

REPORT OF THE FEDERAL ANTIMONOPOLY SERVICE ON COMPETITION POLICY IN 2007

Executive Summary

In 2007 the active work on introduction and application of the competition law in the Russian Federation was kept on, taking into consideration of coming into force in October, 2006 of the Federal Law №135-FZ “On Protection of Competition”. Moreover adoption of the Federal Law of 09.04.2007 №45-FZ “On introducing amendments to the Code of the Russian Federation on administrative violations” has a huge significance for the competition policy development. This law toughened administrative liability for violating competition law; it also introduced the principles of leniency program. Furthermore due to necessity of constant reaction on every day reality and of prevention of possible problematic issues in future, the FAS Russia took an active part in bill-drafting process in order to introduce amendments into sector legislation (Water Code, Forest Code, laws on fishery, power industry, finance, etc).

The FAS Russia participated actively in reforms of the naturally-monopolistic sectors of economy aimed at ensuring transition from inefficient and hardly transparent system of pricing state regulation and financial policy in this sphere to market mechanisms of ensuring competition of undertakings and achievement of balance between producers and consumers.

The FAS Russia issued a number of statutory and legal acts, including Administrative Regulations on execution of state functions imposed on the FAS Russia that allowed regulating of the sequence of execution of state function.

In 2007 the FAS Russia considered a number of noted cases on violation of competition law, including disclosing of cartels affecting considerably consumers. Control over economic concentration was conducted within the frameworks of new regulations set by the Federal Law №135-FZ “On Protection of Competition” resulting in considerable decrease of the number of pre-merger and post-merger notifications submitted to the antimonopoly authority for consideration.

The biggest number of violations of competition law was revealed under control and supervision actions on suppression of anticompetitive actions of authorities on the territory of the Russian Federation that allowed reducing of administrative barriers for the activity of economic entities, as well as corruption risks, which in general promotes benign conditions for competition development.

In the sphere of control over public procurement the forward movement was kept on: there were adopted amendments to public procurement legislation aimed at eliminating of imperfection of current legislation to ensure equal access of all interested persons to procurements.

The FAS Russia made a number of proposals on state regulations of foreign trade basing on principles of ensuring competition, protection of consumers interests and enhancement of competitiveness of national products.

Regular international contacts of the FAS Russia and exchange of experience with OECD, ICN, European Commission and foreign competition agencies worldwide contributed greatly to more effective development of competition policy and enforcement, particularly in fighting against cartels in different sectors of the Russian economy.

Establishment in the Russian Federation of Non-Commercial Partnership “Assistance to Competition Development” (the so-called Russian Bar Association) played a significant positive role for development of better enforcement practices in the sphere of competition, competition advocacy among Russian and foreign market participants.

In general, it should be underlined that the considered period of the FAS Russia activity was marked with a series of innovations promoting effective competition development in the state keeping the fundamental approaches for competition policy implementation.

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

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

2007 was marked for the FAS Russia by work within frameworks of the Federal Law №135-FZ “On Protection of Competition” that came into force on October 26, 2006 and unified competition law for commodity and financial markets and considerably improved state approach in this sphere. Much effort was devoted to explanation on application of this law to the Russian and foreign market participants. Active work was conducted on introducing amendments to the Russian legislation in order to ensure and develop principles of effective competition policy and enforcement.

With the Federal Law №45-FZ of 09.04.2007 “On introducing amendments to the Code of the Russian Federation on administrative violations” coming into force on 13.05.2007 the administrative liability for non-observance of the legal decision, instruction of the antimonopoly authority was toughened; the direct administrative liability for abuse of dominance, conclusion of agreements restricting competition (concerted actions), unfair competition was introduced; penalties calculated from the sum of infringer’s proceeds from the goods sale on the market where a violation took place, were introduced; and disqualification of officials (under certain violations) for a period of three years was also introduced. Already in the first months of application of this law the rate of disclosure of agreements restricting competition was increased due to application of new provisions of leniency program set in the Code of the Russian Federation on administrative violations. The number of cases of organizations giving themselves up was 8 cases in 2007.

Moreover the FAS Russia carried out activity on introducing to the sector legislation of competition regulations, including regulations of direct action, envisaging indispensability of conducting public procedures (auctions, tenders) while allocating relevant assets/rights/resources that leads to competition development in the given sectors and allows the federal antimonopoly authority to control the spheres that were previously “closed”, including:

in the sphere of water consumption

the action of the competition legislation was extended on this sphere, and the competitive principle of selection of candidates on water consumption was determined with the Federal Law of 03.06.2007 №74-FZ “Water Code of the Russian Federation” coming into force on 01.01.2007;

in the sphere of forest industry

antimonopoly regulation were introduced to the legislation on forest and the auction principle of allocation of rights of forest lands was established with the Federal Law of 04.12.2006 №200-FZ “Forest Code of the Russian Federation” coming into force on 01.01.2007. To implement provisions of the Forest Code the FAS Russia elaborated a Resolution of the Government of the Russian Federation of June 22, 2007 № 395 “On establishing maximum volume of timber for purchase by a

person, group of persons” aimed at prevention of economic concentration growth on the timber purchase market affecting competition in the sphere of forest exploitation”;

in the sphere of fishery

a regulation on prohibition of monopolistic activity and unfair competition in the sphere of fishery and preservation of water biological resources was formulated in the Federal Law of 06.12.2007 № 333-FZ «On introducing amendments to the Federal Law “On fishery and preservation of water biological resources” and certain legal acts of the Russian Federation” with introducing amendments to the Federal Law of 20.12.2004 № 166-FZ «On fishery and preservation of water biological resources”;

in the sphere of power industry

considerable changes to execution of the antimonopoly regulation and control on wholesale and retail markets of electric power were introduced by the Federal Law of 04.11.2007 № 250-FZ “On introducing amendments to the certain legal acts of the Russian Federation due to undertaking of measures on reform of the Russian unified energy power system” to the Federal Law of 26.03.2003 № 35-FZ “On power industry”.

The Resolution of the Government of the Russian Federation of 21.03.2007 № 168 “On introducing amendments to the Resolution of 27.12.04 № 861 “On confirmation of Rules of non-discriminatory access to the services on transfer of power energy and their rendering, Rules of non-discriminatory access to the services on operative-dispatch management in the power industry and their rendering, Rules of non-discriminatory access to the services of the wholesale market administrator of trade system and their rendering and Rules of technological connection of energy-receiving units (energy plants) of legal and private persons to the electric network systems” provides for a number of measures aimed at reduction of the number of refusal from technological connection to electric network systems due to lack of technical ability, creation of opportunity to develop electric network systems to the extent meeting the requirements of the growing economy (in particular with regard to specification of the incumbent procedure of technological connection to the electric network systems, main principles of dispute settlement on power energy transfer, inclusion of investment costs to the payment for technological connection of energy-receiving units (energy plants) of legal and private persons, aggregated capacity of which should not exceed 750kVA (small enterprises).

in the sphere of power energy, gas and public utilities tariffs regulations

a number of amendments to the Russian legislation was introduced through the Resolutions of the Government of the Russian Federation:

of 07.04.2007 № 206 “On introducing amendments to the Resolution of the Government of the Russian Federation of 07.03.95 № 239 “On measures for improvement of state regulation over prices (tariffs)” with regard to price regulation on natural gas, domestic gas in bottles, energy supply, heating (including heat supply);

of 07.04.2007 № 208 “On sequence of dispute settlement arising between the executive authorities of the subjects of the Russian Federation, of local self-governments regulating tariffs and extra-charges on public utilities and public utilities entities with regard to set tariffs and extra-charges”;

of 09.06.2007 № 360 “On compulsory rules under conclusion and implementation of public agreements concluded when connecting to the public utilities systems”;

of 23.07.2007 № 464 “On the sequence of financing of investment programs for public utilities – producers of goods and services in the sphere of energy and/or heat supply”;

of 23.07.2007 № 468 “On the sequence of state control in the sphere of tariffs and extra-charges of public utilities”;

in financial sphere

Resolution of the Government of the Russian Federation of 30.05.2007 № 334 “On determination of the size of assets of financial organizations (except for credit organizations) and aggregate share of financial organizations (except for credit organizations) on the commodity market in order to conduct antimonopoly control” *inter alia* determined standard of aggregate share of financial organizations on commodity market exceeding which the notification of the antimonopoly authority on agreements between the above financial organization is required. Moreover there is given a list of cases for compulsory notification of the antimonopoly authority under conduction of certain actions by financial organizations.

With regard to credit organizations the Resolution of the Government of the Russian Federation of 30.05.2007 № 335 “On determination of the size of assets of credit organizations and aggregate share of credit organizations on commodity market in order to conduct antimonopoly control” was adopted.

Resolution of the Government of the Russian Federation of 26.06.2007 № 409 “On confirmation of terms for admitting the dominance of the credit organization and of rules for determination of dominance of the credit organization” determined the terms for admitting the dominance of the credit organization and rules for determining the dominance of the credit organization.

With regard to financial organization the Resolution of the Government of the Russian Federation of 09.06.2007 № 359 “On confirmation of terms for admitting the dominance of the financial organization (except for credit organization) and of rules for determination of dominance of the financial organization (except for credit organization)” was adopted.

The Federal Law of 17.05.2007 № 82-FZ “On Bank of Development” aimed at promotion of development of industry and innovative sectors of economy, envisages provision of qualitatively new level of state participation in the capitals of credit organizations that can eliminate existing deficit of financial institutions promoting formation of long-term projects with a long period of payback to create modern competitive technological base of the Russian economy.

The Federal Law of 26.01.2007 № 573-FZ “On introducing amendments to the article 1062 of the second part of the Civil code of the Russian Federation” (the FAS Russia proposals on creation of benign conditions for trade of derivative financial instruments and judicial protection of transactions with the instruments of the times market were implemented. The previous edition of this article of the Civil code of the Russian Federation qualified such transactions as bets and did not provide for judicial protections on them);

in the sphere of road building

The Federal Law of 08.11.2007 № 257-FZ “On motor roads and road activity in the Russian Federation and on introducing amendments to certain legal acts of the Russian Federation” introduced amendments to the Federal Law of 21.07.2005 № 94-FZ “On placement of orders on products, works and services for state and municipal needs”. There were formulated the peculiarities of placement of order on building, reconstruction, major overhaul of the objects of capital construction, including motor roads, temporary buildings, stalls, sheds and other such sort of buildings by means of conducting an actions (the given changes come into force from 01.01.2009) and placement of order on building, reconstruction, major overhaul of mostly dangerous, technically complicated objects of capital construction, as well as artificial road construction included in the motor road by means of conducting tender or auction;

in the sphere of natural monopolies

The Federal Law of 18.10.2007 № 230 “On introducing amendments to the certain legal acts of the Russian Federation due to improvement of separation of responsibilities” introduced amendments to the Federal Law of 17.08.1995 № 147-FZ “On natural monopolies” (with regard to establishment of a duty for the subjects of natural monopolies to conduct separate calculation of income and expenditures under types of activity, including specification of the sequence for taking a decision by

natural monopolies regulators on introduction, changing or termination of regulation of the activity of the subjects of natural monopolies);

in the sphere of advertising

the number of amendments to the advertising legislation, establishing, in particular, prohibition of the advertisements of the stock bonds before the date of their admission to the stock-exchange in the process of the stock bonds; requirements to indication of cost criterion.

The Federal Law of 21.07.2007 №193-FZ “On introducing amendments to the articles 19 and 33 of the Federal Law “On Advertising” provides for requirements to the sequence of placing of advertising construction as well as imposition on the antimonopoly authority new powers on issuance to the local self-governments of instructions on annulment of permissions on placing of advertising constructions belonging to the persons occupying a dominant position in the sphere of outdoor advertising.

The Federal Law of 01.12.2007 № 310-FZ “On organizing and holding of XXII Winter Olympic Games and XI Winter Paralympic Games of 2014 in Sochi, development of Sochi as mountain climate resort and introducing amendments to the certain legal acts of the Russian Federation” introduced amendments to the Federal Law of 13.03.2006 № 38-FZ “On Advertising” that determine peculiarities of allocation (distribution) of advertisements during the period of holding Olympic and Paralympic Games of 2014 in Sochi.

1.2 Other relevant measures, including new guidelines

The FAS Russia issued a number of legal and statutory acts registered in the established order in the Ministry of Justice of the Russian Federation and that has already come into force, that promote implementation of administrative reform of the Russian Federation, including Administrative Regulations on execution of state functions imposed on the FAS Russia. Application of these Administrative Regulations allowed creating of more detailed unified structure of the administrative regulation on the execution of state functions; regulating such issues as the sequence of execution of state function, results of execution of state functions, periods of execution of certain procedures, sequence of electronic information exchange (or via email) between the FAS Russia and economic entities and citizens.

1. the FAS Russia order of 31.10.2007 № 356 “On conformation of the Administrative Regulation of the Federal Antimonopoly Service on execution of state function on controlling over observance of compliance with the competition law of agreements concluded between economic entities and restricting competition”;

2. the FAS Russia order of 14.11.2007 № 379 “On conformation of the Administrative Regulation of the Federal Antimonopoly Service on execution of state function on considering complaints on actions (inactions) of the customer, authorized authority, special organization, tender, auction or quotation commission when placing order on goods, works, services supply for state and municipal needs”;

3. the FAS Russia order of 04.12.2007 № 413 “On conformation of the Administrative Regulation of the Federal Antimonopoly Service on execution of state function on controlling over the activity of the trade system administrator of the wholesale market of power energy (capacity)”;

4. the FAS Russia order of 05.12.2007 № 415 “On conformation of the Administrative Regulation of the Federal Antimonopoly Service on execution of state function on controlling and supervising over actions of the wholesale market subjects with regard to revealing of cases of price manipulation on power energy (capacity) on the wholesale market of power energy (capacity)”;

5. the FAS Russia order of 25.12.2007 № 447 “On conformation of the Administrative Regulation of the Federal Antimonopoly Service on execution of state function on initiating and considering cases on violation of the competition law of the Russian Federation”;

6. the FAS Russia order of 28.12.2007 № 453 “On conformation of the Administrative Regulation of the Federal Antimonopoly Service on execution of state function on considering of cases, initiated on the basis of infringing the advertising legislation of the Russian Federation”;

7. the FAS Russia order of 14.11.2007 № 378 “On conformation of the sequence of revealing of cases of price manipulation on power energy (capacity) on the wholesale market of power energy (capacity)”;

8. the FAS Russia order of 21.12.2007 № 442 “On conformation of the Administrative Regulation of the Federal Antimonopoly Service on execution of state function on explaining of the Russian competition law application issues”.

1.3 Government proposals for new legislation

The FAS Russia in order to implement the Regulation of the Government of the Russian Federation of 29.12.2006 and to ensure organizing of bill drafting activity the FAS Russia in 2008 adopted a “Plan on organizing bill drafting activity of the FAS Russia for 2008” within the frameworks of which it is planned to introduce the following amendments to the legislation in order to develop principles of competition:

“On introducing amendments to the Federal Law “On Protection of Competition” (with regard to determination of basic notions, procedures of control over economic concentration and agreements concluded between economic entities and restricting competition, procedures of consideration of cases on violation of competition law, sequence of selection of financial organizations, consequences of violation of granting of state aid, prohibition of unfair competition);

“On introducing amendments to the Code of the Russian Federation on administrative violations” (CoAV) (with regard to specification of leniency program rules, envisaged under article 14.32 of the CoAV, as well as with regard to introduction of liability for non-submission to the control authorities of information relating to distribution of improper advertisements, determination of elements of offence dealing with the violation of the legislation on advertising of the Russian Federation);

Resolution of the Government of the Russian Federation “On conformation of block exemptions with regard to agreements between buyers and sellers, and agreements on joint scientific research and joint use of gained scientific and (or) scientific and technical results” that sets forth the list of conditions meeting which the agreement can be admitted as permissible;

New edition of the Federal Law “On Natural Monopolies” dealing with the extension of the list of the subjects of natural monopolies, specification of the status of the register of the subjects of natural monopolies, development of the tariff regulation methods, including introduction of ROI (return of investment) tariff, as well as imposition of commitment of conducting a tender when purchasing the goods by the subjects of natural monopolies;

“On introducing amendments to the Criminal Code of the Russian Federation” (with regard to determination of the elements of violation of the Article 178 relating to prevention, restriction or elimination of competition);

“On introducing amendments to the Federal Law “On Gas Export” (with regard to limitation of the law application sphere by natural gas and stripped net gas, and to imposition on the Government of the Russian Federation of powers to conform the sequence of distribution of proceeds gained from selling of natural and stripped net gas between organizations extracting natural gas and processing stripped net gas within the frameworks of the “Single export channel”);

“On introducing amendments to the Federal Law “On Advertising” (with regard to determination of requirements to the language and of correlation of volume of the sound of advertisement and the sound of the radio and TV programs interrupted by it).

2. Enforcement of competition laws and policies

To prevent and suppress anticompetitive practice in 2007 the FAS Russia conducted 195630 control and supervision actions. 7932 violations of the competition law were revealed, 6857 cases were initiated.

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 2007 the FAS Russia conducted 8129 control and supervision actions aimed at prevention and suppression of monopolistic activity (abuse of dominance and anticompetitive agreements between economic entities) on commodity and financial markets. 1740 violations under monopolistic activity were revealed, 1563 cases were initiated.

Suppression of abuse of dominance

In 2007 the antimonopoly authority received 5290 applications on abuse of dominance by economic entities. The mostly spread type of abuses is still imposition on unprofitable terms of agreements (about 25% of all applications). 1331 cases were initiated, out of them 113 were initiated on the initiative of the antimonopoly authority, 985 cases were terminated due to elimination of violations during consideration of cases (67%) and non-confirmation of the fact of violation (33%). On the rest of cases under consideration 676 decisions were taken on admitting violation and 614 instructions were issued. 242 decisions (35%) taken in 2007 were appealed in court. The Court admitted completely invalid 49 decisions and partially invalid 11 decisions.

In 2007 the antimonopoly authority received 42 applications on abuse of dominance by financial organizations (mainly on the banking service market). 1 case was initiated and was terminated due to non-confirmation of the fact of violation.

Suppression of anticompetitive agreements concluded by economic entities

In 2007 the antimonopoly authority received 195 applications on agreements (concerted actions) by economic entities, restricting competition. The majority of applications (30%) was submitted due to establishment (maintaining) of prices (tariffs), discounts, markups (extra charges), margins and due to limitation of an access to market (14%). 232 cases were initiated, out of them 163 cases were initiated by the antimonopoly authority. 206 cases were terminated due to elimination of violations during consideration of a case (67%) and non-confirmation of the fact of violation (33%). On the rest cases under consideration 94 decisions on admitting the violation were taken and 78 instructions were issued. 28 decisions were appealed to court, 1 was admitted as completely invalid

As for agreements (concerted actions) of financial organizations restricting competition on the financial service market there were submitted 56 applications. 120 cases were initiated, out of them 101 on the initiative of the antimonopoly authority. 123 cases were terminated due to elimination of violation during consideration of case (71%) and non-confirmation of the fact of violation (29%). On the rest cases 33 decisions on admitting violation were taken and 26 instructions were issued. 4 decisions were appealed to court; the claims were not met by court.

Practice of application of leniency program

Since the date of the article 14.32 of the Code on Administrative Violations (CoAV) coming into force (May 2007) and introducing leniency program and till the date of the considered period there were received 8 applications on commutation due to voluntary refusal from participation in the agreement. Article 14.32 of the CoAV provides for direct administrative liability for concluding agreement restricting competition or participating in concerted actions restricting competition. The amount of fines in 2007 was 4'259'493 roubles. Such a small sum of fines is due to the fact that many cases under this article in 2007 were still considered by courts.

2.1.2 Description of significant cases

Suppression of abuse of dominance

Iodine market. The FAS Russia considered a case against OJSC “Troitsky iodine plant” initiated on application of CJSC “Rostov pharmaceutical factory” on termination of supplies of crystal iodine and potassium iodide, produced by OJSC “Troitsky iodine plant”, to CJSC “Rostov pharmaceutical factory” from November, 2005, and admitted it as violating clause 8 part 1 Article 10 of the Federal Law “On Protection of Competition” (abuse of dominance).

Violation was in creation by OJSC “Troitsky iodine plant” of discriminatory terms for entry to commodity markets of crystal iodine and potassium iodide (refusal from raw supply) for CJSC “Rostov pharmaceutical factory”.

Having considered the case the FAS Russia Commission issued an instruction to OJSC “Troitsky iodine plant” to

- terminate violation of the competition law on the markets of crystal iodine and potassium iodide;

- ensure non-discriminatory access of CJSC “Rostov pharmaceutical factory” to goods consumption (crystal iodine and potassium iodide, produced by OJSC “Troitsky iodine plant”). Meanwhile to take into account that economically and technologically unjustified refusal from supplying of the given goods is prohibited.

OJSC “Troitsky iodine plant” fulfilled the FAS Russia instruction and resumed supplies of iodine goods to CJSC “Rostov pharmaceutical factory”.

Railway transportation. The FAS Russia initiated a case against JSCo “RZD” on application of OJSC Brewery company “BALTICA”, “Brewery Heineken” Ltd. attracting to consideration of case of the Union of the Russian producers of beer and soft-drinks. Violation was in the fact that JSCo “RZD”, occupying a dominant position on market of railway transportation via railways of general use, unjustifiably refused OJSC Brewery company “BALTICA”, “Brewery Heineken” Ltd. from conclusion of agreement on transportation of scalded beer in their own, rented sheltered carriages during summer and transition period.

JSCo “RZD” eliminated violation of competition law through publication of telegram on determination of special terms for transportation in multi-purpose sheltered carriages with thermal protection of potted goods, juices (sterilized, sulfated), syrups, vegetable and fruit nectars, soft-drinks and low alcoholic drinks, scalded beer, mineral water, different wines, ketchups, tomato pasts, concentrated tomato, vegetable and fruit puree, stewed fruit, jams, confiture.

As a result the FAS Russia took a decision that JSCo “RZD” committed actions admitted as abuse of dominance, and according to the article 14.31 of the CoAV the FAS Russia imposed a fine on the monopoly for abuse of dominance amounting to 22 780 000 roubles (about 911000 US dollars).

Diary production market. The Bryansk Regional Office of the FAS Russia admitted OJSC “Bryansk diary plant” violating article 10 of the Law on protection of competition (abuse of dominance on the commodity market) and issued an instruction to eliminate the committed violations. Violation was in diary plant’s establishing of monopolistically high price on milk for the consumers of the Bryansk region. The OJSC “Bryansk diary plant” is listed in the Register of economic entities having a market share on the certain commodity market exceeding 35 %. The diary plant appealed the decision of the Bryansk Regional Office of the FAS Russia to the Bryansk Arbitrary Court. However the court admitted the decision of the antimonopoly authority as fully valid.

Public utilities. The Amursk Regional Office of the FAS Russia considered a case, initiated against OJSC “Amursk public utilities” on abuse of dominance under the article 14.31 of the CoAV.

The violation was in OJSC “Amursk public utilities” technologically unjustified refusal to the owners of the tenement house from conclusion of agreements on rendering of public utilities, referring to lack of proper document proving the tenants’ right of property on the common property (networks).

The Head of the Amursk Regional Office of the FAS Russia by his Resolution called OJSC “Amursk public utilities” for administrative liability under article 14.31 of the CoAV, having imposed the fine of 1% of the proceeds of the violator which is more than 23 million of roubles (920000 USD).

Suppression of anticompetitive agreements concluded by economic entities

Insurance services. The FAS Russia determined a violation by OJSC AKB “Avangard” and CJSC “Insurance group “Avangard-Garant” of the clause 5 part 1 article 11 of the Law on protection of competition. Violation was in conclusion of agreement that led (could lead) to imposing on bank’s borrowers of terms of agreement not beneficial for them (compulsory insurance of the vehicle pawning to bank only in the CJSC “Insurance group “Avangard-Garant”). Determination of violation of the article 11 of the Law on protection of competition is basis for calling of relevant persons to administrative violation set by the article 14.32 of the CoAV. The FAS Russia took a decision on imposition of turnover fine on the CJSC “Insurance group “Avangard-Garant” in the size of 4 058 595,40 roubles and fine on the President of OJSC AKB “Avangard” in the size of 17000 roubles for violating article 14.32 of the CoAV. The decision was voluntarily fulfilled by the above companies.

Auto-components market. The FAS Russia prevented coordination of economic activity by OJSC “Zavolzhsy Motor Plant” (OJSC “ZMP”) by means of agreements obliging dealers to prevent appearance on the commodity market of spare parts for vehicle made by other organizations competitive to OJSC ‘ZMP’. The case was considered on complaints of “NTC RODOS” Ltd (Moscow region), “Cohesion plant” Ltd. (Tumen region) and “Inform-Auto” Ltd. (Nizhny Novgorod region).

As a result the FAS Russia obliged the OJSC “ZMP” to introduce amendments to all concluded dealer agreements setting forth that the dealer, distributor, sub dealer of OJSC “ZMP” has a right to purchase, sell, store, advertise detail, assemblies, units, other suppliers of the same nomenclature that are the ones supplied by the OJSC “ZMP” and to place this information on ZMP official web-site.

The FAS Russia instruction is fulfilled, the competition conditions are restored.

Oil market. The Stavropol Regional Office of the FAS Russia admitted “Lukoil-Yugnefteproduct” Ltd., OJSC “Oil Company “Rosneft-Stavropolie” and OJSC “Stavropolnefteproduct” violating article 11 of the Law on protection of competition (prohibition of

agreements and concerted actions restricting competition) and gave instruction to eliminate the committed violations. These companies, being the leaders of the petrol market in the Stavropol region, committed synchronous increase of retail prices on petrol and diesel oil from November 14, 2007. The Stavropol Regional Office of the FAS Russia determined presence of price collusion aimed at unjustified price increase and coordination of the activity.

As a result the antimonopoly authority issued an instruction to “Lukoil-Yugnefteproduct” Ltd., OJSC “Oil Company “Rosneft-Stavropolie” and OJSC “Stavropolnefteprodct” to discontinue committing of concerted actions and activity coordination leading to unjustified establishment and maintenance of prices. OJSC “Oil Company “Rosneft-Stavropolie” and “Lukoil-Yugnefteproduct” Ltd. are fined on 25 915 566 roubles and 49 166 273 roubles relevantly.

Exhibition services. The FAS Russia initiated two cases against 40 member of the Guild of exhibition and fair organizations of Moscow Chamber of Commerce and Industry and 86 members of the Russian Union of exhibitions and fairs on violation of article 11 of the Law on protection of competition. The ground for the case initiation was an application of CJSC “CROCUS INTERNATIONAL” on agreements restricting competition on the exhibition services market. The violations were in coordination of economic activity of the members of the Guild of exhibition and fair organizations of Moscow Chamber of Commerce and Industry and members of the Russian Union of exhibitions and fairs, namely: limitation of exhibitions with the same topic by the period of holding (60 days before and after the organizer’s exhibition marked with the labels of leading professional exhibition associations) and by the place of holding (in the cities where the incumbent exhibitions already have labels of leading professional exhibition associations).

The FAS Russia admitted the Moscow Chamber of Commerce and Industry and the Russian Union of exhibitions and fairs as violating part 3 article 11 of the Law on protection of competition.

However due to voluntary elimination of violations the FAS Russia terminated a proceeding against Moscow Chamber of Commerce and Industry and the Russian Union of exhibitions and fairs.

Practice of application of leniency program

Insurance services market.

1) The FAS Russia initiated a case against OJSC AKB “ROSBANK” and 36 insurance companies on violation of part 1 article 11 of the Law on protection of competition. Violation was in conclusion of agreements that lead or can lead to restriction of competition on the insurance market, as well as to establishment or maintenance of prices (tariffs).

The ground for case initiation was voluntary applications of bank and insurance companies on refusal from further participation in concluded agreements between them, restricting competition and non-permissible under the competition law of the Russian Federation. Organizations noted that agreement between credit organization and insurance companies with regard to concordance of applicable by insurance companies tariffs on programs of giving credit for vehicle, consumer and mortgage credits leads or can lead to establishment or maintenance of prices on insurance services.

Thus OJSC AKB “ROSBANK” and 36 insurance companies used the leniency program due to which persons participating in the anticompetitive agreements are relieved from the administrative liability envisaged by the article 14.32 of the CoAV.

In July, 2008 the FAS Russia issued a decision on admitting the violation of OJSC AKB “ROSBANK” and 36 insurance companies under the clauses 1, 4, 5 part 1 article 11 of the Law on protection of competition, out of them 12 insurance companies and OJSC AKB “ROSBANK” were also admitted violating clause 6 part 1 article 11 of the Law on protection of competition. The case was terminated due to voluntary elimination of violation and its consequences.

2) The FAS Russia initiated 2 cases against CJSC “Raiffeisenbank” and 10 insurance companies on violation of article 11 of the Law on protection of competition when giving credits for vehicle and mortgage purchase. In February, 2008 the FAS Russia received two applications of CJSC “Raiffeisenbank” where the bank admitted violation of the competition law, including the ones relating to presence of concerted tariffs in the agreements on cooperation with insurance companies, and to conduction of closed tenders on selection of insurance companies and non-publicly available requirements for insurance companies.

CJSC “Raiffeisenbank” prior to consideration of case voluntarily admitted violation of the competition law and applied to the FAS Russia for leniency program under article 14.32 of the CoAV for concluding agreements restricting competition submitting all information on such agreements.

2.2 Mergers and acquisitions

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

In 2007 the FAS Russia carried out 21952 control and supervision actions in the sphere of control over market, including consideration of 6097 pre-merger notifications and 15117 post-merger notifications. Transaction between companies with aggregate value of assets exceeding 3 billion of roubles or 120 million of US dollars should get preliminary agreement of the FAS Russia; transaction of companies with aggregate value of assets exceeding 200 million of roubles or 8mln of US dollars are also to be notified.

With regard to creation and reorganization of commercial organization there were considered 528 pre-merger notifications and 97 post-merger notifications, 3 of them were refused to be satisfied and 5 were satisfied on fulfillment of certain conditions aimed at ensuring of competition.

With regard to transactions with stock (shares), property of commercial organizations, rights in respect of commercial organizations there were considered 5025 pre-merger notifications and 431 post-merger notifications. The biggest part of pre-merger notifications dealt with acquisition of right to dispose of more than 25% of voting stocks of the joint-stock companies (1551). 75 notifications out of all on this aspect were refused, 344 were satisfied with issuance of instruction on committing actions aimed at ensuring of competition.

With regard to transactions with stock (shares), assets of financial organizations and rights in respect of financial organizations there were considered 396 post-merger notifications (out of them 9 were refused, 4 were satisfied with issuance of instructions) and 101 post-merger notifications.

With regard to agreement of financial organizations achieved in any form there were considered 12536 notifications, out of them 99 were refused to be satisfied, 34 were satisfied with issuance of instructions.

As for other transaction there were considered 46 pre-merger notifications (1 is refused) and 1868 post-merger notification (1 is refused, 7 are satisfied with issuance of instruction).

Peculiarity of state control over natural monopolies. In 2007 the scale of the state control by the antimonopoly authority over transactions in the spheres of natural monopolies was slight. There were considered 102 pre-merger notifications (2 were refused) and 84 post-merger notifications, all of them were satisfied. It should be mentioned that in 2007 unlike 2006 the Regional Offices of the FAS Russia started receiving notifications on transactions in the sphere of natural monopolies (31 pre-merger notification and 67 post-merger notifications).

2.2.2 Summary of significant cases

Satisfaction of pre-merger notification on acquisition of voting stock with issuance of instruction. The FAS Russia considered the pre-merger notification of OJSC “Gasprom” on acquisition of 49,81% of voting stocks of OJSC “Mosenergo” (main supplier of electric energy to Moscow), that together with the already purchased stocks would make 63,93% of voting stocks of OJSC “Mosenergo”. The FAS Russia took a decision that as a result of transaction there would occur a vertical integration of the subject of natural monopoly and economic entity, which is a consumer of its products and services. One of the electric power market participants (OJSC “Mosenergo” a member of group of persons of OJSC “Gasprom”) competing with other market participants, receives an opportunity to unilaterally affect general conditions of the circulation of goods on the power energy market, thus affecting the level of price and number of output goods (output energy), also by means of creating discriminatory conditions for gas supplies for the subject of electric energy wholesale market.

To ensure competition the FAS Russia took a decision to issue to the OJSC “Gasprom” group of persons an instruction on committing of actions aimed at ensuring competition until the holding of voting stocks of OJSC “Mosenergo” in the amount of from 50%+1 stock till 100% of stocks is owned by the OJSC “Gasprom” group of persons or until the given group of persons has an opportunity to execution of a right of voting provided by the given stocks of OJSC “Mosenergo” on the other legal grounds, namely:

1. To prohibit creation of discriminatory terms when forming and executing contractual commitments on gas supply under state regulated and non-regulated prices to the subjects of the relevant electric energy wholesale market.

2. To provide the FAS Russia monthly until 2011 inclusive with the information on actual execution of agreements on gas supply to the subjects of the relevant electric energy wholesale market, including information on prices (state regulated or non-regulated), scope and suppliers of gas in respect of every electric power station, as well as information on actual execution of agreements on independent organizations’ gas transportation.

Satisfaction of pre-merger notification with issuance of remedy. The FAS Russia considered a pre-merger notification of “KES-Holding” Ltd., “ResourceTransGaz” Ltd., Primagate Trading Limited, Berezville Investments Limited on acquisition of 100% of voting stock of OJSC “TGK-6” and pre-merger notification of “KES-Holding” Ltd., Primagate Trading Limited, Berezville Investments Limited, Integrated Energy Systems Limited on acquisition of 100% of voting stocks of OJSC “Volzhskaya TGK”. All applicants are included in one group of persons. The FAS Russia determined that if this group of persons would own stocks of TGK-6 and Volzhskaya TGK in the geographical borders of the zone of free cross-flow, this group of persons would enhance it dominance while the number of non-members of power energy wholesale market participants (non-members of this group of persons) in this zone of free cross-flow would decrease.

As a result the FAS Russia took a decision to issue an instruction aimed at ensuring competition which contains structural remedies on sale of generating assets in this zone of free cross-flow. According to this instruction the “KES-Holding” Ltd. group of persons, in case of purchasing of TGK-6 and Volzhskaya TGK, within one year should sell objects directly used in the power energy (capacity) production process, included in the structure of generating assets belonging to this group of persons and acting in the zone of free cross-flow, the aggregated fixed capacity of which is not less than 741MWatt.

Refusal of pre-merger notification on acquisition of rights. The FAS Russia considered a pre-merger notification of “AgroProm-Souz” Ltd. on acquisition of rights allowing determining of terms for conduction of economic activity by OJSC Shipyard “Northern shipyard”.

According to the part 5 article 32 of the Law on protection of competition a person obliged to submit a pre-merger notification should also submit a list of documents set forth in this article.

According to clauses 9 and 10 part 5 article 32 of the Law on protection of competition documents on purchaser's group of persons and group of persons of acquired person should be attached to the pre-merger notification. However in the documents submitted by the applicant there was no information on actual owners (final beneficiaries) of the company "NEKTA HOLDING LTD.", controlling "AgroProm-Souz" Ltd., i.e. on persons included in one group of persons with "AgroProm-Souz" Ltd. and actually controlling it.

Out of the submitted information it follows that companies, comprising a purchaser's and acquired person's group of persons can act on the one market and on relevant markets. In this case information on actual group of persons of the purchaser and acquired person, scope of production and goods supply on the market, produced by all persons from their groups of persons, is a key element for taking a decision on whether this transaction would lead to restriction of competition.

According to the clause 5 part 2 article 33 of the Law on protection of competition the antimonopoly authority took a decision to refuse the satisfaction of the pre-merger notification, as the given transaction can lead to competition restriction on the market.

Refusal of pre-merger notification on acquisition. The FAS Russia considered a pre-merger notification of the "Siemens AG" (major types of activity – production, transfer and distribution of energy, production of energy equipment, complex solutions and services for industry) on acquisition of controlling voting stocks of OJSC "Power machines – ZMT, LMZ, Electrosila, Energomashexport" (major type of activity – production of energy equipment).

Basing on the clause 5 part 2 article 33 of the Law on protection of competition the FAS Russia took a decision to refuse the satisfaction of the given pre-merger notification, as on holding analysis it was determined that conduction of the given transaction could lead to restriction of competition, including as a result of occurring of dominance by the "Siemens AG" on the Russian market of energy equipment, as well as on relevant markets of repair, service and supply of spare parts.

2.3. State Control over acts, actions, agreements or concerted practices restricting competition of the Federal of 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

2.4.1 Summary of activities of competition authorities and courts

In 2007 the majority of violations were revealed under conduction of control and supervision actions on suppression of anticompetitive actions by state authorities. 161749 control and supervision actions were conducted, 3076 violations were revealed. 2250 cases were initiated.

In 2007 with regard to acts and actions of the state authorities there were considered 2384 applications. 1259 cases were initiated. On 742 cases there were taken decisions on admitting of violations and there were issued 697 instructions. 118 decisions were appealed to court. The court found completely invalid 17 decision and partially – 5.

In 2007 there were received 174 applications on anticompetitive agreements (concerted actions) with participation of state authorities. 43% of applications were submitted due to restriction of access to the market, exit from the market. 148 cases were initiated. 74 cases were admitted as violations and 74 instructions were issued. 11 decisions were appealed to the court. The court found 1 decision completely invalid.

With regard to non-observance of antimonopoly requirements to conduction of tenders on placement of orders for goods, works and services for state and municipal needs there were received 286 applications. The majority of applications (82) deal with unjustified restriction of access to participation in tender, as well as with creation of beneficial conditions for participation in tender (74). 125 cases were initiated, including 58 – on the initiative of the antimonopoly authority. 50 cases were terminated due to elimination of violation during proceeding (29) and non-confirmation of the fact of violation (21). On the rest of cases there were taken 75 decisions on admitting the

violation and 47 instructions were issued. 11 decisions were appealed to court, out of them 1 is admitted by court as invalid.

2.3.2 Summary of significant cases

Suppression of acts and actions of state authorities restricting competition. The FAS Russia admitted the Federal Service on supervision over consumer rights protection and human's welfare (hereinafter referred to as Rospotrebnadzor) violating part 1 article 15 of the Law on protection of competition. The case was initiated under complaint of the director-general of "ZapSibSyr" Ltd. Violation was in publishing by Rospotrebnadzor of a letter "On the system of voluntary certification of biologically active food supplements".

The letter of Rospotrebnadzor excluded an opportunity of conducting voluntary certification in other systems of voluntary certification not confirmed by Rospotrebnadzor, that violated the principle, established by the law, on inadmissibility of constraint to conduct voluntary certification.

Implementation of the Rospotrebnadzor letter "On enhancement of supervision over circulation of biologically active supplements" can lead to prevention, restriction and elimination of competition on the market of biologically active supplements production and sale.

As a result the FAS Russia took a decision not to issue an instruction, since the Rospotrebnadzor voluntarily eliminated violation of the competition law through publishing of letter whereby it is envisaged an opportunity for holding voluntary certification of biologically active supplements in any registered in the established order system of voluntary certification of biologically active food supplements.

Suppression of combining of functions of state authorities and functions of economic entities. The Kursk Regional Office of the FAS Russia admitted violation by the Federal Service on ecological, technological and atomic supervision (hereinafter referred to as Rostekhnadzor) regional department on technological and ecological supervision of the article 15 of the Law on protection of competition.

Violation was in endowing the economic entity – FSU "Center for laboratory analysis and technical measures in the Central Federal district" (Kursk regional branch FSU CLATM) with powers of the state authority (Rostekhnadzor) on consideration of draft documentation on environmental protection, as well as preparation of relevant conclusions under issuance of authorizations of Rostekhnadzor.

The Kursk Regional Office of the FAS Russia took a decision that FSU CLATM received a real opportunity to participate in decision-making by Rostekhnadzor on the results of consideration of ecological draft documentation elaborated by other economic entities. These economic entities compete with FSU CLATM on the market of services on elaboration of documentation on environment protection.

The Kursk Regional Office of the FAS Russia issued an instruction to the Rostekhnadzor department on technological and ecological supervision to cancel orders on endowing the economic entity with the functions and rights of the state authorities.

Having disagreed with this decision the Rostekhnadzor department appealed to the arbitrary court. However the court recognized its arguments as unjustified, thus confirming the rightfulness of antimonopoly authority.

Suppression of unjustified prevention of conduction of activity by economic entities. The FAS Russia admitted the Federal Communication Agency (hereinafter referred to as Rossvyaz) violating clause 1 part 2 article 17 of the Law on protection of competition. The case was initiated on application of OJSC "VypelCom". The Federal Service on supervision over mass communications, protection of cultural heritage (hereinafter referred to as Rossvyazohrankultura) was attracted to consideration of case as a person possessing information on the case circumstances.

Violation was in determination by Rossvyaz of tender terms for receiving a right for getting a license on rendering services of mobile communication on the territory of the Far East and Siberia.

From the published tender documentation it can be seen that tender proposals would be assessed on the score system taking into account certain criteria of tender participants' assessment. The given criteria for assessing the tender proposals of participants provide for evident benefit for operators already having a license for the tender territories, and unjustifiably limit access for other operators, not having licenses for these territories, to participate in tender. The main criteria of assessment of the tender proposals of participants is their possession (at the moment of decision-taking on conducting a tender) of a license on conducting activity on rendering communication services on the tender lot territory.

As a result the FAS Russia admitted Rossvyaz violation of competition law and decided to bring a claim to the arbitrary court on admitting the auction invalid. Moreover the FAS Russia decided to send to Rossvyazohrankultura recommendations on terms of tender documentation, taking into consideration results of the case consideration.

Rossvyaz disagreed with the FAS Russia decision and appealed it to the court. The Moscow arbitrary court admitted the FAS Russia decision as invalid, indicating the FAS Russia' incorrect evaluation of the tender documentation, and that the FAS Russia didn't determine the participants in respect of whom Rossvyaz created beneficial conditions. The FAS Russia appealed this decision to the appellation arbitrary court. The court satisfied the FAS Russia appeal. Thus court completely confirmed the legality of the FAS Russia decision in respect of Rossvyaz.

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 2007 was 1146. There were revealed 408 violations. 448 cases were initiated.

On the facts of unfair competition on commodity markets there were considered 743 applications. The majority of applications (27%) related to sale of goods with illegal use of the results of intellectual activity; about 22% of application related to distribution of false information and 17% of applications related to consumers' misleading. 388 cases were initiated, out of them 67 – by the initiative of the antimonopoly authority. Violation was admitted in 268 cases, 209 instructions were issued. 48 decisions were appealed to the court. The court found 7 decisions as completely invalid and 1 decision as partially invalid.

Suppression of unfair competition on financial service markets is less than on commodity markets. With regard to this it was considered 98 applications. The majority of them (65%) dealt with unfair competition on the insurance service markets. 61 cases were initiated, out of them 19 – by the initiative of the antimonopoly authority. The violation was admitted on 47 cases, 36 instructions were issued. 4 decisions were appealed to the court, 1 decision was admitted completely invalid by the court and 1 – partially invalid.

2.4.2 Summary of significant cases

Telecommunication market. The FAS Russia considered a case against OJSC “VympelCom” on application of OJSC “Megafon” on violation of part 1 article 14 of the Law on protection of competition and imposed a fine of 100 000 roubles (4000 US dollars).

Violation was in calling telephone subscribers of competing mobile operators proposing to conclude an agreement on rendering communication service by the company. OJSC “VympelCom” representative proposed OJSC “Megafon” customers to test their sim-card in order to switch to this

mobile operator in future if wanting to. The FAS Russia recognized this action as an act of unfair competition.

The company disagreed with the FAS Russia decision and appealed it to court. However the Moscow arbitrary court refused to satisfy the company's claim.

Illegal use of intellectual activity results. The FAS Russia Commission on application of the company "Souz-Viktan" Ltd. considered a case against CJSC "Product group (PG) "LADOGA" that violated clause 4 part 1 article 14 of the Law on protection of competition, and issued a relevant Instruction on termination of violation.

Violation was in illegal use of graphic element located on the label of the vodka bottle "On birch buds" similar to graphic trade mark under certificate belonging to "Souz-Viktan" Ltd., that produces and sells vodka "On birch brunki" ("brunki" is a Ukrainian word for buds) . The comparative analysis of graphic element, used on the label of bottle of vodka "On birch buds", with the graphic trade mark under certificate provided by the Federal Service on intellectual property rights, patents and trade marks (Rospatent), showed that these elements are similar to the extent of confusion.

CJSC "Product group (PG) "LADOGA" fulfilled an instruction completely.

3. The role of competition authority in the formulation and implementation of other policies

The FAS Russia contributes greatly to implementation, formulation and introducing proposals to other policies. The most considerable efforts are devoted to reformation of natural monopolies in different sectors of economy of the Russian Federation (power industry, railway transport, telecommunications, etc.) These reforms are being pursued during a long-term period in order to ensure creation of comprehensive and benign competition environment in these sectors, equal opportunities and rules of conduct for market participants and non-discriminatory access to the infrastructure. Moreover the FAS Russia takes an active part in elaboration of the National plan on resistance to corruption in the Russian Federation, approved by the President of the Russian Federation in 2008. All the objectives and tasks of the national anticorruption program fully correspond with the actions undertaken by the FAS Russia in competition policy implementation.

3.1 Participation of the FAS Russia in the Russian Federation Administrative reform

In 2007 the FAS Russia continued active implementation of the Russian Federation Administrative reform. The main objectives of this reform in 2007 for the FAS Russia were: state service quality and availability improvement, costs reduction to business on overcoming of administrative barriers, increase of effective activity of the FAS Russia, increase of openness and transparency for society.

The most important results of administrative reform events conducted by the FAS Russia within its competence in 2007 and significant for citizens and entrepreneurs are the following:

- regulation of execution of functions by the FAS Russia (10 Administrative Regulations on execution of state functions imposed on the FAS Russia were adopted that lead to achievement of the optimization of administrative procedures, transparency increase and effectiveness of the Service's activity);

- resistance to corruption (introduction of anticorruption mechanisms within the frameworks of implementation of Agency anticorruption program allowing to reduce corruption risks in the FAS Russia);

- increase of effectiveness of collaboration with the society (activity of publicly consulting councils in the subjects of the Russian Federation was optimized promoting participation of representatives of public organizations in the activity of consultation councils under the FAS Russia; actions on informing publicity on the FAS Russia activity by means of publishing

information on the official web-site, active work with mass media, round tables, publication of information leaflets, allocation of information stands allowing to speak about growth in citizens awareness on the FAS Russia' activity).

Thus, the FAS Russia' activity conducted in 2007 was aimed at improvement of quality of implementation of state regulation functions in protection of competition, limitation of interference in economic activity of the economic entities and increase of the FAS Russia activity effectiveness.

3.2 The FAS Russia contribution to the activity of Non-Commercial Partnership “Assistance to Competition Development”

Taking into consideration the global best practices in competition policy development the FAS Russia contributes greatly to the activity of Non-Commercial Partnership “Assistance to Competition Development” (hereinafter referred to as Partnership). Such collaboration allows the FAS Russia to implement the more effective advocacy and to develop better enforcement practices in the competition policy.

The Partnership was established on May 23, 2007, combining leading lawyers in the field of competition legislation and economists specializing on competition issues.

Main directions of the Partnership activity are:

formation of effective policy on application of competition legislation in cooperation with the Russian antimonopoly authority;

participation in formation of effective state policy in the sphere of competition protection and development;

assistance to conduction of constructive dialog between business and the Russian government on competition issues;

participation in rule-making activity on competition issues;

cooperation with the European Commission, International Competition Network, US and European and other states' national public and private organizations on competition law;

analysis and use of global experience on competition regulation issues.

Presently the Partnership conducts the following activity:

monitoring of the competition law enforcement practice;

discussing with the Russian antimonopoly authority the actual issues of competition law enforcement;

preparing recommendations to the antimonopoly authority on application of the competition legislation;

forming of its own opinion, preparing of expert conclusions (recommendations) on application of the competition legislation;

conducting of research and development on competition protection and development;

developing cooperation with the Russian antimonopoly authority, its regional offices, other governmental authorities of the Russian Federation, subjects of the Russian Federation, as well as local self-government authorities, Russian and foreign organizations, representatives of mass media;

concluding agreements on cooperation with the Russian antimonopoly authority, other Russian and foreign organizations;

supporting its own web-site in Internet (www.competitionssupport.com);

conducting studies of legal and economic issues of competition protection and development;

organizing business cooperation and experience exchange between the Partnership members;

organizing and participating in open events (seminars, conferences) devoted to the issues of competition law application in Russia and abroad;

creating of informational data on competition law enforcement practice.

The Partnership held a number of joint events with the FAS Russia on competition law application.

3.3 The FAS Russia activity on observance of requirements of the Federal Law of 21.07.2005 № 94-FZ “On Placement of Orders for products, works and services for state and municipal needs”

Under the provisions of the Article 17 of the Federal Law of 21.07.2005 № 94-FZ “On Placement of Orders for products, works and services for state and municipal needs” (hereinafter referred to as the Law on public procurement) control over observance by state and municipal customers of requirements of the law on public procurement is executed by the FAS Russia and its regional offices by means of conducting planned and non-planned inspections.

As a result of control actions in the sphere of public procurement in 2007 the FAS Russia revealed 8122 violations of the law on public procurement, including:

- 2745 cases of setting by customers of requirements to the participants of public procurement contradicting with the law on public procurement;
- 1863 cases of untimely allocation (publishing) of protocols envisaged by the law on public procurement;
- 1239 cases of setting in the notice on conducting a tender, tender documentation application assessment criteria for participating in tender that are not envisaged by the law on public procurement;
- 1054 cases of unjustified refusal to provide access for participants of public procurement to participation in tenders, quotation inquiries;
- 915 cases of customers' selection on inappropriate way of public procurement;
- 443 cases of unjustified provision of access of the participant to participation in tenders, quotation inquiries.

In 2007 the FAS Russia initiated 5068 cases on administrative violation. Out of them 1654 cases under public procurement for the federal needs, 1182 cases under public procurement for the needs of the subjects of the Russian Federation and 2232 cases under public procurement for municipal needs. As a result there were issued 2500 decisions on imposition of administrative penalties totally amounting to 37 870 000 roubles.

The biggest amount of decisions (715) on imposition of penalties is issued under part 2 of the Article 7.30 of CoAV, i.e. the customers most frequently violated the sequence of public procurement, especially requirements set by the law on public procurement to the periods of publication on official web-site of notice on conduction of tenders, Commission meetings protocols, tender documentation, auction documentation, requirements to the sequence of provision of tender documentation, sequence of opening envelopes with participants' applications, sequence of selection of tender (auction) participants.

As a result of application of the law on public procurement and execution of control functions in the sphere of public procurement the FAS Russia came to the conclusion that the law on public procurement has, undoubtedly, a progressive nature. The law changed the system of public procurement; to ensure common economic space on the whole territory of the Russian Federation the single sequence of public procurement for state and municipal needs was established. The procedures of public procurement became more transparent, allowed ensuring of equal access to the orders for all the interested persons thus promoting not only saving of budget resources, but also to fair competition development on commodity and financial service markets.

Presently the big set of amendments to law on public procurement is adopted which under preservation of fundamental approaches set forth in the law should eliminate the disadvantages of the law on public procurement relating to existing administrative barriers, gaps and inaccuracies of not only the law on public procurement but also other statutory and legal acts of the Russian Federation dealing with public procurement.

The most vivid confirmation of the above is the introduction of auctions and objective pre-qualification on building, creation of single Russia-wide portal, limitation of the opportunity to take subjective decisions on defining the tender winners, passing of concordance of public procurement

under the single supplier under municipal orders from the local level on the level of the subjects, considerable extension of CoAV regulations.

3.4 Participation of the FAS Russia in the foreign trade regulation

In 2007 the FAS Russia continued its activity within the frameworks of Interagency Commission on protective measures in the foreign trade and customs and tariff policy, responsible for elaboration of proposals to the Government of the Russian Federation on state regulation of foreign-economic activity issues. The FAS Russia prepared about 100 conclusions on applications of economic entities and authorities with regard to changing of incumbent measures of customs and tariff and non-tariff regulation. The FAS Russia based its conclusions on results of assessment of consequences of introduction of proposed measures on relevant commodity markets for the competition, of current situation and necessity of promoting improvement of competitiveness of the Russian goods under simultaneous non-admission of unjustified protectionism and provision of protection of consumer interests.

In 2007 in order to create normal conditions of competition on the relevant commodity markets under consolidation of production assets the import customs duties on cement and initial aluminium were cancelled by the FAS Russia initiative.

Given the price growth on the global market the FAS Russia not to allow price growth on the food market supported temporary reduction of import customs duties on milk and dairy products, introduction of reduced duties on vegetable products and oil.

On the grounds of the conducted analysis of the competition environment on the relevant commodity markets the FAS Russia proposed to cancel incumbent measures of trade protection with regard to channels and did not support introduction of protection measures with regard to armature supplied from Ukraine.

4. Resources of competition authority

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

4.1.1 Annual budget

In 2007 the annual budget of the competition authority (the FAS Russia) amounted to *960'809'521 roubles* (approximately 38 million USD). The growth compared to 2006 is 73%.

4.1.2 Number of employees (person-years)

On 01.01.2008 the actual number of staff of the FAS Russia was 2079 persons (366 persons in the Central Office, 1713 in the Regional Offices). The information given below is related to the Central Office only:

«lawyers» – 108 persons;

«economists» - 99 persons;

«other professionals» - 66 persons (people having technical and other education, as well as incomplete higher education);

«support staff» - 93 persons.

25 employees of the Central Office have an academic degree, out of them 13 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, 2007 till January 1, 2008.

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

1. Report on competition in the Russian Federation, Moscow, 2008.
2. A. Tsarikovsky, D. Aleshin Report “On the Federal Antimonopoly Service of Russia”, Moscow, 2008.
3. A. Varlamova “Competition Law in Russia”, Moscow, 2008.
4. I. Knyazeva “Antimonopoly policy in Russia” Moscow, 2007.
5. A. Shastitko “Economics of infringements and punishment in antitrust: leniency program”, Moscow, 2008.