



FEDERAL ANTIMONOPOLY SERVICE

## FAS Russia's Experience on Investigation of Violations of Antimonopoly Legislation on IT and Liner Shipping Markets

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- The FAS Russia is independent public authority responsible directly to the Government of the Russian Federation
  - Single and unified authority on control over compliance with antimonopoly legislation;
  - Empowered to conduct investigations and make decisions.
- Antimonopoly regulation in Russia is exercised in accordance with the Federal Law dated July 26, 2006 No. 135-FZ “On Protection of Competition”
  - Transborder nature of competition legislation;
  - Absence of sectoral or others exceptions.
- In 2015 the FAS Russia investigated 9 092 cases on violation of antimonopoly legislation

- The FAS Russia's case in relation to Google
- The FAS Russia's case in relation to liner shipping companies

## The FAS Russia's case in relation to Google

- In November 2013 Russian mass media informed that Russian smartphones’ manufacturer (Explay) refused to cooperate with Russian company Yandex on setting their searching and other services on their mobile devices under Android OS, which was confirmed by Yandex application to the FAS Russia

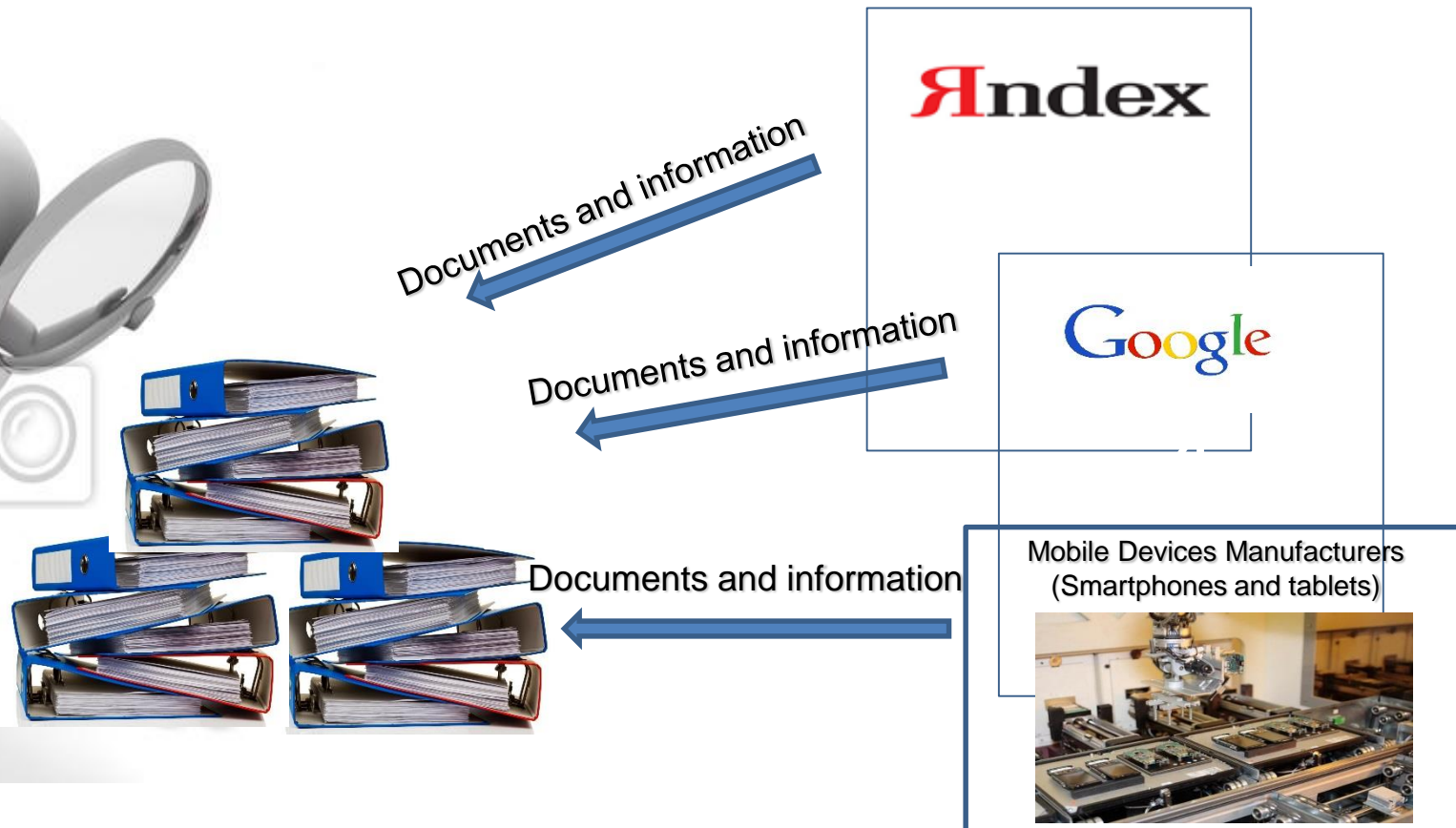


Yandex LLC:

- Russian company – direct competitor of Google on the market of Internet search;
- Popular search engine in the Russian Federation (12.3 mln. users daily)
- Yandex’ market share is 57% of all search queries (in 2015)

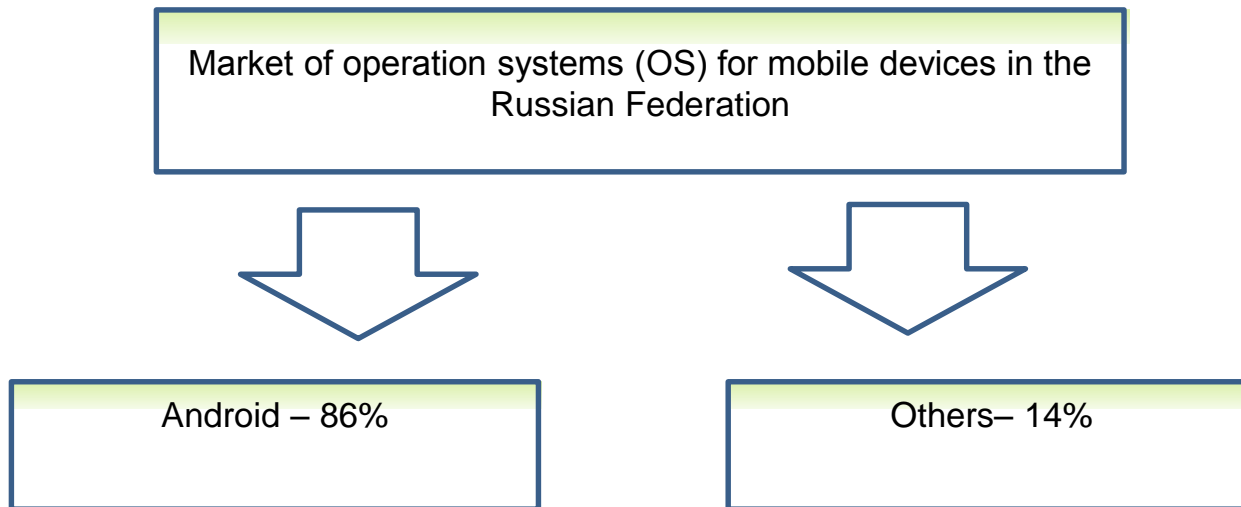
# Investigation of the FAS Russia in relation to Google

- The FAS Russia initiated investigation in relation to Google (Google Inc., Google Ireland Limited, Google Ltd), that was conducted for more then 6 months. Major of documents and information, containing evidences from both sides, was commercial secrets, that is why, at large, the investigation was closed from the public



# FAS Russia's Investigation

- In course of antimonopoly investigation, the FAS Russia found out that Google occupies a dominant position on the market of pre-installed app stores Google Play for Android OS, that is strengthened by their rights on the Android OS itself.



- Users prefer mobile devices with pre-installed app store: 63% on the smartphones 67% on tablets

- 58,18% of Android OS mobile devices has Google Play pre-installed (in the Russian Federation)

- Individual users cannot install Google Play

- Mobile devices manufacturers are interested in having Google Play on their devices

# The Essence of the Violation

- Using its dominant position, Google set a number of requirements for Android OS mobile devices manufacturers for obtaining Google Play app store.

It is possible to obtain Google Play only by:

- Package with other Google apps

- setting/pre-installation of Google search as a default search engine

- Prioritized placement of Google apps on the screen of a mobile device

- Prohibition of pre-installation of apps and services of competitors, that was secured by financial reward from Google





# The Essence of the Violation

Google exercised control over compliance with their restrictions/requirements by manufacturers for obtaining Google Play – **Anti-fragmentation Procedures**



## Negative Consequences

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- Impediment of development of competitors – producers of apps functionally similar to Google apps, included in GMS

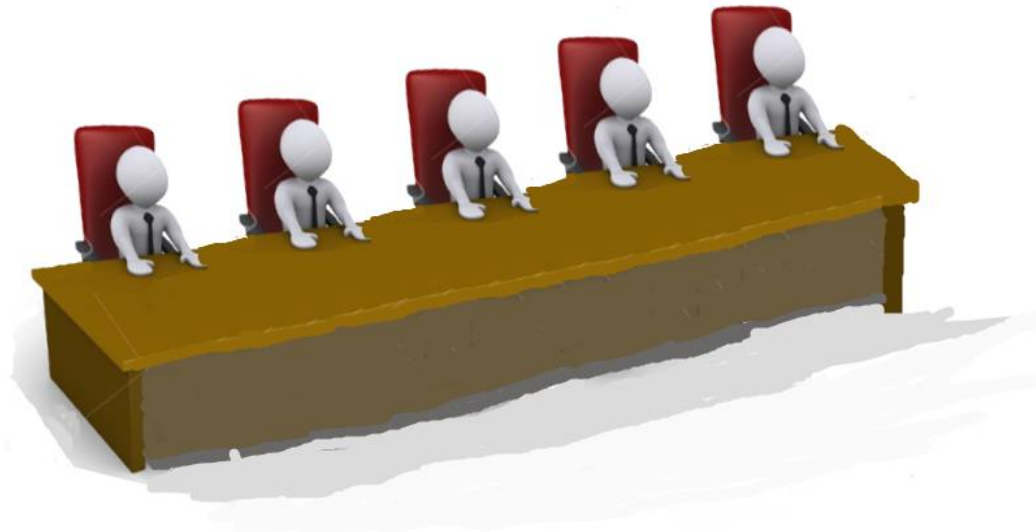


- Supersession of competitors from the market of services, functionally similar to Google apps, included in GMS



In accordance with provision of the Law on Protection of Competition the FAS Russia after consideration of a case made a decision on existence of violation and issued a ruling on elimination of violation and its consequences.

Commission of the FAS Russia found out that Google abused its dominant position that is violation of Part 1 Article 10 of the Law on Protection of Competition.



It was ruled to stop:

- To prohibit pre-installation of apps developed by other economic entitles, including securing of such prohibition with financial reward from Google to Android OS mobile devices manufacturers or other financial rewards;
- To oblige to pre-install along with Google Play a number of other Google apps, products, services;
- To oblige to pre-install on mobile devices and/or set on mobile devices Google search as a default search engine along with Google Play
- To oblige to set other Google apps pre-installed along with Google Play strictly on the exact places on a screen of a mobile device.

Google did not agree with the decision of the FAS Russia and made 2 attempts to appeal it in courts

On March 14, 2016 Moscow Arbitration Court fully supported the decision of the FAS Russia.

Decision of the Ninth Appeal Court dated August 17, 2016 also refused possibility to cancel decision of the FAS Russia in relation to Google.

Decision of the FAS Russia came into force.



In accordance with Article 14.31 of the Code of Administrative Offences of the Russian Federation, the FAS Russia brought Google to administrative liability for violation of antimonopoly legislation

- On March 14, 2016 an administrative case was initiated in relation to Google.
- On August 11, 2016 the FAS Russia imposed a fine on Google in the amount of 438 067 400 RUB (~ 6.8 mln. USD).
- Currently Google appeals the fine in the court.





- Transborder nature of violation of antimonopoly legislation;
- New growing markets;
- Complexity of market analysis;
- Existence of effects on relevant (upstream/downstream/connected) markets;
- Conducting consumers' inquiry;
- Complexity of fine calculation;
- Desire of the FAS Russia to settle with Google.

## The FAS Russia's case in relation to liner shipping companies



# The Essence of the Violation

**In 2013-2015 the FAS Russia investigated a case in relation to the largest liner shipping companies on signs of concerted actions on the liner shipping market on the route Southeast Asia- St. Petersburg.**



The FAS Russia jointly with the Ministry of Internal Affairs of the Russian Federation conducted dawn raids in the offices of 14 Russian companies – partners of the largest liner shipping companies and gained necessary documents and information



The broad market study of liner shipping market (regular and refrigerated) was conducted with participation of experts. Price setting issues on the liner shipping market (incl. agent services) was researched and the assessment of the results of participation of liner shipping companies in various alliances was made.

It was established by the authority that in 2012-2013 information on General Rate Increase was published on the website of one of the liner shipping companies, after which the other companies fixed the same surcharges. Such concerted actions are prohibited for competing economic entities if their joint market share on the relevant market exceeds 20%, and each involved company's market share is not less than 8%.

**As a result of investigation A.P.Moller-Maersk A/S (Denmark), CMA CGM SA (France), Hyundai Merchant Marine Co., LTD (Korea), Orient Overseas Container Line Limited (Hong Kong), Evergreen Marine Corp. (Taiwan) Ltd (Taiwan) were found violated Clause 1 Part 1 Article 11 of the Law on Protection of Competition (anticompetitive agreements)**

- Companies went to courts to appeal decision of the FAS Russia;
- On September 7, 2016 Moscow Arbitration Court confirmed the decision of the FAS Russia in relation to international liner shipping companies.





- Transborder nature of violation of antimonopoly legislation;
- Obtaining documents in course of dawn raids;
- Necessity to conduct expertise and deep market analysis;
- Separate consideration of actions of every single company (not all the companies under investigation were found violators)

Google	Liner Shipping
<ul style="list-style-type: none"><li>• European Commission</li><li>• Canada Competition Bureau</li><li>• Korea Fair Trade Commission</li></ul>	<ul style="list-style-type: none"><li>• US Federal Trade Commission</li><li>• European Commission</li><li>• Spanish National Commission on Markets and Competition</li><li>• Competition Commission of South Africa</li><li>• Japan Fair Trade Commission</li><li>• Romania Competition Council</li></ul>

- Is it taken into consideration the practice of investigation of the same case in other jurisdiction?
- Is it necessary to have practical tools for cooperation between competition authorities conducted investigation on the same market?
- What are the challenges for effective international cooperation in investigation cases in relation to transnational companies?

THANK YOU FOR YOUR  
ATTENTION!



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