizations meeting the criteria to their type set forth in this Resolution, as well as envisage other terms that eliminate restriction of competition, shall be considered as permissible and shall not lead to administrative and criminal responsibility.

One of the achievements of the FAS Russia in 2009, in addition to the previously adopted Rules on discriminatory access in energy and railway sector, was adoption by the Russian Government of the Resolution of the Government of the Russian Federation of 22.07.2009 on a sequence of ensuring access to the services of natural monopolies in airports that will significantly promote competition in this sector.

Progressive elaboration of Rules on Non-Discriminatory Access in various sectors of economy is one of the priority tasks of the Program on Competition Development in the Russian Federation that was adopted by the Order of the Government of the Russian Federation №691-r of May 19, 2009.

As it was underlined in the previous report, the Program on Competition Development in the Russian Federation (hereinafter referred to as the Program) contains a set of the priority medium-term measures on competition development in Russia, including in certain sectors of economy, as well as proposals on improvement of competition regulation.

Peculiarity of the Program is, on the one hand, its complexity, and on the other – its implementation on all the levels of state and local power. Within the frameworks of this Program, in particular, local executive authorities in all the regions of the Russian Federation were obliged to develop and adopt regional programs on competition development which tasks should contain: facilitation of launch and running of entrepreneurial activity; reduction of administrative barriers and elimination of restrictions for movement of goods; collection, analysis and publication of information on regional markets, needs in goods and services in order to attract new businesses; increase of informational transparency of activity of state and local authorities including publication of basic procedures and results of their activity; reduction of direct participation of state and local authorities in economic activity; development of state and municipal public procurement, including extension of procurement of social (medical, educational) services on the basis of open tender procedures; development of transportation and energy infrastructure.

The strategic objective of implementation of regional programs on competition development is creation of a level-playing field in all the subjects of the Russian Federation. Regional programs on competition development should contain both general measures aimed at improvement of competition conditions in the region and sectoral measures that take into consideration specifics and problems on certain markets. The FAS Russia and its Regional Offices take direct part in elaboration of the regional programs. Control over their elaboration is conducted under the Order of the FAS Russia of 11.06.2009 № 366 “On adoption of a Plan of actions of the FAS Russia on implementation of the Program on Competition Development in the Russian Federation for 2009-2012”.

It should be noted that majority of regions have already adopted such regional programs and plans of actions on their implementation.

Moreover in 2009 the FAS Russia succeeded in introducing special antimonopoly regulation of retail through adoption of the Federal Law of 28.12.2009 № 381-FZ “On Fundamentals of State Regulation of Trade Activity in the Russian Federation” (hereinafter referred to as the Law on trade).

The Law on trade is aimed at creation of transparent and predictable sequence of trade activity unstipulated by any arbitrary requirements of the local authorities, as well at elimination of excessive barriers in trade, at support of SMEs in the sphere of trade and production of foodstuffs.

The Law on trade contains a set of regulations aimed at improvement of antimonopoly regulation and competition development on the retail services market. Thus, part 6 of the Article 9 of the Law on trade prohibits the economic entities operating in trade to include any bonuses into the supply contract price for the retail network to implements the terms of this contract.

The Law on trade also prohibits to include terms on conduction (rendering) by supplier of any actions or services aimed at promotion of goods (advertizing, marketing, etc), as well as to compel supplier to agree to such terms in order to conclude a supply contract. These regulations aim at suppression of one of the widely used method imposed by retail networks to counteragents that creates discriminatory conditions for suppliers of foodstuffs to enter this product market.

The Law on trade establishes commitment for economic entities operating in trade and supplying products to publish (submit) information on criteria for choosing counteragent to conclude a contract on supply of foodstuffs and on essential terms of such contract.

Part 1 of the Article 13 of the Law on trade contain antimonopoly rules and a list of actions that are prohibited to economic entities operating in trade and supplying foodstuffs in retail networks, as these actions could lead to restriction of competition in retail and infringement of rights of other economic entities. The period for making the supply contract comply with the requirements of the Law on trade makes up 180 days from the date of the Law entering into force.

Moreover Article 14 of the Law on trade established restriction on purchasing additional trade spots for retail. Restriction are applied to retail networks which market share exceeds 25 % within the borders of the region of the Russian Federation, including cities of federal importance Moscow and Saint-Petersburg, borders of municipal and town districts. Implementation of this regulation will promote equal access of economic entities on the retail services market and creation of competitive environment on this market (in order to implement the latter regulation under the proposal of the FAS Russia there was adopted a Resolution of the Government of the Russian Federation of 04.05.2010 № 305 that establishes a methodic for calculation of shares of economic entities on retail market).

Furthermore, Article 15 of the Law on trade prohibits state and local authorities to prevent economic entities from running their business, to impose restrictions for consumers to choose suppliers.

On the whole the FAS Russia believes that adoption and implementation of the Law on trade will ensure competitive conditions for the market participants, reduction of prices and improvement of retail services and foodstuffs production.

### ***1.2 Other relevant measures, including new guidelines***

In 2009 in order to increase transparency of the FAS Russia activity it adopted two Administrative Regulations on implementation of its state functions.

1. Administrative Regulation of the FAS Russia on implementation of the state function on consideration of notification on granting of state or municipal preference (adopted by the Order of the FAS Russia of 16.12.2009 № 841)

2. Administrative Regulation of the FAS Russia on implementation of the state function on conduction of inspections on observance of antimonopoly legislation (adopted by the Order of the FAS Russia of 16.12.2009 № 840).

Moreover in 2009 the FAS Russia concluded a number of agreements on cooperation with other state, municipal authorities of the Russian Federation and a number of associations.

1. Agreement on cooperation in the sphere of informational interaction between the FAS Russia and “Interfax-ACI” Ltd. of 11.02.2009.
2. Agreement on interaction between the Government of the Dagestan Republic and the Dagestan Regional Office of the FAS Russian of 09.04.2009.
3. Agreement on interaction between the FAS Russian and Non-Commercial Partnership “Competition Support Association” of 15.05.2009.
4. Agreement on cooperation between the FAS Russia and Accounts Chamber of the Russian Federation of 22.05.2009.
5. Agreement on interaction between the Pskov region Administration and the FAS Russia of 04.06.2009.
6. Agreement on interaction between the Government of the Altay Republic and the FAS Russian of 06.06.2009 г.
7. Agreement on informational cooperation between the FAS Russian and Non-Commercial organization “Association of Electronic Trade Spots” of 01.07.2009.
8. Agreement on cooperation in the sphere of informational interaction between the FAS Russia and “Analytical Global Information Agency” Ltd. of 01.07.2009.
9. Agreement on interaction between the FAS Russia and the Federal Bailiff Service when implementing resolutions on cases on administrative violations and other executive orders of 17.12.2009.

Thus the FAS Russia strives to systematize working relations with these authorities and organizations in order to ensure timely effective cooperation for suppression and detection of violation of antimonopoly legislation. Moreover these agreements allow making the process of gaining information by the parties more efficient.

To implement anti-crisis measures the FAS Russia proposed to change some regulations aimed at supporting particular industries, but at the same time restricting competition. In particular, through adoption of the Resolution of the Government of the Russian Federation № 855 of 29.10.2009, proposed by the FAS Russia, economically unjustified requirements to the banks were removed and thereby access of credit institutions to the preferential car loan program was expanded. These requirements were prolonged for 2010. The FAS Russia contributed to the considerable extension of the list of cars for concessional lending program, including increase of the maximum price for cars that can be included into the list.

### ***1.3 Government proposals for new legislation***

In 2009 the FAS Russia has started to elaborate the “third antimonopoly package of laws” aimed at clearing certain provisions of the Law on protection of competition, including at liberalization of the most severe regulations of the competition legislation. Draft amendments are currently gaining consent from all the state authorities. The FAS Russia published a draft of the “third antimonopoly package of laws” on its official web-site in order to provide an opportunity for stakeholders to provide their comments upon it and to be aware of the planning changes.

These amendments, amid alia, specify:

- sequence of application of antimonopoly legislation to the actions of persons located outside the territory of the Russian Federation and affecting competition in Russia. In particular, there is a more precise definition of the transactions of foreign companies that are to be notified to the FAS Russia (criteria – scope of turnover on the territory of the Russian Federation);

- definition of the coordination of economic activity – it is possible only by the person that doesn't operate on the same product market where coordination occurs;

- definition of agreements and concerted actions (qualification criteria are planned to be added that would allow to differentiate purely parallel actions on the market caused by common for all conditions from concerted actions restricting competition). They do not cover economic entities from one group of persons or controlled by one person. Amendments envisage separation of notions agreements and concerted actions in two different articles of the Law.

Moreover, the “third antimonopoly package of laws” excludes application of criminal liability for concerted actions, introduces fixed fines for abuse of dominance in cases not related to significant restriction of competition.

The FAS Russia devotes much effort to extension of cooperation with the Russian business, academicians and civil society institutions in order to obtain an objective vision over the FAS Russia initiatives and to timely revise them.

## **2. Enforcement of competition laws and policies**

In 2009 the FAS Russia in order to prevent and suppress monopolistic activity (abuse of dominance and anticompetitive agreements) revealed 9026 violations of competition law, 9664 cases were initiated (compared to 6541 in 2008). The total sum of imposed fines made up 29 bln. rubles (about 812 mln. US dollars).

### ***2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions***

#### ***2.1.1 Summary of activities of competition authorities and courts***

In 2009 the FAS Russia initiated 2899 cases at the signs of monopolistic activity (abuse of dominance and anti-competitive agreements of economic entities) on the product and financial markets, which is 45 % higher than in the last year.

#### ***Suppression of abuse of dominance***

In 2009 the Russian competition authorities received 10046 applications related to abuse of dominance by the economic entities. The mostly spread type of reasons for applications is still imposition of unfavourable terms of agreements. 2411 cases were initiated, out of them 350 were initiated on the initiative of the antimonopoly authority, and 973 cases were terminated due to non-confirmation of the fact of violation. On the rest of cases under consideration 1438 decisions were taken on admitting violation and 1251 instructions were issued. 578 decisions (40%) taken in 2009 were appealed in court. The Court admitted completely invalid 41 decisions and partially invalid 11 decisions.

In 2009 the antimonopoly authority initiated 5 cases on abuse of dominance by financial organizations (setting of the unjustifiably high price of financial service).

#### ***Suppression of anticompetitive agreements concluded by economic entities***

In 2009 the antimonopoly authority received 897 applications on agreements (concerted actions) by economic entities, restricting competition. The majority of applications were submitted

due to imposition of unfavourable terms of agreements and establishment (maintaining) of prices (tariffs), discounts, markups (extra charges), margins (17 % and 24 % respectively). 488 cases were initiated, out of them 284 cases were initiated by the antimonopoly authority. 293 decisions on admitting the violation were taken and 393 instructions were issued. 118 decisions were appealed to court, 13 were admitted as completely valid, 4 decisions were admitted as completely invalid, and the rest still go through the appeal procedure.

### ***Practice of application of leniency program***

With introduction of amendments in August 2009 only the first applicant can get relief under the leniency program. With this regard before amendment there was received 491 applications under leniency program within 17 cases, after amendments came into force there were received 6 applications under leniency program (Article 14.32 of the Code of the Russian Federation on Administrative Violations).

#### ***2.1.2 Description of significant cases***

##### ***Suppression of abuse of dominance***

**The highest fines on the oil companies:** In 2010 Presidium of the Highest Arbitrage Court of the Russian Federation took a precedent decision on case FAS Russia vs. TNK-BP, one of the four largest Russian oil companies. The Court admitted validity of the FAS Russia decision under which TNK-BP was fined in 2009 on over 1,112 bln rubles (37 mln US dollars) for establishing and maintenance of the monopolistically high price on fuel in the first half of 2008, creation of discriminatory conditions for consumers at wholesale oil product markets, establishment of economically, technologically and in other way unjustified different prices on oil products. The Presidium of the Highest Arbitrage Court of the Russian Federation abolished judicial decision of the lower court instances and confirmed the FAS Russia decision. TNK-BP totally paid out the fine.

This decision is a precedent, since it directly influences the outcome of the similar cases against the remaining three largest oil companies in Russia (Rosneft, LUKOIL, Gazpromneft) that were also totally fined by the FAS Russia for over 4 bln rubles (113 mln US dollars) due to abuse of dominance in 2008.

It should be noted that all these four companies were considered as collectively dominant on the wholesale oil product market. Analysis of these four companies revealed anticipatory growth of sale proceeds over costs under increase of prices on oil products in the forth quarter of 2007 and first and second quarters of 2008..

In the given cases growth of proceeds leading growth of costs necessary for production and sale of goods confirms establishment and maintenance of monopolistically high price allowing company to gain surplus profit as a result of abuse of its dominant position.

Moreover due to continued unjustified oil products price increase in 2009 the FAS Russia initiated new cases against these companies. Main violation was in withdrawal of a product from circulation which resulted in increase of the price of products (artificial creation of deficit) and in creation of discriminatory conditions on the market of automobile fuel and jet fuel. Taking into consideration the repeated violation the fines on these cases were increased and the FAS Russia fined Rosneft on 5,28 bln rubles (176 mln US dollars), Gazpromneft on 4,7 bln rubles (157 mln US dollars), LUKOIL – 6,5 bln rubles (217 mln US dollars), TNK-BP - 4,2 bln rubles (140 mln US dollars).

Thus, the total size of fines on two series of cases made up over 1 bln US dollars which is the highest fine ever imposed by the FAS Russia.

Presidium of the Highest Arbitrage Court in its decision on case against TNK-BP supported the FAS Russia conclusions on:

- presence of dominant position which companies jointly hold on wholesale market of automobile fuel, jet fuel, diesel within the borders of the Russian Federation;
- fact of abuse of dominance through establishment of monopolistically high price on oil products;
- facts of abuse of dominance through discrimination of counteragents on sale of oil products from refineries;

as well as legality and validity of the relevant sum of turnover fine.

As a whole the FAS Russia believes that pricing on monopolized Russian oil markets is of a non-market nature and is managed by the largest Russian oil products. Cases that were considered by the Central Office of the FAS Russia on violations on large wholesale market (sales from refineries) are closely connected to the cases initiated by the Regional Offices of the FAS Russia on violations on retail and wholesale markets of automobile fuel, jet fuel and diesel in regions of the Russian Federation.

During 2008-2010 the FAS Russia considered over 260 cases on violation of competition legislation on the oil products markets. The total sum of fines imposed on oil companies made up:

- on the “first series” on oil companies – 5 421 mln rubles,
- on the “second series” on oil companies – 20 700 mln rubles,
- in the regions of the Russian Federation on oil companies’ branches and other sellers of oil products – about 2 bln rubles.

The FAS Russia continues its monitoring of the wholesale and regional retail prices through analysis of selling prices from refineries, proceeds from wholesale and retail sale of fuel in regions.

On a whole the FAS Russia believes that its activity on this market results in ensuring more careful market conducts on part of oil companies. There is a trend for development of exchange trade, oil companies work in close cooperation with the FAS Russia on elaboration of the so-called “price formula” on oil products that could be a price indicator on domestic wholesale market before the exchange trade is completely launched.

**Termination of abuse of dominance on the cement market:** In January 2009 the FAS Russia admitted the group of persons CJSC “BaselCementPikalevo” as violating part 1 Article 10 of the Law on protection of competition. Violation was committed through termination of supplies of belite sludge (raw for producing cement) in 2008 to the CJSC “Pikalevski Cement” and reduction of supplies of carbonate mortar (raw for producing soda and potash) to the CJSC “Metakhim” despite acting supply contracts.

This caused stoppage in production of cement on CJSC “Pikalevski Cement” and to considerable reduction of production of soda and potash on CJSC “Metakhim”. As a result, there occurred a strained social situation in the region due to the termination of production of three major plants in town Pikalevo (Leningrad region).



According to the instruction of the FAS Russia CJSC “BaselCementPikalevo” was to organize tenders on selling its property till May 1, 2009 or to resume supply of carbonate mortar to CJSC “Metakhim” and to conclude a sludge supply contract with CJSC “EVROCEMENT” till May 15, 2009. However, CJSC “BaselCementPikalevo” disagreed with the FAS Russia decision and instruction and appealed them to court. The courts confirmed the validity of the FAS Russia decision.

In September 2009 CJSC “BaselCementPikalevo”, CJSC “Pikalevski Cement”, CJSC “Metakhim”, OJSC “Apatit” concluded contract on supply of belite sludge, carbonate mortar, nepheline concentrate under fair prices. Moreover, CJSC “BaselCementPikalevo” was fined for more than 19 mln rubles (633 000 US dollars).

**Termination of abuse of dominance on the market of cylinder raw stocks:** The FAS Russia admitted OJSC “Ruspolimet” as violating point 1 part 1 Article 10 of the Law on protection of competition and imposed a fine over 1,17 mln rubles (39 000 US dollars) for abuse of dominance on the market of cylinder raw stocks production from nickel-alloy that are used for producing aviation engines.

Case against OJSC “Ruspolimet” was initiated due to the complaint of the FSUE “Moscow engineering production undertaking “Salut”.

When calculating the sum of the fine the FAS Russia took into account the fact that OJSC “Ruspolimet” admitted its violation of competition legislation and cooperated with the FAS Russia during investigation and undertook measures to eliminate violation of competition legislation.

The FAS Russia also satisfied request of OJSC “Ruspolimet” on down payment of fine in three parts.

### *Suppression of anticompetitive agreements concluded by economic entities*

**Market of maintenance of dangerous production units.** The FAS Russia fined OJSC “Center on salvation and ecology operations” (CSEO) – organization occupying dominant position on the market of maintenance of production units dangerous from the perspective of possible oil spill, for conducting concerted actions restricting competition on about 2,5 mln rubles (83 000 US dollars).

The first case against OJSC “CSEO” dealt with anti-competitive agreements conducted by this company on division of market of maintenance of dangerous production units in Moscow region. OJSC “CSEO” concluded an agreement with State Unitary Municipal Unit “Mosoblpozhs pas” under which companies divided dangerous production units in Moscow region – federal units were to be maintained only by OJSC “CSEO”. The fine on OJSC “CSEO” made up over 253 000 rubles (8433 US dollars). “Mosoblpozhs pas” gained full immunity in accordance with leniency program.

The second case was initiated under Article 16 of the Law on protection of competition (prohibition of agreements and concerted actions by state and local authorities and economic entities, restricting competition). The case was initiated against Ministry of the Russian Federation for Civil Defence, Emergencies and Elimination of Consequences of Natural Disasters and OJSC “CSEO”. Ministry restricted issuance of certifications to various maintenance companies on local, regional and federal levels and put pressure upon production units to conclude an agreement only with OJSC “CSEO”. Moreover it assisted OJSC “CSEO” in developing its regional structure. The fine on OJSC “CSEO” made up over 2,2 mln rubles (73 thousands US dollars).

**Market on rendering service on drive-training.** In Kemerovo 10 driving schools were admitted as having violated point 1 part 1 Article 11 of the Law on protection of competition.

All the driving schools simultaneously increased prices on the equal rate on training to drive under category “B”. There was also maintenance of fixed price (18 200 rubles (600 US dollars) from 01.04.2008, 24 500 rubles (816 US dollars) from 01.01.2009).

The FAS Russia issued instruction on termination of violation and conduction of independent price policy making price upon the sum necessary for rendering these services on the basis of costs and profit.

Not all of the driving schools admitted themselves guilty; however all of them fulfilled an instruction.

### *Practice of application of leniency program*

**Market on production of matches.** In 2009 the FAS Russia revealed the classic cartel of matches producers that acted for many years in order to fix prices and limit production volumes. Cartel was of international nature as undertakings from Ukraine and Belarus were also involved in it. Companies were admitted violating point 1, 3, 7 part 1 of Article 11 of the Law on protection of competition.

Cartel was revealed on the basis of documents received by the FAS Russia during dawn-raids (8 simultaneous raids in 6 regions of Russia) with participation of police. Cartelists held quarterly meetings with recording minutes with decision on fixing prices and matches production volumes for certain period of time.

All the cartelists applied for leniency program and thus gained immunity (this was before the amendment about the first applicant came into force).

**Foodstuffs sector.** On February 2009 as a result of monthly foodstuffs price monitoring the Kursk Regional Office of the FAS Russia initiated cases against three baking plants on violation of point 1 part 1 Article 11 of the Law on protection of competition. Violation was in simultaneous increase of retail prices on rye and white bread in November 2008 on average 18-20 % without any economic reasons for that.

As a result of case consideration the baking plants were issued with instruction on elimination of violations. With this regard the prices from April 10, 2009 on rye and white bread were reduced to the level present before violation (with account of inflation and growth of regulated tariffs).

The case was of great social importance for the region, as concerted actions were conducted with regard to socially important product (bread) by economic entities having significant market potential on the relevant product market of Kursk region.

All the participants of concerted actions admitted the fact of violation of competition legislation and provided written evidence for that. They also refused from further continuation of concerted actions and applied for leniency program, thus gaining immunity from administrative liability.

## **2.2 Mergers and acquisitions**

### *2.2.1 Statistics on number, size and type of mergers notified and/or controlled under competition laws*

In 2009 the FAS Russia considered 4160 pre-merger notifications and 9118 post-merger notifications by economic entities: 4054 pre-merger notifications and 8646 post-merger notifications were satisfied; 106 pre-merger and 472 post-merger notifications were declined. Due to the increase of the thresholds of the companies' assets for getting permission under the current legislation there was a reduction of the number of notification (about 30% compared to 2008), meanwhile the number of large transaction requiring clarification is still significant.

After introduction of changes to the incumbent legislation related to peculiarities of control over economic concentration, all the transactions conducted within one group of persons under point 1 part 1 Article 9 of the Law on protection of competition are notified post-factum.

With regard to pre-merger notifications they were basically dealing with purchase of disposal of more than 1/3 shares in the nominal capital of the limited companies (1131), purchase of disposal of more than 25 % of voting shares of the joint-stock company (945), purchase of rights to determine the terms for the economic entity's activity or to run the functions of its executive authority (803).

**Peculiarity of state control over natural monopolies.** In 2009 under the state control by the antimonopoly authority over transactions in the spheres of natural monopolies there were considered 23 pre-merger notifications (most of which dealt with sale, renting, other transaction when economic entity purchases essential facilities of the natural monopoly, as well as purchase of share (stocks) in authorized capital of the natural monopoly) and 31 post-merger notifications. In 2009 the Regional Offices of the FAS Russia considered 4 pre-merger notifications and 26 post-merger notifications (including 1 with foreign investor) on transactions in the sphere of natural monopolies.

### *2.2.2 Summary of significant cases*

**Clearance of notification with issuing of instruction.** The FAS Russia satisfied the pre-merger notification of the OJSC "United Motor Technologies" on its acquisition of rights allowing it to execute functions of executive authority of a number of plants on producing motor parts and components. Due to the fact that information and documents submitted with the notification didn't satisfy requirements of the part 5 Article 32 of the Law on protection of competition, the FAS Russia requested for additional information.

The analysis of competition on the motor parts and components for passenger cars and trucks in the Russian Federation showed that plants mentioned in notification are a part of one group of persons and occupy dominant position with the market share of more than 50 %. The notified transaction could lead to restriction of competition on this market through creation of opportunity for OJSC "United Motor Technologies" to unilaterally affect general conditions on the circulation of products on this market.

The FAS Russia took decision to clear the notification together with issuing an instruction under which OJSC "United Motor Technologies" should not take without preliminary approval of the FAS Russia any actions (inactions) aimed at termination of production, including as a result of reorganization, liquidation, bankruptcy, provided there is a demand of final consumers for its production on the territory of the Russian Federation.

In order to suppress monopolistic activity of the OJSC "United Motor Technologies", it is obliged to submit to the FAS Russia every half year report on basic indicators of its economic activity, as well as to inform the FAS Russia (within 30 calendar days) of any changes in the structure of group of persons and position of OJSC "United Motor Technologies" on the relevant product market.

**Clearance of notification.** The FAS Russia cleared transaction by company "Severstal Trade Ges.m.b.H" acquiring 25%+1 voting shares of "Todlem, S.L." within establishment of joint undertaking by group "Severstal" and "Gestamp" (Spain) on production of pressed parts of body for production of vehicles.

This was one of the first pre-merger notifications submitted by the Russian companies to the FAS Russia on acquiring of foreign assets under part 2 Article 3 of the Law on protection of competition.

The group of persons of OJSC "Severstal" is a international vertically integrated mining and smelting company with chemical-recovery, sintering, blast-furnace, steelmaking and rolling production.

International group "Gestamp Automocin" elaborates and produces metal subassemblies and components for motor-car-construction. "Gestamp" manufactures production for such largest global car producers as Volkswagen, Renault-Nissan, Peugeot-Citroen, Daimler, GM, Ford and Chrysler.

**Rejection of pre-merger notification.** The FAS Russia rejected notification of the Ministry for land and property affairs of the Republic of Tatarstan on establishment of OJSC "Tatarstan-Avia". This establishment would lead to creation of an economic entity that would include airport and avia company interests of which and, therefore, terms of service could become preferable ones thus infringing the interests of other companies operating (planning to operate) in the airport "Kazan" and not having any relations with the airport.

Holding by economic entity of activities on rendering services subject to natural monopoly (airport services) and competitive sector (air transportation) can lead to competition restriction on air transportation through airport "Kazan".

### **2.3. State Control over acts, actions, agreements or concerted practices restricting competition of the federal executive authorities, state authorities of the subjects of the Russian Federation, the local self-governments, other organizations vested by the functions or rights of the mentioned authorities and Central Bank of the Russian Federation**

#### ***2.3.1 Summary of activities of competition authorities and courts***

In 2009 as well as in 2008 the biggest number of violations of competition law was committed by the state and local authorities. 4237 cases were initiated under Article 15, 16, 17, 17.1, 18, 19-21 of the Law on protection of competition (in 2008 – 2978 cases).

In 2008 there were considered 2657 applications in respect to acts and actions of state and local authorities (article 15). 1278 applications were submitted due to unjustifiable restriction of economic entities activity. 2650 cases were initiated. There were taken 1936 decisions on admitting violations and issued 1780 instructions. 264 decisions were appealed to courts. Out of them 42 were found completely valid, 5 – partially valid, 28 – invalid, 189 are still under appeal.

In 2009 there were received 258 applications on anti-competitive agreements (concerted actions) with participation of state authorities (Article 16). Percentage remains almost the same: 45,7% of applications were submitted due to restriction of access to the market, exit from the market. 425 cases were initiated, including under the FAS Russia initiative. 342 cases were admitted as violations and 444 instructions were issued. Out of 61 appealed decisions the court found 9 decisions completely valid, 1 – partially invalid, and 51 are still under appeal.

With regard to non-observance of antimonopoly requirements to conduction of tenders on public procurement (Article 17) there were received 1322 applications. The majority of applications (437) deal with unjustified restriction of access to participation in tender (275), as well as with creation of beneficial conditions for participation in tender (217). 753 cases were initiated. 168

cases were terminated due to elimination of violation during proceeding and non-confirmation of the fact of violation. On the rest of cases there were taken 585 decisions on admitting the violation and 427 instructions were issued. 79 decisions were appealed to court. Out of them the court found 14 decisions completely valid, 1 – invalid, and 64 are still under appeal

### *2.3.2 Summary of significant cases*

**Ecological pressure.** On March 16, 2009 the FAS Russia admitted Kemerov Regional Offices of the Federal Supervision Agency for Customer Protection and Human Welfare, the Federal Service for Ecological, Technological and Atomic Inspection, Fire Supervision Department of the Ministry of the Russian Federation for Civil Defence, Emergencies and Elimination of Consequences of Natural Disasters violating part 1 Article 15 of the Law on protection of competition.

The case was initiated under the complaint of the “Production company “Kuznetsky cement plant” Ltd. Violation of competition legislation was in conduction by the regional offices mentioned above actions on unjustified prevention of economic entities from operating their activity that finally resulted in elimination of the “Production company “Kuznetsky cement plant” Ltd. from the cement production market.

The Regional Office of the Federal Service for Ecological, Technological and Atomic Inspection fulfilled the instruction of the FAS Russia with this regard. It issued the Kuznetsky cement plant permission on emission of air pollutants given the observance of ecological legislation. This allow the Kuznetsky cement plant to resume its work and thus to ensure competition on the cement production market. Thus the decision and instruction of the FAS Russia provided for keeping of hundreds of working place in crisis period.

**Inaction of state authority.** The FAS Russia admitted the Federal Agency for Fishery violating part 1 Article 15 of the Law on protection of competition. The case was initiated under the complaint of the Russian fishery companies that concerned cancellation in July 2009 of an auction on sale of right on shares of quotas on catching pacific ocean salmons in the Russian economic area.

Violation of antimonopoly legislation was in inaction of the Federal Agency for Fishery – authority responsible for rendering of state services in the fishery activity, on allocation of quotas on catching fish between the Russian fishermen.

It was found that auction announced by the Federal Agency on Fishery in July 2009 on sale of rights on quotas on catch of Pacific Ocean salmons in the Russian economic area was cancelled and the new auction was not announced. Thus the relevant right on catch of pacific ocean salmons in the Russian economic area was not given to any company in 2009. This resulted in termination of activity of many Russian fishing companies in 2009.

As a result of case consideration the FAS Russia issued an instruction aimed at conduction of actions on allocation of right to the Russian fishing companies to conclude contracts to catch Pacific Ocean salmons.

**Violation at tender.** In 2009 the FAS Russia initiated a case against the Institute for Software Systems of the Russian Academy of Sciences on violation of part 1 Article 17 of the Law on protection of competition (prohibition of actions restricting competition when holding tenders).

The tender was conducted to choose the company to create a development type of supercomputer and to supply special equipment for it. As a result of investigation it was revealed that the staff of the Institute was at the same time the staff of the company that was a single participant and winner of the tender.

In accordance with point 4 part 1 Article 17 of the Law on protection of competition it is prohibited for the organizers of tenders or customers to participate in tender. Violation of these rules is a justification for the court to admit this tender and transactions concluded as a result of the tender as invalid.

## **2.4 Actions aimed at suppression of unfair competition**

### ***2.4.1 Summary of activities of competition authorities and courts***

Total number of control and supervision actions in order to prevent and suppress unfair competition in 2008 made up 1172. 687 cases were initiated. Out of them 480 cases admitted violation and 365 instructions were issued.

On the facts of unfair competition on product markets there were initiated 391 cases. On the facts of unfair competition on financial markets there were initiated 89 cases.

95 decisions were appealed to court (14 – on financial markets, 81 – on product markets). The court admitted 28 decisions as valid (4 – on financial markets, 24 – on product), 6 decisions were admitted as invalid (all on product markets), 1 decision on product market was admitted as partially invalid, the rest 60 decisions (10 – on financial, 50 – on product markets) are still undergoing the appeal procedure.

In 2009 the FAS Russia admitted “Eldorado” Ltd as violating point 3 part 1 Article 14 of the Law on protection of competition. “Eldorado” Ltd allocated in its stores of consumer electronics and equipment informational blocks comparing its advertizing leaflets with the ones of its competitor “M.Video Management” Ltd. (largest supermarkets on sale of consumers’ electronics and equipment). These informational blocks contained picture, characteristics and price of different goods sold by these two companies. At that it was stated that prices of products sold by Eldorado are cheaper than those sold by M.Video Management. The FAS Russia issued an instruction to “Eldorado” Ltd. to terminate this improper comparison of good. Moreover “Eldorado” Ltd. was fined on over 200 000 rubles (6 700 US dollars) for this violation. The fine was fully paid.

## **3. The role of competition authorities in formulation and implementation of other policies**

### **3.1 Participation of the FAS Russia in the Administrative reform and combating corruption**

The FAS Russia continues its active participation in implementation of administrative reform conducted in the Russian Federation.

The most important direction is implementation of measures aimed at fight against corruption in Russia.

The Order of the FAS Russia of 27.07.2009 № 479 adopted a Plan on anti-corruption activity of the FAS Russia for 2009-2010 which is a basis for further reduction of corruption risks and increase of quality of implementation by the FAS Russia of its state functions and powers. The Plan envisages active participation of citizens and entrepreneurs in fighting any signs of corruption in the FAS Russia, including through conduction of independent anti-corruption expertise of any legal acts elaborated by the FAS Russia.

The Resolution of the Government of the Russian Federation of 05.08.10 № 1096-r established under the Governmental Commission on conduction of administrative reform a Working group headed by the Mr. Igor Artemyev, the Head of the FAS Russia, on optimization of structure and functions of federal executive authorities.

As a result of activity of this Working group there was adopted a Resolution of the Government of the Russian Federation of 31.12.2009 № 1188 which establishes:

- precise periods for stock-taking of Federal State Unitary Enterprises, as well as conduction of reorganizational/liquidation procedures with regard to unitary undertakings or inclusion in the scope of planned privatization;
- precise list of powers of the state authorities with regard to its lower unitary organizations;
- extension of powers of Russian Federal Property Fund in part of administration and control over state property.

Moreover, the Government of the Russian Federation approved a proposed set of measures aimed at optimization of the structure of state property and ensuring effective state participation in sectors of economy.

### **3.2 Control over foreign investments in strategic sectors of economy**

The FAS Russia together with the interested federal executive authorities elaborated a draft of Rules on preliminary clearance of transactions and permission of establishing control over foreign investors or group of persons, where foreign investor is included, over economic entities of strategic importance for the Russian national defense and state security, which were adopted by the Resolution of the Government of the Russian Federation of 17.10.2009 № 838. Adoption of this document provided for improvement of the procedure of submission and consideration of notification making it more clear and precise.

Moreover in accordance with the instruction of the Governmental Commission on Control over Foreign Investment, chaired by the Prime-Minister of the Russian Federation, the FAS Russia together with the interested federal executive authorities elaborated amendments draft law «On Introducing amendments to the Federal Law № 57-FZ “On Procedures for Foreign Investments in the Economic Entities of Strategic Importance for the Russian National Defense and State Security”», which was agreed by other agencies and is being prepared for the submission to the Government of the Russian Federation. Adoption of this draft law will allow improving legal base for state control over foreign investments in strategic sectors of economy.

In 2009 the FAS Russia considered 75 notifications of foreign investors.

Out of them 39 notifications (52 %) were submitted to the Governmental Commission for its consideration.

Among the number of applicant who submitted notifications under Law № 57-FZ and № 160-FZ were 5 international organization, 9 organizations under control of foreign state or international organization, 61 private foreign companies from 18 foreign states.

### **3.3 Performance of control measures to comply with requirements of the Federal Law of 21.07.2005 No. 94-FZ “On placement of orders to supply goods, carry out works and render services for state and municipal needs” by the FAS Russia**

The Federal Law No. 94-FZ “On placement of orders to supply goods, carry out works and render services for state and municipal needs» (hereinafter referred to as Law on public procurement) was adopted on July 21, 2005. Control over compliance with requirements over public procurement legislation by state and municipal customers is carried out by the FAS Russia. With adoption of this law a reform of the system of public procurement started that led to radical modernizations in organization and conduction of tenders in Russia.

During the period of force of this law the system of public procurements saw significant modifications that considerably influenced national economy. With adoption of the Law on public procurement entrepreneurs gained an opportunity to protect their rights through administrative procedure by submitting complaint to the FAS Russia or its Regional Office.

The FAS Russia and its Regional Offices consider complaints on actions of customers during five working days. In 2009 the FAS Russia considered 27 500 complaints, out of which 50 % were admitted as justified. This means that tender results are canceled, rights of entrepreneurs were restored and officials who violated the Law on public procurement are brought to administrative liability. 95 % of the decisions of the Central Office of the FAS Russia are confirmed by courts.

Presently the reform of the system of public procurement in Russia is going under two directions. The first is switch to electronic auctions, the second is increase of the quality of public procurement which is directly related to the increase of the quality of financial provision.

Since July 1, 2010 all electronic auctions should be conducted on the five selected spots. This is a great move towards creation of the singly economic space and to high liquidity of tenders. Customers and entrepreneurs from all the country shall meet only on these five spots instead of the numerous tenders conducted throughout the whole territory of the Russian Federation. Expected Savings by 2012 from introduction of these auctions is expected to make up to 1 trillion rubles (33 bln US dollars) annually.

Since January 1, 2011 all the system of public procurement will be covered by the single register of contracts which will be connected to the Russian-wide portal. There will be created the single informational resource that would allow raising the level of informational openness and competition, liquidity of tenders and savings of budget resources.

The Law on public procurement has significantly reduced corruption potential of state and local authorities and provides for reduction of administrative barriers in the sphere of public procurement. During the 4 years of its application the budget of the Russian Federation saved more than 770 bln rubles (25 bln US dollars).

### **3.4 Participation of the FAS Russia in regulation of foreign commerce**

During financial and economic downturn affecting the activity of the Russian companies there is a significant growth of applications of national producers to the state asking to introduce additional restrictions with regard to import.

Therefore activity of the FAS Russia in regulation of foreign trade activity in 2009 was mainly aimed at solution of the following tasks:

- maintenance of normal competitive environment on the Russian domestic market;
- prevention of unreasonable protectionism when regulating foreign trade activity;
- ensuring balance of interests of producers and consumers when elaborating measures on regulation of foreign trade activity.

The FAS Russia within the frameworks of activity of the coordinating authorities of the Government of the Russian Federation on customs and tariff regulation of foreign trade activity considered 194 applications on adjustment of rate of duties and introduction of protecting measures, participated in preparation of 58 drafts Resolutions of the Government of the Russian Federation dealing with regulation of foreign trade. Out of them 45 drafts were agreed by the FAS Russia, 13 drafts were not approved or approved with certain comments.



Comments to the drafts basically related to possible worsening of competition as a result of adoption of the proposed measures that may cause price increase on the relevant product markets.

Thus, the FAS Russia didn't support increase of rates of duties on terephthalic acid and polyethylene terephthalate initiated by OJSC "Sibur-holding" as a pre-emptive anti-crisis measure, on suspension of polyvinylchloride widely used for production of modern construction materials, plastics, etc.

The FAS Russia didn't support prolonging of period of validity of increased (anti-crisis) rates of duties on combine harvesters, thinking that such measure in terms of high concentration of domestic market and significant disparity of prices on national and imported production would lead to further price increase on domestic market on this production.

At the same time the FAS Russia proposed to cancel export duties on cement, since during crisis due to reduction of construction works there was a significant reduction of consumption of this product on domestic market.

Analysis of the market of bearing tubes conducted due to the launch of anti-dumping investigation with regard to bearing tubes supplied from China, the FAS Russia supported introduction of anti-dumping measures because during the investigation period there was seen worsening of financial and economic indicators characterizing Russian production of bearing tubes as a result of increase of import supplies from China. At the same time, in order to prevent restriction of competition on this market the FAS Russia proposed to adjust the level of the proposed protection taking into account current price parameters on bearing tubes, as well as to decrease current import duties with regard to bearing tubes that were increased due to adoption of anti-crisis measures.

#### **4. Resources of competition authority**

##### **4.1 Resources overall (current numbers and changes over previous year):**

###### **4.1.1 Annual budget**

In 2009 the annual budget of the competition authority (the FAS Russia) amounted to 1'511'200'200 rubles (approximately 50 million USD – amount in US dollars is lower compared to 2008 due to exchange rate difference). The growth compared to 2008 is 5 %.

###### **4.1.2 Number of employees (person-years)**

On 01.01.2010 the actual number of staff of the FAS Russia was 3130 persons in all the system of the FAS Russia. Out of them:

«lawyers» – 770 persons;

«economists» - 602 persons;

«other professionals» - 842 persons (people having technical and other education, as well as incomplete higher education);

«support staff» - 916 persons.

33 employees of the Central Office have an academic degree; out of them 18 have an academic degree in economics.

###### **4.2 Human resources applied to certain enforcement practices**

There is no such statistics in the FAS Russia.

### 4.3 Period covered by the above information

From January 1, 2009 till January 1, 2010.

### 5. Summaries of or references to new reports and studies on competition policy issues

1. Artemyev I.Yu. Battle for competition/ – M. TM-Management, 2009. – 393p.
2. Fundamentals of antimonopoly regulation in the Russian Federation: monograph/ under edition of Artemyev I.Yu. – M. Poligran-T, 2009. – 280 p.
3. Varlamova A.N. Competition legislation in Russia : [monograph] / A.N. Varlamova ; Moscow State University, faculty of law. - M. : Zercalo-M, 2009. – 566 p.
4. Kuznecova E.I. Development of competitive relations and economic strategy of state : monograph / E.I. Kuznecova. - M. : UNITY-DANA: Law and right, 2009. - 383 p.
5. Knyazeva I.V. Economics of sectoral markets: lectures / I.V. Knyazeva, S.D. Kapeluk ; under edition of I.V. Knyazeva ; Federal agency on education, Siberian academy of public service. - Novosibirsk, 2009. – 181 p.
6. Taranukha Yu.V. Competition and competitive strategies : (in charts) : manual/ Yu.V. Taranukha. - M. : Business and Service, 2008. - 266 p.
7. Pakhomova N.V. Economics of sectoral markets and state policy : [manual] / N.V. Pakhomova, K. K. Rihter. - M. : Economics, 2009. – 814 p.
8. Federal Antimonopoly Service of Russia and local self-government. - Obninsk: Institute of municipal management, 2009. - 108 p.
9. Khokhlov D.V. Competition law here and now /D.V. Khokhlov. – M. Alpina Business Books, 2009. – 267 p.