

REPORT OF THE FEDERAL ANTIMONOPOLY SERVICE ON COMPETITION POLICY IN 2008

Executive summary

In 2008 the FAS Russia undertook significant measures on improvement of the competition legislation by introducing new amendments to the Federal Law №135-FZ “On Protection of Competition” and by elaborating some totally new provisions known as the “second antimonopoly package” that came into force on August 2009. The major innovations in the “second antimonopoly package” include introduction of disqualification of officials, detailed provisions of the leniency program, introduction of criminal liability for the gravest violations of competition law, etc. Moreover due to the new designated functions (control over foreign investments in strategic sectors of economy) and set of priorities the structure of the FAS Russia was changed, resulting in establishment of new Departments and increase of staff of the FAS Russia.

A need to react timely on arising challenges during crisis made the FAS Russia review some of its procedures, especially with regard to merger control and to elaborate some Recommendations on fine calculations review, however, fully ensuring observance of the competition legislation.

Moreover the FAS Russia in order to increase its efficiency introduced rating system and performance evaluation and made a great step towards openness to the public and increase of the public awareness of the FAS Russia activity.

In 2008 the FAS Russia considered a number of noted cases on violation of competition law, including revealing of cartels affecting considerably consumers. With regard to merger control the thresholds of the assets were considerably increased resulting in a huge increase of post-merger notifications submitted to the FAS Russia in 2008.

The biggest number of violations of competition law was again committed by the state and local authorities. Much effort has been taken to tackle this situation, in particular the National Anti-Corruption plan signed by the President contains suggestions made by the FAS Russia in order to ensure observance of competition principles by the officials.

In the sphere of control over public procurement the forward movement was kept on: down trend of quantity of violations under public procurement and upward trend of quantity of public procurement placed in accordance with the requirements of the Russian legislation.

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.

Moreover in 2008 the FAS Russia continued development of close cooperation with OECD, ICN, European Commission and foreign competition agencies worldwide through mutual exchange of information and best practices on topical issues of competition policy and enforcement.

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

2008 was marked for the FAS Russia by a number of changes both in the structure and in powers of the agency, and in the competition law and enforcement.

On March 28, 2008 the Government of the Russian Federation adopted a Resolution of the Government of the Russian Federation “On Introduction of Changes to the Regulations on the Federal Antimonopoly Service”, which resulted in compliance of the functions and powers of the FAS Russia with the Federal Law №135-FZ “On Protection of Competition” adopted in 2006 (hereinafter referred to as the Law on protection of competition).

Moreover according to the Resolution of the Government of the Russian Federation №510 of July 6, 2008 “On Governmental Commission on Control over Foreign Investments in the Russian Federation” the FAS Russia was designated a federal executive authority responsible for execution of functions on control over foreign investments. The key role of the FAS Russia in implementation of the Federal Law № 57-FZ of April 28, 2008 “On Procedures for Foreign Investments in the Business Entities of Strategic Importance for Russian National Defense and State Security” (hereinafter referred to as the Law on foreign investments to strategic sectors) was logically sequential to the FAS Russia activity on merger control.

To realize new powers the new Department for Control over Foreign Investments was established in the FAS Russia. Its main task is preparation of the relevant documents for consideration and decision-taking on the meetings of the Governmental Commission on Control over Foreign Investment, chaired by the Prime-Minister of the Russian Federation. Moreover, the Department permanently provides explanations on the application of the Law on foreign investments to strategic sectors to the Russian and foreign market players.

In 2008 the FAS Russia to apply more actively high fines and adequate sanctions, in particular against the cartel agreements, that was predetermined by the changes introduced in 2007 to the Code of the Russian Federation on Administrative Violations (CoAV). In 2008 the total sum of fines imposed under the Article 14.32 of CoAV “Conclusion of anti-competitive agreement or execution of concerted actions restricting competition” made up 1 670 767 524 rubles (about US 70 mln. Dollars) compared to 4 259 493 rubles (about US 178 thousand dollars) in 2007.

Since anti-cartel activity is one of the priorities for the FAS Russia, the new Anti-Cartel Department within the structure of the FAS Russia was established in August, 2008 to activate investigation of cartels in different sectors of the Russian economy and to strengthen cooperation of the FAS Russia with police and prosecutor’s office while investigating cartels.

In order to implement state aid control functions that were designated to the FAS Russia in 2007 and to eliminate violations of competition legislation by state and local authorities there was also established a new Department for Control over State Authorities.

One of the prominent events was adoption on June 30, 2008 by the Plenum of the High Arbitrage Court of Resolution “Issues of Administering the Antimonopoly Legislation for the Arbitration Courts” aimed at provision of unified approaches by judges when considering cases on violation of competition legislation. This resolution was elaborated together with the FAS Russia and lawyers conversant in competition law, and contains provisions that reflect the FAS Russia’s vision on majority of fundamental issues. Adoption of such explanations providing for the common approach in arbitration practice will contribute to the more effective competition policy in Russia.

On July 28, 2008 the Government of the Russian Federation adopted a Resolution № 571 “On Introducing Amendments to the Resolution of the Government of the Russian Federation №335 of 30.05.07” which changes assets values of the credit organizations and aggregate share of the credit organizations on the product market in order to control the observance of the competition legislation. With this Resolution coming into force one should apply for a preliminary approval of the FAS Russia provided the aggregate value of assets of credit organizations under the balance sheet makes up more than 14 bln. rubles (before that the sum was – more than 10 bln. rubles). Approval of transactions with shares (stocks), assets of the credit organization or rights in relation to the credit organization should be received provided the assets value under the last balance sheet of the credit organization exceeds 4 bln. rubles (earlier – 3 bln. rubles).

On November 8, 2008 the Federal Law № 195-FZ “On Introducing Amendments to the Federal Law “On Protection of Competition” came into force:

- Amendments to the Article 35 of the Law on protection of competition allows to determine the group of agreements to be notified to the competition authority and provides the financial organizations with an opportunity to exercise bona fide the obligations on sending notifications without any risk of imposition the fine due to non-sending of the notification, which occurred due to the ambiguity of the former wordings of the part 9 Article 35 of the Law on protection of competition. Agreements on changing, annulment or prolongation of the earlier concluded agreements and agreements with the non-financial organizations (with retailers or real estate agents) are exempted from the compulsory notification procedure.
- The article 17.1 was introduced to define the peculiarities of the procedure of the conclusion of the contracts in relation to state and municipal property. Now transfer of such property to the ownership or rent is possible only through conduction of public tender. This article also determines exemptions (cases of transfer of property for not more than 30 calendar days, cases of gratuitous transfer of property to the religious organizations, etc.) This provision is extremely important for providing honest and fair principle of transfer of the state property, as well as for the anti-corruption activity.
- According to the amendments to the Article 33 the duration of the consideration of pre-merger notifications is increased, provided this transaction is a subject to the applying for preliminary approval according to the Law on foreign investments to strategic sectors, till the day of decision-taking by the Governmental Commission on control over foreign investment.

In 2008 the FAS Russia together with the Ministry of Economic Development of the Russian Federation has elaborated the Program on Competition Development in the Russian Federation, that contains 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. This program was approved by the Resolution of the Government of the Russian Federation № 691-p of May 19, 2009.

The most actual measures under today economic conditions are the following:

- market entry cost reduction, including through reduction of administrative barriers and conduction of such operations in the sectors with explicit barriers to entry;
- more thorough control over actions of state authorities;
- facilitation of procedure on access to the natural monopolies’ infrastructure;
- setting prohibition on combinations of activity on selling the jet fuel with another types of activity on supply of jet fuel and elaboration of the rules of access to the services of jet fuel complexes in airports;

- extension of support of the small business through reduction of administrative pressure, provision of access of small business entities to the credit resources, facilitation of access to infrastructure, including reduction of payment for joining the power networks, extension of market of goods produced by small business through their participation in the public procurement;

- reduction of a number of transaction that should get preliminary approval by the FAS Russia, primarily compulsory notifications of transactions within one group of persons are no longer needed;

- formation of effective, maximum accessible and transparent tender system of public procurements, purchases of state undertakings and natural monopolies;

- competition development in the sphere of railway transport and other infrastructure sectors.

Approval by the Government of the Russian Federation of this Program on Competition Development testifies on its support of the Russian competition authority in its activity on competition development and on understanding the importance of competition even in crisis time.

1.2 Other relevant measures, including new guidelines

To ensure stability on the product and financial markets of Russia under the crisis situation, the FAS Russia undertook a number of measures aimed at elimination of extra administrative barriers and effective implementation of antimonopoly control measures.

The FAS Russia regularly conduct monthly monitoring of prices on socially important goods – bread, milk, sunflower seed oil, petrol, medicines along the whole interconnected production chain of these goods to detect the reasons for price increase.

Moreover, taking into consideration the current economic situation the FAS Russia applies the reduced the duration of consideration of notification on transactions from 90 days, set by the Law on protection of competition, to 30 days to foster the transactions between companies. The period for considering the notification of financial organizations is 5 days (in some cases).

Furthermore, the FAS Russia also recommended its Regional offices to consider the changes of the financial conditions of companies when taking a decision on imposition of “turnover” fines. When determining the basic size of administrative fines for violation of competition legislation calculated from the size of company’s profit at 2007, reduction of the calculated administrative fine at two times is used. The size of the administrative fine can’t be less than one per cent of the profit from selling the product on the market on which the infringement occurred. Moreover, the prolongation of payment period on imposed fines is allowed from 3 months to 1 year.

To ensure common application of the antimonopoly legislation under controlling transactions on economic entity’s gaining a right to use the state or local property, namely objects of gas, heat, power, water supply and drainage system, the FAS Russia elaborated the Methodical recommendations on holding tenders by local and state authorities when transferring the property rights on public utilities objects. Since the transfer of public utilities objects to non-state organizations influence the society interests, conduction of tenders provides for the selection of the most effective possessor of this right.

To promote openness the FAS Russia adopted an Order № 54 of February 21, 2008 “Regulation on Informational Policy of the Agency”, that sets forth the rules for the disclosure of information on the FAS Russia activity. In particular, this document defines the list of information that is public or has a limited access, as well as it determines the sequence of the agency’s handling the public information. The Regulation contains a sequence for publishing the agency’s documents on its official web-site (www.fas.gov.ru).

Moreover, the FAS Russia actively introduces the method of the result-oriented program-target planning of the budget expenses. Result oriented budgeting envisages setting the priorities of

the current FAS Russia activity, opportunity to control the Departments and the Regional offices of the FAS Russia, as well as formation of the feedback for taking strategic decisions. The FAS Russia also introduced the rating system and performance evaluation of the Regional offices under 21 indicator showing the achievement of result and the payload. This method provides for evaluating the comparative effectiveness of the FAS Russia Regional offices' activities and for taking management decisions basing on the relevant evaluation.

1.3 Government proposals for new legislation

On the whole 2008 was celebrated by the sign of the so-called “second antimonopoly package” – a set of amendments to the legislation aimed at development of competition on the Russian markets. 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 certain legal acts of the Russian Federation” and the Federal Law №160-FZ “On Introducing Amendments to the Code of the Russian Federation on Administrative Violations and certain 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”.

The provisions of the “second antimonopoly package” significantly change the competition legislation expanding its extraterritorial application and introducing more severe behaviour rules, primarily with regard to actions of state and local officials restricting competition including state aid. Thus, disqualification of officials is now determined as an administrative sanction, moreover administrative liability for anti-competitive acts, actions and agreements of the state and local authorities is introduced.

Moreover the leniency program became more detailed, liability for anti-competitive coordination and conduct on the power energy market is introduced, the list of prohibited per se agreements (concerted actions) is reduced.

Within the frameworks of merger control the thresholds of value assets under which the transaction falls under the antimonopoly control were considerably raised (from 3 bln. rubles to 7 bln. rubles), requirements for information submitted together with the notification were extended (in particular, obligation to disclose the beneficiaries from the off-shore jurisdictions is introduced). Moreover control over transactions inside the group of persons was cancelled that significantly will reduce load both on business and on competition authority.

Within the frameworks of anti-cartel activity one of the major initiatives of the “second antimonopoly package” also gained a support – the new wording of the Article 178 of the Criminal Code of the Russian Federation envisaging the criminal liability for the most grave violations of competition legislation was adopted.

Moreover the powers of the FAS Russia on conducting inspections were detailed, the conduction itself was regulated, the rule of uniting cases on competition law violation was introduced, and competition requirements in other federal laws were detailed.

With regard to the natural monopoly sector, the “second antimonopoly package” defined the requirements to the rules of non-discriminatory access to the service of natural monopolies, basing on which the sectoral rules should be elaborated. Moreover the rules of revealing the monopolistic prices were also detailed.

Presently the FAS Russia considers a necessity to considerably change and complement the Law on natural monopolies taking into consideration realities, economy development perspectives

and competition enforcement in these spheres. The basic idea of the draft law is formation of the system of the legislative regulation of natural monopolies that provides for the secure, effective and qualitative provision of consumers with goods and services, increase of transparency of activity of natural monopolies, as well as creation of conditions for competition development.

Furthermore, in 2009 there is planned elaboration or introduction of amendments to the rules of non-discriminatory access to the services on oil and oil product transportation through pipe lines, access of carriers to the railway infrastructure, airport services, post services, inner water routes using, sea and river ports services.

Within the frameworks of the ongoing power energy reform some amendments are planned to be introduced to the Standards of the information disclosure by the power energy subjects in order to ensure informational openness with regard to free electric capacities available for connection.

Moreover there are some plans on improvement of the procedures of state allocation of the limited resources and certain rights (including subsoil use, water use, radio frequencies allocation) in order to implement the principle of transparency and level-playing field for such allocation.

During 2008 the FAS Russia continued its active work at the text of the draft Resolution of the Government of the Russian Federation “On approval of block exemptions of agreements between the credit and insurance organizations” in accordance with the part 2 Article 13 of the Law on protection of competition aiming at developing competition on the credit insurance market. According to the Resolution of the Government of the Russian Federation № 386 of 30.04.09 the agreements concluded between the credit and insurance organizations meeting the certain criteria set forth in this resolution shall be considered as permissible and shall not lead to administrative and criminal responsibility, provided they don't contain impermissible terms and do not restrict competition.

It should be noted that all the issues on legislation amending are closely discussed with the representatives of business community, academicians and civil society institutions in Russia to ensure operative reaction on the changing needs of society and competition development in Russia. For instance, presently extension of powers of the competition authority to interfere into the unilateral conduct of economic entities is now being publicly discussed.

As a means of cooperation with society there is acting a Social-Consultation Council under the FAS Russia containing of the most respected non-commercial organizations and business associations. The Council conducts monitoring of the FAS Russia activity, elaborates recommendations on improvement of the competition legislation and its enforcement. The similar councils are also being formed under the Regional offices of the FAS Russia.

Moreover Expert Councils focusing on the key markets regularly act under the FAS Russia. They comprise of market participants, representatives of non-commercial associations and state authorities. Such practice allows the FAS Russia to impartially evaluate situation on the relevant markets and increase transparency of the decisions taken by the FAS Russia.

There should be also mentioned activity of the established in 2007 Non-Commercial Partnership “Assistance to Competition Development” comprising of lawyers and economists specializing in the field of competition. Provisions of the “second antimonopoly package” were regularly discussed by the Non-commercial partnership and certain compromise wordings were elaborated.

2. Enforcement of competition laws and policies

In 2008 the FAS Russia in order to prevent and suppress monopolistic activity (abuse of dominance and anticompetitive agreements between economic entities) revealed 7247 violations of competition law, 6541 cases were initiated (compared to 4686 in 2007), the majority of which were initiated with regard to violation of competition law by the state and local authorities (2978 cases compared to 1881 cases in 2007). The total sum of imposed fines made up 13 bln. rubles (about 542 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 2008 the FAS Russia initiated 1998 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 27,8 % higher than in the last year.

Suppression of abuse of dominance

In 2008 the Russian competition authorities received 6156 applications related to abuse of dominance by the economic entities. The mostly spread type of abuses is still imposition of unfavourable terms of agreements (about 21% of all applications). 1639 cases were initiated, out of them 158 were initiated on the initiative of the antimonopoly authority, 777 cases were terminated due to non-confirmation of the fact of violation. On the rest of cases under consideration 862 decisions were taken on admitting violation and 748 instructions were issued. 351 decisions (41%) taken in 2008 were appealed in court. The Court admitted completely invalid 33 decisions and partially invalid 3 decisions.

In 2008 the antimonopoly authority initiated 2 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 2008 the antimonopoly authority received 341 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 (26 % and 24 % respectively). 359 cases were initiated, out of them 260 cases were initiated by the antimonopoly authority. 183 decisions on admitting the violation were taken and 174 instructions were issued. 45 decisions were appealed to court, 13 were admitted as completely valid, the rest still go through the appeal procedure.

Practice of application of leniency program

In 2008 there were initiated 16 cases under the “leniency program” according to the Article 14.32 of the Code of the Russian Federation on Administrative Violations (CoAV). It should be noted that before the amendment on granting immunity to the first leniency applicant was introduced in 2009 the number of applicants on the same case can reach dozens.

2.1.2 Description of significant cases

Suppression of abuse of dominance

Termination of abuse of dominance on the coal market: On September 18, 2008 the FAS Russia in accordance with the Article 14.31 of the CoAV instituted administrative liability against the group of persons “Raspadsky” Ltd., resulting in imposition of turnover fine of more than 117 mln. rubles (about 4,7 mln. US dollars) for violating points 1, 5, 8 part 1 Article 10 of the Law on protection of competition.

Violation was in collective abuse of dominance by the group of persons of “Raspadsky” Ltd. on the market of coking coal of the most spread sort. The company was obliged to terminate the violation. When calculating the fine, assistance of the company (voluntary reduction of sale prices) was taking into consideration.

The number of other coal companies was accused of the similar charges with imposition of the relevant fines.

All the fines were fully paid. These fines were one of the largest since introduction of “turnover fines” in 2007.

Elimination of discriminatory conditions for access to the market of apatite concentrate: the FAS Russia in accordance with the article 14.31 of CoAV instituted an administrative violation against group of persons of OJSC “EvroChem” and OJSC Kovdorsky GOK and imposed fine of 13 mln. rubles (about 530 thousands US dollars) for their abuse of dominant position on the market of apatite concentrate according to the point 8 part 1 article 10 of the Law on protection of competition.

Violation was in abuse of dominance by the group of persons of OJSC “EvroChem” and OJSC Kovdorsky GOK on the market of apatite concentrate, in particular in creation of discriminatory conditions for access of “Trade House “GMZ” to the market of apatite concentrate.

On January 16, 2009 the FAS Russia and OJSC “EvroChem”, which runs the functions of the executive body of the OJSC Kovdorsky GOK, agreed upon the rules of non-discriminatory access to the apatite concentrate of the OJSC Kovdorsky GOK production. OJSC Kovdorsky GOK shall sell not less than 200 thousands tons of apatite concentrate a year in accordance with the given rules for the outside contractors that are not a part of the OJSC “EvroChem” group.

The highest fines against the oil companies: In the second half of 2008 the four largest oil companies of Russia (“Rosneft”, “Lukoil”, “Gazprom oil” and “TNK-BP”) got to know the FAS Russia more closer. The reason for this “acquaintance” was the fact that under the impetuous reduction of oil prices on the global market the price for oil products in Russia continued to grow. After the first warning of the FAS Russia to these companies, the prices began decreasing. However against the background of 300 per cent collapse of quotations on the spots of raw materials, reduction of petrol price at the Moscow filling station on 1,5 rubles (5 %) was unconvincing. As a result, “Rosneft”, “Lukoil”, “Gazprom oil” and TNK-BP were fined at 1,5, 1,44, 1,3, and 1,1 bln. rubles (totally above 175 mln. US dollars) respectively which makes up about 1 % of their profits.

The FAS Russia admitted “Gazprom oil” and “TNK-BP Holding” as violating points 1, 6 and 8 part 1 Article 10 of the Law on protection of competition (abuse of dominance on the market in part of setting monopolistically high prices, creation of discriminatory conditions, setting economically and technologically unjustified differences in price). Basing on this decision the FAS Russia issued instructions to the companies containing directions to commit certain actions to cease violation and eliminate its consequences. The case is still under the consideration in various courts.

Suppression of anticompetitive agreements concluded by economic entities

Heat power transfer market. The FAS Russia fined OJSC “MOEC” and OJSC “MTK”, the largest players on the market of rendering services of transfer of heat power in Moscow, at 478 mln. rubles (19 mln. US dollars) under the Article 14.32 of the CoAV for violating part 1 Article 11 of the Law on protection of competition.

Violation was in creation of barriers to entry for OJSC “Mosenergo” at the market of rendering services on heat supply within the frameworks of extension of heat networks on the territory of Moscow. OJSC “MOEC” and OJSC “MTK” refused to conclude an agreement with OJSC “Mosenergo” to the contract on rendering services on transfer of heat power and heat carrier.

The FAS Russia obliged OJSC “MOEC” and OJSC “MTK” not to take part in agreements and concerted actions that can lead to creation of barriers for entry to the market of rendering services on heat supply for other economic entities. The decision and instruction of the FAS Russia are now being appealed in courts.

Dairy market. Udmurtsk Regional office of the FAS Russia revealed concerted actions between OJSC “Mozhgasyr” and its wholesale consumers on cheese market violating part 3 Article 11 of the Law on protection of competition and issued instructions to eliminate the violation.

Violation was in OJSC “Mozhgasyr” and its wholesale consumers agreeing on price (elements of price) and on division of product market under the territorial principles and under the categories of consumers.

After a number of appeals these companies were fined at a total sum of 6,4 mln. rubles (about 256 thousands US dollars).

Fuel market. The Sverdlovsk Regional Office of the FAS Russia admitted OJSC “Ekaterinburgnefteproduct” and “Lukoil-Permnefteproduct” Ltd. violating Article 11 of the Law on protection of competition and issued an instruction to eliminate the violation.

Violation was in concerted fixing and maintaining of same prices for petrol and diesel oil in Ekaterinburg from January 1, 2007 till April 1, 2008 without any objective economic reasons for that.

The total sum of fines for both companies was more than 29 mln. rubles (1,2 mln US dollars).

Practice of application of leniency program

Oil products market. The Kursk Regional Office of the FAS Russia admitted “Kurskobnefteproduct” Ltd. and “Alexia” Ltd. violating Article 11 of the Law on protection of competition (concerted actions). Violation was in setting similar prices on petrol and diesel oil at filling stations of these companies from April 1, 2008 till August 1, 2008. The companies also simultaneously changed the retail prices.

“Alexia” Ltd. used leniency program envisaged by the Article 14.32 of the CoAV and gained immunity from administrative liability. “Kurskobnefteproduct” Ltd. was fined over 3 mln. rubles (about 120 thousands US dollars) for committing concerted actions.

Banking sector. The Tumensk Regional Office of the FAS Russia admitted agreements concluded between the OJSC “Moscow Bank for Reconstruction and Development” and a number of companies, selling vehicles as violating points 4 and 8 of the Article 11 of the Law on protection of competition.

Thus, the program of crediting private persons to purchase vehicles that are the Appendix to the considered agreements on cooperation, makes it compulsory to pay for a liability insurance and for insurance against damage and stealing and contains the closed list of insurance companies where the Buyer was to conclude a contract on insurance.

Due to the voluntary elimination of violation of competition law and its consequences the FAS Russia took a decision to terminate consideration of this case. To prevent such further actions on competition restriction the FAS Russia issued relevant instructions.

Taking into consideration the fact that OJSC “Moscow Bank for Reconstruction and Development” applied for a leniency program, it gained full immunity on this case. The other parties to the agreements and their officials were subject to administrative liability under Article 14.32 of CoAV, and were fine at total more than 100 thousand rubles (about 4000 US dollars).

2.2 Mergers and acquisitions

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

In 2008 the FAS Russia considered 5821 pre-merger notifications and 44088 post-merger notifications. Such a huge growth of the number of post-merger notifications (almost at 3 times) was a reason of the increase of the thresholds of the companies’ assets for getting permission (see point 1.1) and mainly related to consideration of agreements of financial organizations in free form (41928 notifications, 982 of which were denied).

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 (1601), purchase of disposal of more than 25 % of voting shares of the joint-stock company (1399), purchase of rights to determine the terms for the economic entity’s activity or to run the functions of its executive authority (1065).

Peculiarity of state control over natural monopolies. In 2008 under the state control by the antimonopoly authority over transactions in the spheres of natural monopolies there were considered 40 pre-merger notifications (most of which dealt with sale, renting, other transaction when economic entity purchases essential facilities of the natural monopoly) and 101 post-merger notifications. In 2008 the Regional Offices of the FAS Russia considered 6 pre-merger notifications (1 was refused) and 85 post-merger notifications (including 5 with foreign investor) on transactions in the sphere of natural monopolies.

2.2.2 Summary of significant cases

Satisfaction of pre-merger notification with instruction. On March 18, 2008 the FAS Russia cleared the pre-merger notification of the Carlsberg Breweries on its getting the rights allowing to determine terms for the OJSC “Brewing company “Baltica” to operate its economic activity as a result of the purchase of Baltic Beverages Holding AB by the Carlsberg Breweries. But the FAS Russia issued a relevant instruction.

As a result of this transaction group of persons comprising the Carlsberg Breweries and OJSC “Brewing company “Baltica” will have more than 35 % of market share on a market of beer production and under certain conditions can restrict competition on market, including as a result of abuse of its dominant position.

According to the instruction of the FAS Russia the Carlsberg Breweries should ensure that OJSC “Brewing company “Baltica” complies with the following conditions: not to restrict beer sale under the territorial principle, range, scope and not to economically and technologically unjustifiably refuse to supply beer to counterparts, as well as to inform the FAS Russia two months in advance on OJSC “Brewing company “Baltica” plans of single increase or decrease of the beer price on more than 10 %.

Instruction is valid until the Carlsberg Breweries has a right allowing it to determine terms of the economic activity of the OJSC “Brewing company “Baltica”.

Satisfaction of pre-merger notification under the Law on protection of competition and the Law on foreign investments to strategic sectors. On November 7, 2008 the FAS Russia approved pre-merger notification by Jarpeno Limited on gaining the rights allowing it to determine the conditions for certain economic entities (e.g. Imperial Energy) to operate their economic activity. The FAS Russia considered and approved this pre-merger notification under the Articles 28 and 33 of the Law on protection of competition.

At the same time the FAS Russia in accordance with the part 4 Article 6 of the Federal Law № 160 “On Foreign Investments in the Russian Federation” considered notification of Jarpeno Limited on the preliminary approval of the transaction on gaining control over the above mentioned economic entities. In accordance with the Law on foreign investments to strategic sectors the FAS Russia admitted that the considered economic entities are not strategic, as according to the Russian Ministry of Nature they don’t possess the rights for geological examination of bowels and (or) exploring and extracting oil on the lands of federal importance. As a result the FAS Russia qualified transactions as not falling under the need to receive preliminary approval in order envisaged by the Law on foreign investments to strategic sectors.

As a result of this consideration and analysis of status of oilfields belonging to these economic entities the FAS Russia didn’t see any obstacles for this transaction and approved notification. The FAS Russia didn’t issue any instruction for Jarpeno Limited.

Refusal on pre-merger notification. The FAS Russia considered pre-merger notification by UNITRADE Ltd. on its gaining of 25 % + 1 voting share of OJSC “Bashkirenergo” and in accordance with the point 5 Article 33 of the Law on protection of competition took a decision to refuse the approval of this notification, since this transaction would lead to competition restriction on the wholesale market of power energy.

According to the information provided for in the notification the UNITRADE Ltd. planned to gain 25% + 1 voting share of OJSC “Bashkirenergo” in the interest of “KES-Holding” group of persons.

It is necessary to underline that companies comprising one group of persons with “KES-Holding” directly control OJSC “TGK-5” and OJSC “TGK-9” (TGK – territorial power generating companies). Moreover, the FAS Russia permitted companies comprising one group of persons with the “KES-Holding” to purchase the control set of voting shares of OJSC “TGK-6” and OJSC “Volzhskaya TGK” taking into consideration instruction to meet the requirement of selling objects that are used in production of power energy with set capacity of not less than 741 MWatt.

Should the transaction under consideration be concluded the total share of the generating assets of the “KES-Holding” group of persons under the scope of produced power energy will make up more than 30 % at the wholesale power energy market within the geographical borders of the free power-flow “The rest part of OES Urals”.

Moreover, according to the research carried out together with OJSC “ATS” gaining by one group of persons of control over OJSC “TGK-5”, OKSC “TGK-6”, OJSC “TGK-7”, OJSC “TGK-9”, OJSC “Bashkirenergo” can lead to drastic worsening of competition environment and as a result to the increase of prices on the wholesale market of power.

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 2008 as well as in 2007 the biggest number of violations of competition law was committed by the state and local authorities. 2978 cases were initiated.

In 2008 there were considered 2023 applications in respect to acts and actions of state and local authorities. 53% of applications were submitted due to unjustifiable restriction of economic entities activity. 1885 cases were initiated. There were taken 1231 decisions on admitting violations and issued 1160 instructions. 132 decisions were appealed to courts. Out of them 22 were found completely valid, 5 – partially valid, 14 – invalid, 91 are still under appeal.

In 2008 there were received 338 applications on anti-competitive agreements (concerted actions) with participation of state authorities (twice more than in previous year). Percentage remains the same: 43% of applications were submitted due to restriction of access to the market, exit from the market. 275 cases were initiated. 226 cases were admitted as violations and 238 instructions were issued. 14 decisions were appealed to the court. The court found 4 decisions completely valid, 1 – partially invalid, and 9 are still under appeal.

With regard to non-observance of antimonopoly requirements to conduction of tenders on public procurement there were received 639 applications. The majority of applications (159) deal with unjustified restriction of access to participation in tender, as well as with creation of beneficial conditions for participation in tender (114). 351 cases were initiated. 137 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 213 decisions on admitting the violation and 143 instructions were issued. 22 decisions were appealed to court.

2.3.2 Summary of significant cases

Case on landing-stages against Moscow Government. On April 25, 2008 the FAS Russia admitted the Moscow Government violating part 1 of the Article 15 of the Law on protection of competition committing actions restricting activity of economic entities using landing-stages for their business activity, as well as violating Article 16 of the Law on protection of competition committing concerted actions with Moscow state organizations on ensuring road security, bridge building, water supply and power energy supply resulting in restriction for economic entities to operate their activity using landing-stages.

Violation by the above mentioned organizations was in particular in restricting access to the parapets of the Moscow-river embankments in the places of setting landing-stages located in the Moscow-river area of water, in refusing these landing-stages to access power capacities, in refusing to meet with the concluded contracts on water supply and collection of sewage, etc.

Basing on its decision the FAS Russia issued instruction on termination of violation of competition law which was executed by the Moscow Government after failing to appeal it in courts. In particular, orders under the protocol of official meetings in the Moscow Government, as well as protocol of meeting of Commission under Moscow Government on regulation of water and coastal area usage, dealing with establishment and maintenance of landing stages were cancelled and the appropriate documents were submitted.

Moreover the court also refused to satisfy the appeal by the Road Security Inspection of Moscow. On January 13, 2009 another party to the case state unitary enterprise "Gormost" transferred to the federal budget the turnover fine for violation of competition law that according to the Article 14.32 of the CoAV made up 3,6 % of its profit.

Suppression of agreements and concerted actions of local authorities restricting competition. Tambovsk Regional Office of the FAS Russia initiated a case against Administration of Tambov region and non-commercial organization of social provision Interregional non-state "Big pension fund" (Moscow) at the signs of violating Article 16 of the Law on protection of competition. The violation was in concluding an Agreement that could lead to prevention, restriction, elimination of competition.

According to Agreement the Administration of Tambov region is obliged to create necessary terms and mechanisms, commit other action promoting the Fund in execution of Agreement, render assistance in setting contacts with executive authorities, heads of undertakings and organizations of Tambov region, promote the Fund's participation in implementation of investment projects in the territory of Tambov region, etc.

The Tambovsk Regional Office of the FAS Russia considered this Agreement as aiming to create preferable conditions for the activity of certain organization that can lead to prevention, restriction, elimination of competition on the relevant product market, in particular on the market of services rendered by the non-state pension funds in Tambov region.

Basing on the decision of the competition authority the parties to the Agreement signed Supplement to the Agreement that changed title, subject and terms of the Agreement and eliminated violations of competition law.

The Tambovsk Regional Office terminated proceeding due to the voluntary elimination of violation.

Suppression of acts and actions by state authorities restricting competition. The FAS Russia admitted the Emergency and Civil Defense Ministry violating Article 15 of the Law on protection of competition and recommended not to violate competition legislation.

Violation was in unjustified extension of the list of documents required for the access to the examination on gaining the right to run ships of small size. The FAS Russia considers this requirement could lead to competition restriction on the service market on training of running ships of small size.

During the consideration of the case the Emergency and Civil Defense Ministry eliminated the reason of violation of competition legislation recalling the letter on compulsory submission to the examination commission under the Ministry of certificate on taking the theoretical course of distance education on running ships of small size only in the "Storm" Ltd.

Having considered the case the FAS Russia recommended the Emergency and Civil Defense Ministry not to issue acts that can lead to restriction of competition in future.

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 was 906. 517 cases were initiated.

On the facts of unfair competition on product markets there were initiated 251 cases. The majority of cases (32%) related to sale of goods with illegal use of the results of intellectual activity; about 19% of cases related to distribution of false information. Decision on admitting violation was taken on 303 cases and 252 instructions were issued. 76 decisions were appealed to court. The court admitted 8 decisions as totally invalid.

There were initiated 50 cases on signs of suppression of unfair competition on financial service markets. 12 decisions were appealed to court, 7 of them were admitted as fully valid, the rest are still under the appeal procedure.

For example, the FAS Russia admitted CJSC “Confectionary “Slavyanka” violating point 4 part 1 Article 14 of the Law on protection of competition (unfair competition). The anti-competitive actions of the company included introduction on the territory of the Russian Federation of the chocolate brick “Alina” with illegal use of combined trade mark owned by the OJSC “Moscow confectionery “Krasny Oktyabr” that produces chocolate “Alenka” popular even in the USSR. The pack of the chocolate “Alina” looked almost like the popular one “Alenka” that resulted in misleading of consumers.

As a result of consideration of this administrative case the FAS Russia admitted CJSC “Confectionary “Slavyanka” as violating part 2 of Article 14.33 of the CoAV and imposed a fine of 3 686 355 rubles (about 105 thousands US dollars).

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

Certain structural changes were made in the organization chart of the FAS Russia’s Central Office in August, 2008. As a result of such changes, the Department for Control over State Authorities was established and got powers to coordinate and control the way the Administrative reform is carried out in the FAS Russia. For these purposes the following two divisions were established: the Division for Implementation of the Administrative reform and the Division for regulation of administrative procedures.

In the framework of carrying out the Administrative reform in the FAS Russia in 2008 the FAS Russia paid a key attention to increasing the quality of functions executed and services rendered by the FAS Russia to citizens and organizations (economic entities). In order to solve this critical issue, the FAS Russia developed the Concept on increase of the quality of executing the state functions and rendering state services by the FAS Russia as well as a draft of the relevant Agency purpose program.

Implementation of the Agency purpose program and the further activity of the FAS Russia in accordance with provisions of the Concept will make it possible to reconstruct the management system in the FAS Russia in the framework of which some specific socially significant results are emphasized, including:

- increase of awareness of economic entities, customers of state services and other stakeholders over the FAS Russia's activity;
- increase of quality of executing state functions and rendering state services by the FAS Russia;
- increase of satisfaction of customers with quality of executing state functions and rendering state services;
- improvement of competition environment in the Russian Federation.

In order to get assessed by the FAS Russia direct "clients", the FAS Russia monitored in 2008 the quality of executing state functions and rendering state services by the FAS Russia, which in general demonstrated that the FAS Russia's activity was positively assessed.

It should be noted that the FAS Russia is one of the few federal authorities that nowadays focuses on comparison of results of its activity with similar parameters in other countries; namely, the FAS Russia holds the position of the Russian Federation in Global Competition Review Rating Enforcement.

Besides, in 2008 the FAS Russia worked intensively to implement anticorruption measures. Suggestions made by the FAS Russia were reflected in the National Anti-Corruption Plan approved by the President of the Russian Federation on July 31st, 2008.

To regulate the process of sanction imposition process on violators of the competition law, the Guidelines on calculation of the size of fine imposed on legal persons for administrative offence provided for by Articles 14.31 and 14.32 of the CoAV (approved by the Methodic Council of the FAS Russia) were forwarded to departments and Regional Offices of the FAS Russia for application.

The FAS Russia Order of June 29th, 2007 No. 196 approved the Regulation over the FAS Russia Commission on compliance with requirements to official conduct of civil officers of the Russian Federation and settlement of conflict of interests.

Measures for reduction of corruption risks of unduly information distribution resulted in providing all departments and Regional Offices of the FAS Russia with personal computers to work with confidential documents.

The Order of June 17th, 2008 No. 212 "On Approval of the methodology of activity assessment of Regional Offices of the FAS Russia" aimed at increase of internal control over the Regional Offices of the FAS Russia was issued.

The draft of the Ethical code for civil officers of the FAS Russia aimed at improving the FAS Russia's personnel policy was developed.

Nowadays the analysis of effectiveness of Administration Regulations implementation on execution of state functions in order to reduce corruption risks is being carried out.

In the frameworks of implementation of the National Anti-Corruption Plan, the Anti-Corruption Plan was developed in the FAS Russia, which provides for the following two main directions of activity: implementation of anti-corruption mechanisms within established scope of activity of the FAS Russia (in the frameworks of Administrative reform activity); and participation of the FAS Russia in implementation of the National Anti-Corruption Plan.

3.2 Control over foreign investments in strategic sectors of economy

As it was mentioned above on April 29, 2008 there was adopted the Federal Law № 57-FZ “On Procedures for Foreign Investments in the Business Entities of Strategic Importance for Russian National Defense and State Security”.

The FAS Russia was appointed as a federal agency authorized for execution of the functions on control over foreign investments.

Within the frameworks of implementation of the Law on foreign investments to strategic sectors the FAS Russia created the legal and organizational mechanisms for control over foreign investments into the economic entities of strategic importance, in particular:

- Order of the FAS Russia of 13.08.2008 №308 On Approval of the Form of the Draft Business-plan of the strategic entity;
- Order of the FAS Russia of 17.09.2008 №357 On Approval of the Exemplary Form of the Agreement on Ensuring Observation of Obligations by the Foreign Investor or Group of Persons under Investing to Economic Entities of Strategic Importance.

On November 10, 2008 the first Meeting of the Governmental Commission headed by the Prime-Minister of the Russian Federation was held where 2 notifications were satisfied. The Department for Control over Foreign Investments conducts regular activity on preparation of materials for the further Meetings of Governmental Commission, as well as on explanation of the law application.

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

According to the Federal Law of 21.07.2009 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”), the control over compliance with requirements over public procurement legislation by state and municipal customers is carried out by the FAS Russia through inspections.

When carrying out inspections in 2008, the Regional Offices of the FAS Russia inspected in total 82 834 cases of public procurement. Out of them 14 798 (18%) cases were violations of the Law on public procurements. According to results of planned inspections, there were 469 instructions on elimination of violations of the legislation on public procurements. When carrying out unplanned inspections, 301 instructions were issued on elimination of violations by federal customers, 194 and 415 instructions on elimination of violations of the Law on public procurement were issued to customers of the Russian Federation’s subjects and municipal customers, respectively.

In 2008 the FAS Russia totally detected 3 352 violations of the Law on public procurement, including:

- 2278 cases of customer’s selection on inappropriate way of public procurement;
- 4757 cases of setting by customers of requirements to the participants of public procurement contradicting with the Law on public procurement;
- 2220 cases of unjustified provision of access of the participant of placement to participation in tenders, quotation inquiries;
- in 1939 cases of unjustified refusal to provide assess for participants of public procurement to participation in tenders, quotation inquiries;

- in 1183 cases of setting assessment procedure, criteria (sub-criteria), importance of criteria (sub-criteria) that contradicts with the Law;
- 1252 cases when criteria, importance of criteria or assessment procedure, according to which the winner has been chosen, are not stated in tender documentation or differed from ones stated in tender documentation;
- 646 cases of reducing of terms of applications;
- 1386 cases of violation of a procedure for conclusion of a contract or unjustified change of its terms and conditions;
- 2624 cases of untimely allocation (publishing) of protocols envisaged by the Law on public procurement;
- 15 932 cases of other violations.

In 2008 the FAS Russia Offices initiated 7 389 cases on administrative violation. Out of them 2 951 cases of violations under public procurement for federal needs, 1 151 cases under public procurements for the needs of the subjects of the Russian Federation and 3 287 cases under public procurements for municipal needs. As a result there were issued 2 989 decisions on imposition of administrative penalties totally amounting to 91 064 000 Rubbles.

According to results of analysis of effectiveness of the FAS Russia in 2008, the load on the federal executive authority authorized to exercise control over public procurement of state and municipal public procurement, in comparison with figures in 2007 increased on average by 42%. The above given figures show positive down trend of quantity of violations under public procurement and upward trend of quantity of public procurement placed in accordance with requirements of the Russian legislation. During 2008 the control over public procurement executed by the FAS Russia also strengthened significantly and acquired some stable and system features.

3.4 Participation of the FAS Russia in regulation of foreign commerce

In 2008 the FAS Russia continued its activity in the framework of the Governmental Commission on protective measures in the field of foreign commerce and customs-and-tariff policy. The Commission is responsible for preparation of proposals in the field of state regulation of the foreign-economic activity. The Head of the FAS Russia is a member of the Commission that allows taking into account competition-related issues.

In order to ensure fair competition conditions and non-discrimination of participants of foreign-economic activity, in 2008 the FAS Russia prepared proposals on meat import regulation measures for 2010 and subsequent years which also provided for a refusal from “historical” principle of distributing quota among participants of foreign-economic activity and transition to auction principle of distribution.

Besides, in order to strengthen a regulating role of export duty on oil and oil products, the FAS Russia proposed a mechanism of establishing tariffs that allows operatively reacting to changes in situation on the world market. The proposed mechanism also ensures formation of prices on oil products on the internal market on the basis of balance of supply and demand.

The proposals for import and export procedures for water biological resources and import and export procedures for narcotic drugs within the customs territory of the Russian Federation aimed at decrease of administration barriers for participants of foreign-economic activity in appropriate area of activity.

In order to exclude price growth on the internal market, the FAS Russia also initiated cancellation of rates for entrance custom duty on scrap and waste of nonferrous metal. Taking into account the market conditions and internal demand provision, the FAS Russia did not support introduction of heightened rates for entrance custom duty on new vehicles. In order to exclude creation of conditions for monopolizing the Russian market of soy oilseed meal (the main raw product to produce compound feed for poultry farming) the FAS Russia expressed its opinion on inexpediency to increase rates for entrance custom duty on soy oilseed meal.

Therewith in conditions of substantial fall of world prices and scope of metal production consumption both on internal and global markets, the FAS Russia supported initiatives of the Government of the Russian Federation related to increase of the level of tariff protection of the national ferrous metallurgy on separate and the most sensible types of rolled metal and pipes made of ferrous materials.

The FAS Russia considered and prepared conclusions on 119 applications made by economic entities and state authorities in relation to changing of operational measures on custom-tariff and non-tariff regulations. When preparing its conclusions, the FAS Russia based on results of assessments of consequences for competition resulted from introduction of proposed measures on appropriate commodity markets and necessity to promote increase of competitiveness of the Russian goods excluding groundless protectionism as well as ensuring protection of consumer interests.

Under results of consideration of applications on adjusting rates for custom duty and introducing protection measures, the FAS Russia participated in preparation of 91 drafts of resolutions of Government of the Russian Federation. Besides, 82 drafts were approved without any comments, 9 drafts were not approved or approved with some comments. Drafts with comments or drafts that were not endorsed, in general, were connected with probable worsening of the competition environment conditions as a result from adoption of proposed measures and, as a consequence, probable rise in prices on relevant commodity market.

4. Resources of competition authority

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

4.1.1 Annual budget

In 2008 the annual budget of the competition authority (the FAS Russia) amounted to 1'429'138'500 rubles (approximately 52 million USD). The growth compared to 2007 is 48,7 %.

4.1.2 Number of employees (person-years)

On 01.01.2009 the actual number of staff of the FAS Russia was 528 persons in the Central Office and 2647 in the Regional Offices. Increase of staff number compared to 2007 relates to designation of new powers to the FAS Russia that were described above. The information given below is related to the Central Office only:

«lawyers» – 171 persons;

«economists» - 120 persons;

«other professionals» - 145 persons (people having technical and other education, as well as incomplete higher education);

«support staff» - 92 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, 2008 till January 1, 2009.

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