

**REPORT ON COMPETITION POLICY IN RUSSIAN  
FEDERATION IN 2017 TO ORGANISATION FOR  
ECONOMIC CO-OPERATION AND  
DEVELOPMENT**

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

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

#### *The Decree of the President of the Russian Federation and National Competition Development Plan<sup>1</sup>*

Significant event of 2017 was the signing by the Russian President of the Decree on the main directions of competition policy in Russia.

Following by the elections of deputies to the VI State Duma of the Federal Assembly of the Russian Federation, that was held on 18 September 2016, the regular meeting of the Russian Government took place on 29 September 2016, at which the issue «On state of competition in the Russian Federation» became the main item on the agenda. Igor Artemiev, Head of the FAS Russia, presented the report on the subject<sup>2</sup>.

The Head of the FAS Russia took the initiative to prepare the National Competition Development Plan. This initiative was approved by Dmitry Medvedev, the Chairman of the Government of the Russian Federation. The finalized plan was submitted to Vladimir Putin, the President of the Russian Federation, for consideration in the end of 2016. At the same time, the Chairman of the Russian Government authorized 10 Russian Ministries<sup>3</sup> in consultation with the Ministry of Economic Development and the FAS Russia to establish competition development plans ("road maps") in their respective fields.

As a result, in December 2017, the President of the Russian Federation signed the Decree of 21.12.2017 No. 618 "On the Main Directions of the State Policy on the Development of Competition" (hereafter – the Decree). The Decree refers to the provisions of Articles 8 and 34 of the Constitution of the Russian Federation: in the Russian Federation, the unity of the economic area, the free movement of goods, services and financial resources, the support of competition, freedom of economic activity are guaranteed, private, state, municipal and other forms of ownership are recognized and protected, in the same way; everyone has the right to use freely his abilities and property for entrepreneurial and other economic activities not prohibited

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<sup>1</sup> <http://en.fas.gov.ru/documents/documentdetails.html?id=15342>

<sup>2</sup> In accordance with paragraph 10, part 2, article 23 of the Federal Law of 26 July 2006 N 135-FZ "On Protection of Competition", the FAS Russia annually submits report on state of competition in the Russian Federation to the Government of the Russian Federation and posts it in its official website in the Internet.

<sup>3</sup> The Ministry of Industry and Trade, the Ministry of Transport, the Ministry of Communications, the Ministry of Construction, the Ministry of Energy, the Ministry of Agriculture, the Ministry for the Environment, the Ministry of Labour, the Ministry of Education and Science, the Ministry of Health Care

by law; economic activity aimed at monopolization and unfair competition is not allowed<sup>4</sup>.

The Decree establishes active promotion of the development of competition in Russia as a priority for activities of the President of the Russian Federation, the Government of the Russian Federation, all federal executive bodies, legislative (representative) and executive public bodies of the constituent entities of the Russian Federation, and also all bodies of local self-government.

The Decree establishes a provision on the inadmissibility of introducing and (or) preserving restrictions that create discriminatory conditions for certain types of economic activity, production and turnover of certain types of goods, the provision of certain types of services, except for cases provided for by federal laws, legal acts of the President of the Russian Federation, legal acts of the Government of the Russian Federation.

The Decree also gives recommendations to the Supreme Court of the Russian Federation, the General Prosecutor's Office of the Russian Federation, senior officials (heads of the highest executive bodies of state power) of the constituent entities of the Russian Federation, local self-government bodies, the Public Chamber of the Russian Federation and public organizations on measures to promote the development of competition.

The document contains, on the one hand, approaches to setting priorities and principles of the competition policy. On the other hand, it contains specific objectives for competitive markets, as well as expected outcomes.

The aims of improving the state policy on the development of competition are:

- a) increase of customer's satisfaction by expanding the range of goods, works, services, improving their quality and reducing prices;
- b) increase of economic efficiency and competitiveness of economic entities, including by ensuring equal access to goods and services of natural monopolies and public services necessary for conducting business activities, stimulating innovation activity of economic entities, increasing the share of hi-tech goods and services in the production structure, development of markets for high-tech products;
- c) stable growth and development of a multisectoral economy, development of technologies, reduction of costs in the scale of the national economy, reduction of social tension in the society, ensuring national security.

The Decree provides for reducing the number of violations of the competition law by the public authorities in 2020 by no less than twofold in comparison to 2017 and

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<sup>4</sup> <http://constitution.kremlin.ru/>

increasing procurement by public and municipal customers and state-owned companies from small and medium business.

To achieve those goals and objectives, the Decree approves the National Competition Development Plan in the Russian Federation for 2018-2020 (hereafter – the National Plan) and an annex to the National Plan - "List of industries (spheres) of the economy (types of activity) and expected results of the development of competition", which contains instructions for the implementation of a set of organizational and legal measures and contributes significantly to the de-escalation of public sector in economy and further support of SMEs.

In particular, it is designed to reduce the share of state participation in the competitive sectors of economic activities, including limited formation of unitary enterprises, the reform of tariff regulation, effective prevention and suppression of antimonopoly violations that lead to restricting and eliminating competition on the markets, and supporting entrepreneurial initiative, including development of small and medium business.

The Government of the Russian Federation has been empowered to coordinate the implementation of activities provided for by the National Plan.

In accordance with the National Plan, the Government of the Russian Federation is charged with implementing a set of organizational and legal measures.

A number of instructions contained in the National Plan refers to the activities of federal executive bodies, executive authorities of the regions of the Russian Federation and local self-government bodies.

The public authorities are obliged to analyze the compliance of strategic planning documents and state programs with the principles of state policy on the development of competition, report on factors that limit competition in established areas of activity and industries, and elaborate measures taken to address these problems. They should create and publish in open access plans for the development of competition ("road maps") in the relevant sectors, as well as information on the results of the implementation of activities provided by these plans. When organizing procurement activities, public authorities should consider providing non-discriminatory access of suppliers to procurement of goods, works, services as a priority, and to introduce indicators characterizing their effectiveness.

In accordance with the National Plan, a particular attention (with the creation of 'road maps' of developing competition) will be paid to the following industries of the Russian economy: transport (including railroad, air and waterway); chemicals; communication and information technologies; road construction; defense industry; housing sector; oil and gas industry; electricity; agroindustrial complex; fishing industry; health care; education; foreign trade activity.

The Decree and the National Plan are the first such documents in the history of the Russian Federation. The documents determine the principles of interaction between the state and the society, implying intolerance to any incidents of unfair competition, cartels and abusing monopolistic position. The authorities at all levels are obliged to evaluate administrative decisions, taking into account the consequences of such decisions for competition.

The FAS expects that every three years the document will be amended in line with current realities.

In addition, as one of the fundamental principles of the state policy for the development of competition, Decree No. 618 defines the improvement of antimonopoly regulation in the digital economy and its globalization.

In this regard, the FAS Russia drafted a federal law "On Amendments to the Federal Law "On Protection of Competition" and other legislative acts of the Russian Federation" (the so-called "fifth antimonopoly package").

In modern conditions, certain standard categories of antimonopoly regulation can not be effectively applied in digital markets. In practice of the FAS Russia, there are more and more examples of how the structure of modern markets is changing.

In the antimonopoly legislation there should appear rules defining regulation in view of modern challenges.

Additional criteria should appear, allowing to classify owners of large infrastructure platforms, Internet platforms that have the appropriate market power as dominant business entities.

Another topical aspect for legislative novels is price algorithms that analyze markets and adjust the price. In conditions when companies use such algorithms to optimize their relations with competitors, one should also speak about the formation of cartels.

In addition, it is planned to consolidate more stringent requirements to control transactions of economic concentration associated with the acquisition of technology or other intangible assets.

Given the current state of markets, "immunities" to the objects of intellectual property should be excluded from the application of competition legislation.

The FAS Russia plans to submit the draft to the Government in the first half of 2018.

*Amendments to the Code of Administrative Offences of the Russian Federation*

On April 28, 2017, the Federal Law No. 74-FZ "On Amendments to the Code of Administrative Offenses of the Russian Federation"<sup>5</sup> (hereinafter – the Law No. 74-FZ) entered into force.

The Law No. 74-FZ amends Article 14.32 of the Code of Administrative Offenses of the Russian Federation establishing the differentiation of administrative responsibility for entering into and participating in various types of anticompetitive agreements, coordinating the economic activities of economic entities, and the implementation by the business entity of concerted actions that are inadmissible in accordance with the antimonopoly legislation of the Russian Federation, on the base of the degree of public danger of the corresponding actions.

The Code also concerned empowering of the FAS Russia with reduction of fines for the second and third members of the cartel, who applied for leniency programm.

### *Legislation in the field of electricity*

The following resolutions of the Government of the Russian Federation aimed at increasing the efficiency of tariff regulation of the fuel and energy complex were adopted:

- Resolution of the Government of the Russian Federation of July 21, 2017 No. 863<sup>6</sup>, which provides for the establishment of sale premiums of guaranteeing suppliers using the method of comparison of analogues;
- Resolution of the Government of the Russian Federation of 28.07.2017 No. 895<sup>7</sup>, which provides for the achievement in the territories of the Far Eastern Federal District of basic levels of prices (tariffs) for electricity (capacity).

### *Legislation in the field of heat supply*

On the initiative of the FAS Russia, the Law No. 279-FZ<sup>8</sup> introduced the Article 4.2 "Antimonopoly Regulation and Control in the Sphere of Heat Supply" to Federal Law No. 190-FZ of July 27, 2010 "On Heat Supply". This article defines the features of antimonopoly regulation and control in the sphere of heat supply. Therefore, the price, the distribution of the heat load in the heat supply system, and the observance of the rules (order) for concluding contracts in the sphere of heat supply now fall under the antimonopoly control in the sphere of heat supply.

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<sup>5</sup> <https://rg.ru/2017/04/19/izm-koap-dok.html>

<sup>6</sup> <http://static.government.ru/media/files/D8i35u3Gth9m4gygccWgZTQbaVmVFp6G.pdf>

<sup>7</sup> <http://government.ru/docs/all/112807/>

<sup>8</sup> <http://static.kremlin.ru/media/acts/files/0001201707310015.pdf>

### *Legislation in the field of procurement*

In 2017, amendments<sup>9</sup> to the Federal Law No. 44-FZ of 05.04.2013 "On the Contract System in the Procurement of Goods, Works, Services for Provision of State and Municipal Needs" came into force. Amendments regarding the procedure for determining suppliers (contractors, executors) in electronic form are conceptual in nature and will ensure openness and transparency of competitive tenders' holding, will reduce subjectivity at the stage of awarding points to participants in procurement and corruption risks, increase the number of participants in procurement that will have favorable effect on the development of competition, as well as allow to achieve effective expenditure of budgetary funds.

In addition, amendments<sup>10</sup> to the Federal Law No. 223-FZ of 18.07.2011 "On Procurement of Goods, Works and Services by Certain Types of Legal Entities" came into force, providing for the establishment of a unified procedure for the selection of suppliers (contractors, executors) in conducting "specialized trades" both regarding the establishment of a closed list of methods of procurement, the regulation of the procedure for such procurement, and the determination of a closed list of electronic sites for procurement, with the establishment of appropriate requirements for hardware and software complex of electronic platforms.

### *Legislation in the field of health care*

At the initiative of the FAS Russia, the "Features of Describing Medicinal Products for Medical Use, Being the Subject of Procurement for Provision of State and Municipal Needs" of 15.11.2017 No. 1380 were developed and approved by the Government of the Russian Federation<sup>11</sup>.

The Resolution prohibits excessive insignificant characteristics of pharmaceuticals that are not important for the therapeutic effect, but narrow the number of market participants.

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<sup>9</sup> Federal Law of 31.12.2017 No. 504-FZ "On Amendments to the Federal Law "On the Contract System in the Procurement of Goods, Works, Services for Provision of State and Municipal Needs""  
<http://static.kremlin.ru/media/acts/files/0001201712310035.pdf>

<sup>10</sup> Federal Law of 31.12.2017 No. 505-FZ "On Amendments to the Federal Law "On Procurement of Goods, Works and Services by Certain Types of Legal Entities""  
<http://static.kremlin.ru/media/acts/files/0001201712310039.pdf>

<sup>11</sup> <http://publication.pravo.gov.ru/Document/View/0001201711170016>

The Resolution was adopted in order to regulate the requirements to customers, increase the number of participants in procurement, create favorable conditions for competition among medicines manufacturers<sup>12</sup>.

According to the adopted act of January 1, 2018:

- state and municipal customers can not purchase medicines, manipulating the therapeutically insignificant characteristics pointing to a specific manufacturer;
- multicomponent, combined preparations and kits can now be purchased only on condition that access to procurement of suppliers of appropriate mono-preparation is available;
- a direct ban on manipulating the volume of filling, the presence of auxiliary substances, pharmacodynamics and pharmacokinetics, storage regimens, the form of release, the amount of the medicine in the secondary packaging and other unreasonable characteristics that are not confirmed by documents is established.

The compliance of customers with the provisions of the mentioned Resolution should increase the availability of medicines for citizens of the Russian Federation and the effectiveness of budget spending on medicines through a reduction in the prices of medicinal products at tenders (in competitive conditions, a drop in prices at auctions reaches up to 70% of the initial (maximum) price of the lot); suppression of acts of unfair customers and cartelization among participants in procurement or/and organizers of tenders; considerable savings of budgetary funds, which can be additionally directed at medicinal provision of citizens.

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

The Guidelines of the FAS Russia play an important role in ensuring compliance with antimonopoly legislation and the formation of judicial practice.

In 2017, the Presidium of the FAS Russia issued 5 Guidelines of the antimonopoly legislation:

- 1) Guidelines "On the application of the provisions of Article 10 of the Law on Protection of Competition"<sup>13</sup>, aimed at clarifying the issues related to the concept of abuse of dominant position, its influence on related markets, as well as issuing warnings to suspend abuse of dominant position.

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<sup>12</sup> The FAS Russia won the contest for competition advocacy, conducted by the World Bank jointly with the ICN, in the category "Creating markets for private sector development", presenting experience on this issue.

<sup>13</sup> <https://fas.gov.ru/documents/561690>

2) Guidelines «On the procedure for the publication by international liner shipping companies of freight charges»<sup>14</sup>, aimed at clarifying the practice of compliance with the minimum requirements for the behavior of liner shipping companies in the market of liner shipping transportation of goods, if the port of loading and (or) the port of discharge of goods are the ports of the Russian Federation.

3) Guidelines «On the application of antimonopoly legislation in order to identify and address violations related the price-setting»<sup>15</sup>, aimed at creating a uniform practice of antimonopoly bodies applying antimonopoly legislation related to violation of the price-setting, as well as applying administrative liability measures.

4) Guidelines «On determination of the amount of losses caused as a result of violation of the antimonopoly legislation»<sup>16</sup>, aimed at forming the position of the antimonopoly body on issues related to determining the amount of losses caused as a result of violation of the antimonopoly legislation, in case of involving the regional office to participate in the case being considered in court.

5) Guidelines «On the application of antimonopoly legislation in respect of owners of electric power facilities, including those that do not meet the criteria for classifying owners of electric power facilities as regional power organizations»<sup>17</sup>, specifying the cases of application of antimonopoly legislation in respect of owners of an energy receiving device or an electric power industry object, including those that do not meet the criteria for attributing owners of electric power facilities to regional power organizations, when implementing measures for technological connection and rendering services for the transmission of electric power.

Interpretations were developed by the FAS Russia jointly with leading lawyers, including the Competition Experts Association and the Russian Corporate Counsel Association, and held public discussions.

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

The abovementioned Decree No. 618 of the President of the Russian Federation includes a plan for legislative amendments aimed at developing competition<sup>18</sup>.

This refers to:

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<sup>14</sup> <http://en.fas.gov.ru/documents/documentdetails.html?id=15298>

<sup>15</sup> <https://fas.gov.ru/documents/611496>

<sup>16</sup> <https://fas.gov.ru/documents/587995>

<sup>17</sup> <https://fas.gov.ru/documents/596595>

<sup>18</sup> <http://en.fas.gov.ru/documents/documentdetails.html?id=15342>

- restricting the creation of unitary enterprises and increasing the share of high-quality Russian products in the domestic market, including such sectors as information technology and agriculture;
- severely curbing violations of antimonopoly legislation and improving the mechanisms of tariff regulation;
- by 2020, doubling the share of purchases of small and medium-sized businesses and NGOs in the state and municipal order.

Starting in 2019, state and municipal authorities and institutions will be obligated to conduct their procurements in electronic form only. At the same time, suppliers can submit applications remotely.

This will shorten the time it takes to execute contracts and will expand the opportunities of domestic companies from Russian regions. Such a mechanism will reduce corruption risks, and increase competition.

Other legal changes proposed:

- prohibition for the state to acquire interests and shares of business entities undertaking activities on competitive markets;
- exclusion of possibility to define business entities that undertake activities in the competitive fields as natural monopolists;
- legal establishment of new approaches in the implementation of antimonopoly regulation in the digital economy;
- increase in the limitation period for the consideration of cases on violation of antimonopoly legislation;
- expansion of the FAS Russia's procedural capabilities in the investigation of cartels, improvement of the mechanisms for dawn raids;
- clarification of applying of the antimonopoly legislation to actions and agreements on use of intellectual property rights;
- establishment of the rights of the consumer council to implement public control over the activities of natural monopolies, state-owned companies and regulated organizations when making decisions on tariffs, and when approving investment programs and monitoring their implementation.

## **Part 2. Enforcement of competition law and policy**

In 2017, the FAS Russia received 39,468 applications on violation of the Law "On Protection of Competition", of which 25,581 applications concerned monopolistic activities (23,824 - abuse of dominant position and 1,757 - agreements or concerted actions), 3,466 - unfair competition, 6,513 - competition restrictions by public authorities, 3,881 - antimonopoly requirements to tenders and peculiarities of selection

of financial organizations, 26 – granting of state or municipal preferences, 1 - responsibility for violation of the antimonopoly legislation.

The number of cases in question in 2017 continued to decline due to the course on combating the unfair practices of large Russian and transnational corporations that have a significant impact on the Russian economy, the successful implementation of the institute of warnings, and efficiency in courts (the FAS Russia wins more than 80% of cases).

In 2017, the FAS Russia initiated 3534 cases, which demonstrates a 12% decrease in the number of cases initiated, compared to 2016. (Therefore, in 2015, 9092 cases were initiated, in 2016 - 4040 cases.) 2621 decisions were made on the existence of a violation. 1371 of them were appealed to the court (52.3%). 8% of the total amount of the FAS' decisions were declared invalid by the court.

The number of cases initiated under the abuse of dominant position in 2017 was 847 (in 2016 - 1340, in 2015 - 3059).

The number of cases initiated under the prohibition of restrictive agreements and concerted actions by economic entities amounted to 420 in 2017 (360 in 2016, 375 in 2015).

Under the provisions of the law on unfair competition, the FAS Russia initiated 409 cases in 2017 (in 2016 - 453, in 2015 - 1113).

The number of cases of violation of the antimonopoly legislation by the authorities in 2017 was 770 (in 2016 - 736, in 2015 - 3109).

## **2.1. Actions against agreements and concerted actions**

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

In 2017, the FAS Russia received 1,757 applications on agreements (concerted actions) of economic entities restricting competition (1390 in 2016, 2151 in 2015). 420 cases were initiated (360 in 2016, 375 in 2015), decisions were issued on the recognition of the violation in 329 cases (284 in 2016, 304 in 2015), 472 prescriptions were issued (378 in 2016, 547 in 2015). 75 decisions have been appealed to the court (64 in 2016, 92 in 2015), 4 of them have been found to be legal (8 in 2016, 20 in 2015), 3 decisions have been declared invalid (2 in 2016, 0 in 2015), the rest are in the stage of judicial appeal.

In 2017, the FAS Russia received 118 applications under the leniency program (91 in 2016, 46 in 2015).

## 2.1.2. Description of significant cases

### *Collusion in the electricity market*

The group of persons "T plus" and CJSC "KAS-Trading" entered into an illegal agreement, which led to restriction of competition by overstating planned volumes of electric energy consumption in the market. This, in turn, led to an increase in the price on the wholesale electricity market in the First price zone, including for generator-suppliers and guaranteeing supplier that are part of the group of entities of CJSC KAS.

This strategy of companies was established by the FAS Russia based on the results of two dawn raids and based on the complex mathematical modeling and analysis of the behavior of violators, as well as the assessment of the economic consequences for consumers conducted with the participation of the Association "NP Market Council".

The group of persons "T plus" was fined in the amount of 870 million rubles (11 440 000 euro).

### *Collusion in the market for the supply of oil submersible cable*

In 2015, the FAS Russia initiated proceedings against JSC Cable Factory Kavkazkabel, OJSC ROSSKAT, LLC Cable Holding Alliance, Kamskiy Kabel LLC, Uralkabel JSC, Sibkabel JSC for the conclusion and implementation of an anti-competitive agreement, which provided for the division of the market for the supply of oil submersible cable (with the exception of a high-temperature cable) in 2014-2015, with the attribution of an approximate market share to each participating organization and the rejection of a competitive method for determining the price of products.

In 2016, the FAS Russia issued a decision on violation of the Law "On Protection of Competition", which was supported in courts in 2017. The revealed anticompetitive agreement is the largest on the commodity market in the Russian Federation in terms of the volume of sales of goods, the range of goods sold and the group of sellers. The total amount of fines imposed was 260 million rubles (3 420 000 euro). On the materials sent to the bodies of internal affairs, a criminal case was opened.

### *Bid rigging in supply of medicines*

The FAS Russia received letters from the FAS Regional Office in Karelia about the presence of signs of violation of the antimonopoly legislation in the actions of LLC Rosmedkomplekt, LLC Etalon-Trading, LLC Market Pharm, LLC PIK when bidding

for the supply of pharmaceuticals and medical products for needs of medical institutions.

The FAS Russia conducted dawn raids of five economic entities, during which the following evidence was found: 1) tables with the distribution of auctions between the parties to the agreement, drawn up before the procurement procedures; 2) scanned copies of documents (including constituent documents) of competing organizations required for filing an application for participation in tenders; 3) tables with the expected revenues of organizations from participation in an anti-competitive agreement.

Based on the results of the verification of the arguments stated in the applications, the FAS Russia concluded that in the actions of LLC Rosmedkomplekt, LLC Etalon-Trading, LLC Market Pharm, LLC PIK, JSC Intermedservice, LLC Service-Farm, LLC Intermedservis Pharma, there are signs of violation of Clause 2 Part 1 Article 11 of the Law on Protection of Competition, which were expressed in the conclusion of and participation in an anti-competitive agreement when holding open auctions in electronic form on the right to conclude state contracts for the supply of pharmaceuticals, infant and dietetic food, medical devices, automobiles, refrigeration and freezing equipment for the needs of medical institutions in 2013-2016.

A number of defendants in the case recognized the fact of the conclusion and implementation of the anti-competitive agreement and took advantage of the program of exemption from administrative responsibility (leniency program). For companies that have declared second and third to commit the specified administrative violation, the minimum administrative fine was established.

The case materials were forwarded to the Russian Ministry of Internal Affairs to consider the initiation of criminal proceedings.

### *Price coordination by Apple*

In 2016, a case was initiated against the group of companies Apple on the grounds of violation of Part 5, Article 11 ("coordination of economic activities of economic entities") of the Law "On Protection of Competition". Commencement of the case was driven by the appeal of a citizen in October 2015 on the establishment of the same prices for new models of smartphones Apple iPhone 6s and iPhone 6s Plus by 16 major resellers.

Investigation that was carried out by the Federal Antimonopoly Service of Russia in 2016 using information obtained from resellers showed that since the start of official sales of the Apple iPhone 5s, iPhone 5c, iPhone 6, iPhone 6 Plus, iPhone 6s and iPhone 6s Plus in Russia, most resellers fixed and maintained the same prices for these products during nearly 3 months. At the same time, the prices that were set coincided

with prices from press releases and price lists published and distributed by LLC "Apple Rus" employees from e-mail addresses in the apple.com domain.

The decision regarding LLC "Apple Rus" was made in 2017. As part of the case, the illegal practice of coordinating the economic activities by Russian smartphone resellers that was carried out by a Russian subsidiary of the Apple group, was considered and stopped. During the consideration of the case, prices for Apple's smartphones significantly decreased, LLC "Apple Rus" developed and implemented a new compliance policy in the company as well as paid fine.

## **2.2. Actions against abuses of dominant positions**

### 2.2.1. Summary of activities of competition authorities and courts

In 2017, the FAS Russia received 23,824 applications related to the abuse of market power: 847 cases were initiated (1340 in 2016, 3059 in 2015), of which 331 were terminated due to non-confirmation of the fact of violation. In consideration of the remaining cases, 516 decisions recognized the violation (713 in 2016, 2479 in 2015), 330 rulings were issued (490 in 2016, 1818 in 2015). 234 decisions were appealed in court (316 in 2016, 753 in 2015). The court adjudicated that 42 decisions were lawful (99 in 2016, 192 in 2015) and nullified 8 decisions (6 in 2016, 14 in 2015); the rest are in the stage of judicial review.

### 2.2.2. Description of significant cases

#### *Creation of discriminating conditions by Microsoft*

In 2017, in accordance with the statement of the company Kaspersky Lab, the FAS Russia considered the case on the violation of antimonopoly legislation against Microsoft Corporation. Practices of the Microsoft Corporation aimed at providing benefits to its own antivirus application and encouraging users to abandon third-party antivirus applications were reviewed.

Circumstances and commodity markets that had not previously been subject to review by the antimonopoly authority were examined.

In the course of case consideration, the multilateral market of operating systems for stationary devices (computers and laptops) of end users, trial versions of operating systems for stationary devices (computers and laptops) for adaptation of third-party

application software was analyzed. The analysis found that Microsoft Corporation, having a dominant position in this multilateral commodity market, has an impact on related commodity software application markets, as it owns the operating system (Microsoft Windows) for which the application software is created.

FAS Russia issued two warnings to Microsoft Corporation regarding the termination of actions (inaction) that contain signs of violation of the antimonopoly legislation (abuse of dominant position – Article 10, and unfair competition – Article 14 of the Law on Protection of Competition).

In consequence of the execution of warnings, Microsoft Corporation made the necessary adjustments to the "Antimalware Platform Requirements". This document regulates the interaction between Microsoft Corporation and independent vendors of antivirus software. Moreover, Microsoft Corporation eliminated all calls for the abandonment of third-party software.

Execution of the requirements of the FAS Russia created equal conditions for developers of antivirus products across not only the Russian Federation, but also other territories where Microsoft Corporation is present, thereby ensuring effective competition in the global information technology market.

#### *Imposition of the disadvantageous agreement conditions in the colar-tar asphalt market*

At the end of May 2017 the FAS Russia completed the consideration of the case in the colar-tar asphalt market against JSC "OK RUSAL TD" and OJSC "MMK". In carrying out this investigation, the antimonopoly authority faced an example of a bilateral monopoly, when both parties have the ability to exert a decisive influence on the conditions for the circulation of commodities in the market. The parties, forcing each other to maintain the most beneficial conditions for themselves, created risks to the work of both companies. For the first time in Russian antitrust practice, in resolving a conflict between a monopsonist and a monopolist, the FAS Russia applied an unconventional approach, issuing simultaneously two warnings to the defendant and the applicant. The likelihood of antimonopoly sanctions forced JSC "OK RUSAL TD" and OJSC "MMK" to agree on mutually beneficial terms for the supply of colar-tar asphalt for a long-term period. The application of this approach allowed to avoid the violation of the balance of market power within a bilateral monopoly and to develop a model of interaction between colar-tar asphalt market participants for future periods.

#### *Monopolistically high price setting and its maintenance*

The FAS Russia initiated cases on the signs of violation of the antimonopoly legislation with respect to nine companies providing services for loading, unloading and storage of cargo in the seaports of the Russian Federation. The basis for the initiation of cases were the results of research on the stevedoring services market for the period from 2013 to 2015, conducted by the Decree of the President of the Russian Federation and the Government of the Russian Federation.

The FAS Russia came to the conclusion that in absolute terms tariffs independently established by stevedore companies in Russian ports exceed the level of tariffs for similar services in comparable foreign ports. It was established that services for cargo transshipment in ports are often available to consumers only when concluding contracts with certain shorelines. In addition, after examining the received materials, the FAS Russia drew attention to low rental rates, for which the state port infrastructure is transferred to private companies for use.

The FAS Russia issued prescriptions to companies to eliminate violations, as well as obliged to return illegally received income in the amount of 17 billion rubles (223 428 000 euro) to the federal budget.

## **2.3. Mergers and acquisitions**

### 2.3.1. Summary of activities

In 2017, the FAS Russia considered 1,103 pre-merger notifications and 128 post-merger notifications of economic entities (1379/83 in 2016, 1749/165 in 2015) of which 1,209 pre-merger and post-merger notifications were satisfied (1441 in 2016, 1864 in 2015), including 30 with the issuance of prescriptions (39 in 2016, 66 in 2015) and 1 after satisfying certain conditions. 144 applications filed during the period under consideration were transferred to Phase II of the review (100 in 2016, 180 in 2015). At the same time, the competition authority refused to approve 22 transactions (21 in 2016, 50 in 2015).

### 2.3.2. Description of significant cases

*Uber/Yandex.Taxi deal*

In 2017, the FAS Russia approved the merger (joint venture) of Uber and Yandex.Taxi<sup>19</sup>.

The FAS Russia conducted an analysis of the market of services for rendering information interaction between passengers and taxi drivers (the market of taxi aggregators), as well as hold a number of meetings with participants of the Russian markets of taxi and taxi aggregators.

A survey of market participants showed that administrative barriers to entry are characterized as easily overcome.

Given the fact that the market of taxi aggregators is sufficiently young and significant changes and modernization take place in this market all the time, the FAS Russia concluded that currently there are no dominating organizations but Yandex and Uber have signs of dominance that may arise in the future.

In order to improve the conditions for the development of competition in the market for taxi aggregators and related markets, the FAS Russia issued an order to Yandex, Uber and their joint venture to implement actions aimed at optimizing the relationship between aggregators, taxi drivers and passengers. In particular, companies are required to provide the most complete and accessible information to users about a legal entity that carries out transportation with the preservation of the history of trips; do not impose a ban on partners, drivers and passengers to work with other taxis aggregators.

As part of the merger, the FAS Russia consulted with the competition authorities of Kazakhstan and Belarus based on the waivers received from the companies.

### *Bayer/Monsanto deal*

Following the examination of a request of Bayer to acquire 100% of the voting shares of Monsanto, the FAS Russia concluded that the transaction could create significant risks to competition in the Russian market that have to be eliminated at the stage of its approval of the merger.

In assessing the impact of the transaction on the state of competition in the Russian market, the FAS Russia proceeded from the premise that the merged company will have significant opportunities to produce biotechnological seeds with specified characteristics, as well as accumulated large data sets and key algorithms in the field of digital agriculture – this can effectively increase its presence in the agro-industrial complex of the Russian market in the field of digital agriculture, which offers agricultural producers "package" agro technological decisions.

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<sup>19</sup> <http://en.fas.gov.ru/press-center/news/detail.html?id=52562>

This can lead to a sharp increase in the presence of a merged company in the Russian market, up to the dominance on all affected commodity markets and creation of high barriers to entry for companies that do not simultaneously possess such resources and capabilities.

After consultations with concerned federal executive authorities, the business community, science representatives and participants of the transaction in November 2017 the FAS Russia put forward preconditions for companies, aimed at developing potential competition from Russian companies in the seed markets and in the field of digital agriculture as the most balanced solution meeting the objectives of protecting competition and not creating insurmountable obstacles to the transaction in question.

Behavioral requirements<sup>20</sup> include the transfer of breeding technologies required to create new varieties and hybrids that are applicable in Russian agro-climatic conditions, based on a non-exclusive license, and access to databases in the field of digital farming for Russian companies. In accordance with Russian legislation, merging companies have 9 months to fulfill preconditions before the FAS Russia takes a final decision on the results of a merger review.

#### *TechnoNikol / ZNOiM deal*

In the course of 2017, the FAS Russia considered a transaction for the acquisition by the TechnoNikol group (one of the largest producers of mineral stone wool in the Russian Federation) the JSC "ZNOiM" of a similar type of activity.

Analysis of the state of competition in the mineral stone wool market showed that the actualization of this transaction will lead to the emergence of a dominant position of the acquirer (its group) in the market within the borders of the Central and North-Western districts of the Russian Federation and increase concentration in the initially highly concentrated market. The FAS Russia came to a decision to refuse to satisfy the petition.

When deciding to refuse to carry out a transaction, the FAS Russia was also studied the best examples of by foreign practice, namely the Horizontal Merger Guidelines promulgated by the Antitrust Division of the United States Department of Justice (DOJ) in conjunction with the Federal Trade Commission (FTC) in 2010, according to which mergers that increase the HHI by more than 200 points in highly concentrated markets raise antitrust concerns, are presumed to be likely to enhance market power and are subject to prohibition, except when evidence are presented that there is no strengthening of market power as a result of the merger.

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<sup>20</sup> <http://en.fas.gov.ru/press-center/news/detail.html?id=52417>

The TechnoNikol Group re-applied to the FAS submitting in addition evidences of the admissibility of the announced transaction and assuming a number of obligations, including obligations to finance the development of heat and soundproof materials.

Evaluation of the effectiveness of the merger made it possible to conclude that this is beneficial for consumers, given, among other things, the likely alternative scenario - the closure of the enterprise (bankruptcy)<sup>21</sup>.

Taking into account the above facts, the FAS made a decision on the approval of this merger with the simultaneous issuance of remedies containing behavioural conditions aimed at ensuring competition.

## **2.4. Actions against unfair competition**

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

The total number of applications considered in order to prevent and combat unfair competition (Article 14 "Prohibition of unfair competition" of the Law on Protection of Competition) in 2017 was 3,466 (3623 in 2016, 3439 in 2015). 409 cases were initiated (453 in 2016, 1113 in 2015). In 269 cases, a decision was made to recognize the violation (288 in 2016, 841 in 2015) and 169 prescriptions were issued (211 in 2016, 512 in 2015).

There were 67 appeals against the decisions taken by the FAS Russia in 2017 (51 in 2016, 147 in 2015). The court found 10 decisions to be lawful (13 in 2016, 40 in 2015), 1 decision partially invalid (1 decision invalid in 2016, 8 in 2015) and the remaining decisions are in the stage of judicial review.

### 2.4.2. Description of significant cases

#### *Creation of confusion*

In 2017, the FAS Russia recognized the actions of LLC "SanBonsai", associated with the introduction in 2012 of a soy sauce in the Russian Federation in the packaging of 150 ml, which in their appearance (design) is similar to the design of bottles of soy sauce "KIKKOMAN", as an act of unfair competition.

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<sup>21</sup> A similar approach in considering transactions in the EU is reflected in the White Paper "Towards more effective EU merger control".

The design of the bottle-dispenser of the company "Kikkoman Corporation" (Japan) has gained wide popularity in the world, including Russia, with reference to soy sauce "KIKKOMAN". It was nominated for winning places at awards and competitions in the field of design, widely covered in the articles of various popular magazines.

FAS Russia received expert opinion of the Union of Designers of Russia and an analytical report on the determination of the opinion of consumers of soy sauces about the similarity/difference in packages of soy sauce "KIKKOMAN" and "SANBONSAI", which confirmed that a significant number of consumers believe that soy sauces "KIKKOMAN" and "SANBONSAI" are similar in appearance, and they could take the sauces considered as a product line of one manufacturer or confuse these sauces when buying.

This decision has a precedential value due to the fact that it is the first one where actions of a person are found to violate clause 2 of Article 14.6 of the Law "On Protection of Competition", namely, the prohibition on creating confusion in the market by introducing a product that simulates the appearance of the competitor's one, and that it was supported by the courts of two instances.

#### *Misappropriation of exclusive rights for the trademark*

The FAS Russia admitted the actions of "Black Friday" LLC of acquiring and using the trademark BLACK FRIDAY as an act of unfair competition.

The case was initiated on the application of the Association of Internet Commerce Companies (AKIT), a union of e-commerce market participants, including Ozon, Enter, KupiVIP, OTTO, Group, lamoda, re: Store, Yulmart, M.Video, Media Markt-Saturn, Svyaznoy, Sportmaster, Eldorado and others.

Unfair competition on the part of "Black Friday" LLC resulted in the acquisition and use of exclusive rights for the trademark BLACK FRIDAY, while on the date of priority of this sign other online stores already used the designation. The designation BLACK FRIDAY is borrowed and not original for the list of services for which a disputed trademark is registered.

The FAS Russia came to the conclusion that the registration of "Black Friday" LLC the trademark BLACK FRIDAY is aimed, foremost, at monopolizing the market for services of the aggregators by preventing other economic entities from entering it.

#### *Discrimination of competitors*

The FAS Russia admitted the actions of the mobile operator Tele2 related to the "Season Open" ("hunting season") campaign on the website, as an act of unfair competition.

The case was initiated on the request of mobile operators Beeline, MTS and MegaFon, who considered that the call for potential participants of the "Season open" campaign: "Find dishonesty, hand them over to us and connect to Tele2, who is honest. Get honest services as a gift" already in its wording implies the presence of dishonesty.

The FAS Russia, taking into account the views of the members of the Expert Councils on Advertising and Unfair Competition, concluded that Tele2's actions were aimed at discrediting competitors, creating a negative perception of the services of other mobile communication operators, and doubts about the operator's honesty in providing services. Such actions violate the principles of fair competition.

For the committed anticompetitive practices, a fine was imposed on Tele2.

## **2.5. Actions against public authorities' anticompetitive conduct**

### 2.5.1. Summary of activities of competition authorities and courts

In accordance with Articles 15 and 16 of the Law on Protection of Competition, the FAS Russia is empowered to monitor the actions of public authorities, including anticompetitive acts and actions (inactions) taken by them, as well as agreements restraining competition or concerted actions. For violation of the prohibitions established by these articles, the FAS Russia has the right to make decisions on sanctions against the authorities.

In 2017, the FAS Russia considered 6,078 applications (Article 15, acts and actions that restrain competition) (5780 in 2016, 5301 in 2015) and 531 cases were initiated (498 in 2016, 2885 in 2015). In 436 cases, a decision was made to recognize the violation (336 in 2016, 2542 in 2015) and 316 rulings were issued (213 in 2016, 1958 in 2015). 109 decisions were appealed in court (94 in 2016, 430 in 2015). Of these, 20 decisions were found lawful (16 in 2016, 126 in 2015), 10 invalid (3 in 2016, 15 in 2015) and the remaining decisions are in the stage of judicial review.

In 2017, 435 applications regarding anticompetitive agreements with the participation of authorities were received (Article 16, restricting competition agreements and concerted actions) (437 in 2016, 371 in 2015). 239 cases were initiated (238 in 2016, 224 in 2015). In 181 cases, a decision was made to recognize the violation (196 in 2016, 192 in 2015) and 106 prescriptions were issued (130 in 2016, 162 in 2015). 61 of the decision were appealed in court (56 in 2016, 44 in 2015). Of these, 5 decisions

were found lawful (8 in 2016, 3 in 2015), 2 invalid (2 in 2016, 0 in 2015) and the remaining decisions are in the stage of judicial review.

## 2.5.2. Description of significant cases

### *Collusion to impede development and access to infrastructure*

The FAS Russia established that an agreement was signed between PJSC "Gazprom", LLC "Gazprom Mezhrefiongaz", the Governor of the Samara Region and the Ministry of Energy and Housing of the Samara Region aimed at creating a dual gas transportation infrastructure for gas supply to the VAZ combined heat and power plant (CHPP). The creation of parallel infrastructure was not determined by any objective reasons. The change in the gas supply scheme for the VAZ CHPP was aimed at transferring VAZ's CHPP from the existing gas-distributing organization to another one, the member of PJSC "Gazprom Group", and to eliminate the independent gas-distributing organization from the gas supply and gasification market.

The described agreements, apart from the elimination of certain economic entities from the market, lead to an overestimation of the infrastructure component in the final cost of production, create obstacles to development and access to infrastructure.

Case law has been created and implemented in accordance with which the illegality of concluding agreements between economic entities and authorities aimed at creating an economically inconvenient (double, parallel) infrastructure that leads to increased costs of industry and the cost of related goods has been confirmed.

### *Illegal refusal to set a tariff*

The FAS Russia received a complaint from JSC "Urals Heat Network Company" against the actions of the regional governmental body (the Ministry of Tariff Regulation and Electric Power Industry of the Chelyabinsk region), which was expressed in the refusal to set a tariff for the company.

The FAS Russia issued a warning to the Ministry, but it was not executed on time. In this regard, the FAS Russia initiated a case against the authority on the grounds of violation of the antimonopoly legislation and found it violated the Federal Law "On Protection of Competition" (Clause 2 Part 1 Article 15). The Ministry unreasonably deviated from making a decision on the tariff application of JSC "Urals Heat Network Company".

The FAS Russia issued a Ruling, on the basis of which the Ministry had to stop the violation and establish a tariff in relation to JSC "Urals Heat Network Company".

### *Collusion in the sphere of purchasing construction materials*

The Primorsky Regional Office of the FAS Russia revealed an anticompetitive agreement between the Vladivostok City Administration, the Vladivostok City Road and Improvement Department, MUPV "Roads Vladivostok" and LLC "Vostokcement" on the purchase of construction materials.

The participants of the cartel appealed the decision of the antimonopoly authority in court, and the courts of the first and the second instances satisfied the applicant's demands. However, on March 9, 2017 the court of cassation referred the case for a new consideration, repealing previous judicial acts.

The Fifth Arbitration Appeal Court of Primorsky Krai left the decision of the Primorsky Regional Office in force.

In the course of the new consideration, the Arbitration Court of Primorsky Krai agreed with the antimonopoly authority and left the judgment in force.

Materials of the antimonopoly case were transferred to the Investigative Committee of the Russian Federation and became the basis for initiating criminal proceedings against the former Mayor of Vladivostok, the former director of the MUPV "Roads Vladivostok" and the general director of the JSC "Vostokcement". During the investigation, all the defendants in this case were arrested, and the Mayor resigned.

### *Violation of the tender for the provision of services*

In 2016, the Ministry of Economic Development of Russia held a tender for the development and maintenance of the Administrative Reform Web Portal in the Russian Federation. LLC "Ensign" filed a complaint to the FAS Russia.

During its consideration, it was found that the procedure for assessing and comparing applications for participation in the contest was established inappropriately.

Thus, according to one of the non-price criteria of assessment accounted for 50%, the customer took into account the proposals submitted by the participants of procurement, aimed at "improving the quality characteristics of the procurement object." According to this indicator, the bids were compared with each other in order to evaluate them. The highest score, as to the tender documentation, was intended for the application with the best conditions for the performance of the contract and the largest number of "reasonable" and "useful" offers.

At the same time, the documentation did not properly describe the concepts of utility and validity, and it was also impossible to determine which proposals for the procurement object exactly that improve its quality characteristics would be evaluated

by the tender commission and, accordingly, should be submitted by the procurement participants in order to obtain the maximum score.

The FAS Russia prescribed the Ministry of Economic Development of Russia to clarify the evaluation procedure and continue the tender after making appropriate changes to the tender documentation. The Ministry did not agree with the decision and prescription of the antimonopoly body and appealed them in court. However, during 2017 the courts of all the three instances consistently refused the applicant's requests, supporting the position of the FAS Russia.

## **2.6. Summary of courts' action**

### **2.6.1. Summary of activities of competition authorities and courts**

In 2017, attempts were made to appeal 688 decisions of the FAS Russia in the area of competition protection (676 in 2016, 1577 in 2015), of which 531 at the end of 2017 were in the stage of judicial review. The court supported the decisions of the competition authority in 114 cases (174 in 2016, 430 in 2015); 7 decisions were held partially invalid (5 in 2016, 15 in 2015). Revocation of the FAS's decisions was recognized to be necessary in 31 cases (15 in 2016, 40 in 2015).

47 539 proceedings for administrative offences in the field of antimonopoly regulation were instituted in 2017 (42 299 in 2016, 40 483 in 2015). 36 803 decisions on the imposition of fines in a total amount of 4 168 447 170 rubles (54 785 200 euro) were issued (31 398 decisions in a total amount of 4 276 991 649 rubles (56 211 800 euro) in 2016, 28 982 decisions in a total amount of 66 323 379 800 rubles (871 677 000 euro) in 2015).

## **Part 3. Conducted market studies**

Since 2012, the Commission for the analysis of commodity markets operates at the FAS Russia, which includes representatives of the structural units of the Central and Regional offices of the FAS Russia, in cooperation with the Public Advisory Council and expert councils of the FAS Russia, all other government authorities, as well as representatives of business, public associations and scientific organizations. The Commission's functions include consideration of proposals by representatives of the FAS Russia and drafting plans of the agency's work for the analysis of commodity

markets, guidelines for the relevant analyzes and their approval, as well as reviewing the materials of the analysis of commodity markets.

The Commission approves the FAS Work Plan for analyzing the state of competition in commodity markets, which specifies the list of commodity markets for an annual survey.

The Head of the FAS Methodological Council and the FAS Commission for the analysis of commodity markets is Andrey Tsyganov, the Deputy Head of the FAS Russia.

In accordance with the amendments to the Russian competition legislation that came into force in 2016 with the adoption of the "fourth antimonopoly package", market research (or "market analysis" in accordance with the Russian conceptual construct) is conducted when considering every single case of violation of antimonopoly legislation.

In addition, the FAS Russia conducts market researches to assess competitive situation in socially important markets.

### **3.1. Pharmaceutical market**

According to the Order of the President of the Russian Federation No. Pr-1452 of July 27, 2016, the FAS Russia continued to conduct an international comparative study of the prices of medicines from the list of vital and essential medicines.

As a result of the international comparative study of medicine prices and the undertook measures, the FAS Russia managed to achieve a significant reduction of the registered maximum selling price limits for 551 items of expensive and essential medicines, which resulted in significant budget savings. The decrease in prices was 50% on average, while in rubles the largest decrease was 240 000 rubles (3 155 euro) from one consumer package.

At the same time within the framework of the draft Order of the Government of the Russian Federation "On state registration and re-registration of the maximum selling prices for the medicines included in the list of vital and essential medicines", it is planned to review all previously registered prices for medicines during 2018, including those based on minimum prices in reference countries.

### **3.2. Banking market**

By the Decree of the President of the Russian Federation No. 618 of December 21, 2017, it was determined that one of the fundamental principles of the state policy for the development of competition is the reduction of the share of economic entities established or controlled by the state and municipal entities in the total number of economic entities operating on commodity market.

The results of the FAS Russia review on the state of competition in the banking services market in 2017 for the period from 2011 to the first half of 2017 indicate a worsening of the competitive environment and existing non-market tendencies to strengthen positions on the market of large banks, more than half of the shares (shares in authorized capital) of which belong to the Russian Federation or to the Bank of Russia (hereinafter - state banks).

In particular, as it was found, on the federal level in all such segments 1-2 groups of state banks occupy a predominant share, and this share along with the third-largest player, which usually has a small share, has steadily increased (by 2-16%) and depending on the segment was approximately 59-64% in the first half of 2017.

The evaluation of individual factors in the dynamics testifies to a rather low level of competition between market leaders themselves due to the relatively stable position of one of the state banks, and practically no ability for the remaining players to compete with large state banks as a whole.

Regionally the number of markets with an undeveloped competitive environment and the leadership of state banks is also steadily growing (from 9-27 markets in 2011 up to 18-53 markets in the first half of 2017).

As to the FAS Russia, such circumstances create the need to implement a set of measures, primarily aimed at preventing a further increase of the state's share in the banking system.

For this purpose, the FAS Russia has already developed proposals to introduce appropriate amendments to the legislation of the Russian Federation, according to which are limited:

- the acquisition by the Russian Federation, subjects of the Russian Federation, municipal entities and any affiliated persons as a result of one or more transactions of shares (shares in the authorized capitals) of banks, if as a result of such transactions the Russian Federation, subjects of the Russian Federation and municipal entities, as well as affiliated persons, will be able to dispose of more than 25% of bank shares;
- the receipt by the Russian Federation, subjects of the Russian Federation, municipal entities and any affiliated persons of rights that allow to determine the conditions for carrying out business activities of banks on the basis of agreements between shareholders (participants) of the bank.

In 2017, the FAS Russia approved the Action Plan ("Road map") "Development of competition on the financial services market" (hereafter - the Road map)<sup>22</sup>, agreed by the Central Bank of the Russian Federation (the Bank of Russia).

During the elaboration of the Road map, the main activities in the financial and related markets were selected. On their basis 21 largest professional associations of financial organizations were subsequently selected to participate in the survey on filling the Road map.

Taking into account the proposals of the associations of financial organizations and their own materials, the FAS Russia developed a draft of the Road map, including different kinds of activities: from measures to prevent unfair market practices to measures to prevent and stop anticompetitive interference into the functioning of the financial market by public authorities.

Seven sectoral sections and one general section were laid in the Road map, connected with the improvement of antimonopoly regulation approaches on the financial markets. Each of them includes forms, deadlines and expected results from performing the primary tasks set for the antimonopoly authority in the field of competition development on financial services markets.

The approval of the Road map is a significant step as it is the first document containing a set of measures coordinated with the Bank of Russia to develop competition on the financial services market. Until now, previously developed Road maps did not include similar events on the financial markets. Work on the areas contained in the Road map, as well as its further filling will be the priority tasks for the FAS Russia.

Thus, the implementation of the activities of the Road map will allow:

- to reduce the possibility of influence on the value terms of circulation of services for the provision of consumer loans of dominant creditors;
- to ensure competition on the market of payment services when citizens pay for goods (works, services), as well as when they receive payments from the budget system and state extra-budgetary funds;
- to reduce the possibility of the impact of dominant representatives of insurance organizations on the activities of competitors and the state of competition on the market;
- to create conditions for preventing the spread of unfair practices on the financial services market, including those that violate antimonopoly legislation.

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<sup>22</sup> <https://fas.gov.ru/documents/561715>

## **Part 4. International cooperation**

### **4.1. Interaction with international organizations**

The most important direction of the FAS Russia's work is active cooperation with relevant international organizations in order to identify the best practices and improve the enforcement of Russian competition legislation, including the Organization for Economic Cooperation and Development (OECD), the International Competition Network (ICN), the United Nations Conference on Trade and Development (UNCTAD), the Asia-Pacific Economic Cooperation (APEC) Forum.

In 2017, the FAS Russia became a participant of all the meetings of the Competition Committee, as well as the meetings within the Investment Committee and the OECD Network of Economic Regulators.

Through the OECD, the FAS Russia also became a co-organizer of a number of workshops on "Antimonopoly Compliance and Corporate Governance". The events took place in Moscow, St. Petersburg and Kazan, attended by the representatives of Russian and foreign companies carrying out their activities in the Russian Federation.

In 2017, the FAS Russia continued its cooperation with the OECD-GVH Regional Centre for Competition in Hungary (RCC). Traditionally, one of the RCC workshops took place in Moscow and in 2017 it was devoted to the definition of commodity markets for the purposes of antimonopoly enforcement.

The year of 2017 was characterized by the active promotion of Russian initiatives in the field of competition policy on the margins of the UNCTAD. The initiatives prepared by the FAS Russia were aimed at creating effective mechanisms to counter restrictive business practices of transnational corporations. In order to promote this idea, the FAS Russia developed a draft instrument to counter unfair practices of TNCs and initiated its inclusion in the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. Currently the draft is being actively discussed within the framework of the Discussion Group established on the basis of the UNCTAD.

In 2017, the representatives of the FAS Russia took an active participation in the ICN events, including the organization and holding of meetings of the ICN Working Groups and the information content of these events, as well as in the ICN Annual Conference.

During the ICN Annual Conference, the representatives of the FAS Russia were among the key speakers on the issues of international cooperation of competition authorities, compliance with legislation on the placement of state procurement and the introduction of ICN information products.

Besides, within the framework of the Conference, the ICN Coordinating Committee approved a number of new recommendations prepared by the ICN Working Groups. The ICN Working Group on Cartels presented a report on the best practices for establishing fines for cartel violations, as well as the list of effective leniency programs, in the preparation of which the FAS Russia played an important role along with the competition authorities of South Africa, Brazil, Turkey and the Netherlands.

#### **4.2. Bilateral and multilateral cooperation with competition authorities**

In 2017, we signed Memorandums of cooperation with the antimonopoly bodies of Uzbekistan, Serbia, China (NDRRC). For the development of the already signed bilateral cooperation agreements, cooperation programs with antitrust authorities of Brazil, Finland and China were signed for two-year periods.

As part of the implementation of previously concluded bilateral documents, a number of the meetings of the FAS Russia experts were held in competition authorities of Bulgaria, Finland, Hungary, Norway and Serbia. The representatives of several competition authorities from countries like Austria, Belgium, Belorussia, Bulgaria, Kyrgyzstan, Turkey and the Czech Republic took part in an annual internship program organized by the FAS Russia, which took part in Kazan in April 2017 on the basis of the FAS Russia's Training Center on "Antitrust regulation and combating cartels in the retail trade".

In the framework of the CIS, the EEU and the BRICS, mechanisms for bilateral interaction in law enforcement were applied more than 20 times, including consultations with the antimonopoly bodies of Belarus and Kazakhstan in the consideration of the Yandex.Taxi/Uber deal; with the BRICS countries, and the European Commission on Bayer/Monsanto transaction. Consultations on both transactions were conducted on the basis of the waivers received from the companies.

In May 2017, representatives of the FAS Russia took part in the 7th St. Petersburg International Legal Forum (hereinafter - the Forum). Over the past five years, the FAS Russia has been a regular participant of the Forum. Thanks to the forum side, it was possible to attract the attention of a wide range of international experts interested in obtaining information on the development of modern competition legislation and on the issues of antimonopoly regulation both in the Russian Federation and in the BRICS and EEU.

Within the framework of this Forum, the FAS Russia formed a large-scale thematic track under the general title "Antimonopoly Regulation of the Global Economy: Challenges for Regional Associations" to discuss issues related to the interaction of competition authorities in such regional associations as BRICS, CIS, EEU, etc. The

antimonopoly track also included discussions on ensuring competition in the pharmaceutical and food markets, in the digital sector.

In addition, the FAS Russia annually organizes the "Russian Competition Week" - a major international event with the participation of representatives of government bodies, business, international organizations and integration associations, heads of competition agencies of the world.

The Russian Competition Week 2017<sup>23</sup> was held in Veliky Novgorod and included the organization of a number of venues for international discussions, including the meetings of the Interstate Council on Antimonopoly Policy and the Headquarters for joint investigations of violations of the antimonopoly legislation of the CIS member states, a meeting of international Working Groups on the development of competition in the ICT sector, in the pharmaceutical and food industries, a Round Table on combating cartels.

Therefore, at the end of 2017, Moscow hosted the III Annual International Conference "Antimonopoly Policy: Science, Practice, Education"<sup>24</sup>, organized by the FAS Russia along with the Skolkovo Innovation Center. The key topic was the issues of digital economy and competition policy. More than 300 experts from different countries took part in the Conference. Representatives of academia, higher teaching staff of leading universities, experts of international level, representatives of innovative companies, heads of foreign Competition Agencies and international organizations, as well as representatives of the Central Office and Regional Offices of the FAS Russia became the speakers and participants of the Conference.

### **4.3. Development of competition law and enforcement at regional level**

#### *CIS*

In 2017, the CIS countries noted the special need to consolidate efforts to combat international cartels. The Heads of the Governments of the CIS countries signed the Statement on Consolidation of Efforts of the World Community for Effective Counteraction to International Cartels<sup>25</sup>, which was used as an official document of the 72nd session of the UN General Assembly.

The Statement firmly condemns international cartels in all forms and manifestations, confirms the need to form a global international mechanism to counter cartels, in

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<sup>23</sup> <http://en.fas.gov.ru/documents/documentdetails.html?id=15314>

<sup>24</sup> <http://en.fas.gov.ru/documents/documentdetails.html?id=15341>

<sup>25</sup> <http://en.fas.gov.ru/press-center/news/detail.html?id=52437>

particular, by drafting and adopting a relevant international document, which can be the Anti-Cartel Convention.

The draft Convention was supported by the CIS member-states and promoting this initiative at international sites will enhance the reputation of the regional CIS association as an association actively involved in shaping the global agenda.

Besides, competition authorities continued active cooperation within the framework of the Interstate Council for Antimonopoly Policy, which is the sectoral cooperation body of the CIS, and the Headquarters for Joint Investigations of violations of antimonopoly legislation created on its basis.

### *EEU*

During 2017, the FAS Russia cooperated with the Eurasian Economic Commission (EEC) on 9 of its investigations, carried out the procedures provided by the EEU law, including the provision of necessary information to the EEC, the implementation of motivated EEC requests for procedural actions and for participation in the consideration of cases.

Another important area of cooperation between the antimonopoly authorities of the EEU member states over the past year was the improvement of the legal and regulatory basis for competition policy aimed at eliminating the gaps identified as a result of the practical activities of the EEC.

A set of amendments to the Treaty on the Eurasian Economic Union of May 29, 2014, that was approved by the EEU member states, is connected with the inclusion of provisions of so-called soft law in it. These changes are aimed at empowering the EEC to prevent violations of general rules of competition, in particular, to issue warnings to stop actions which contain signs of violations of general rules of competition and to warn against inadmissibility of actions that could lead to violation of general rules of competition.

The FAS Russia also takes an active part in the work of the Working Group on the Formation of General Approaches to Regulation of Pharmaceuticals Circulation within the framework of the EEU (hereinafter - the Working Group) established to prepare the legislation regulating the circulation of medicines in the territory of the EEU.

In pursuance of the Agreement on uniform principles and rules for the circulation of medicinal products within the framework of the EEU dated December 23, 2014, the Working Group developed draft "second level" acts necessary for the launch of the functioning of the general pharmaceutical market of the EEU. They form a system of interrelated acts regulating the requirements for a medicinal product as a pharmaceutical product - for its safety, quality and efficiency. Simultaneously, the acts regulate the requirements for the medicine and as an object of legal regulation - in terms of its admission to the market, accounting and withdrawal from the market. The

drafts of these documents were developed based on Russian experience and approaches of the FAS Russia to regulation of pharmaceuticals circulation, and were approved during the meeting of the EEC Council in 2016.

At the same time, the Working Group is currently developing and agreeing on the "third level" acts of the EEU, envisaged in the drafts of the "second level" acts in the sphere of medicinal products circulation in accordance with the Plan of preparation and approval by the public authorities of the Russian Federation of documents to be developed in accordance with a list of draft EEC documents on regulation of the general market of medicines within the framework of the EEU for 2016-2018. These acts will provide patients of the EEU countries with safe medicines of high quality.

### *BRICS*

In 2017, active work was carried out in the BRICS format: within the framework of the BRICS Coordinating Committee, established in the previous year, which determines the prospective areas of work of the antimonopoly bodies of the BRICS, in particular in the framework of the joint working groups on pharmaceuticals, global food chains, the automobile industry, digitalization.

In 2017, V BRICS International Competition Conference (hereinafter - the Conference) was held in Brasilia (Brazil). To date, the Conference is a key event in the sphere of competition policy of the BRICS countries, allowing for a high-level discussion of the state of competition policy and legislation in the BRICS countries, on the basis of the world's best practices, to develop agreed approaches to their improvement, to identify further joint actions to identify similar violations of antimonopoly legislation and problems of competition development in socially important markets of the BRICS countries. The Conference takes place every two years, alternately in each of the BRICS countries.

The FAS Russia contributed substantively to the preparation of this Conference, representatives of the FAS Russia addressed the Conference among the key speakers, including on competition in the digital economy, the specifics of digital markets, detection and fight against digital cartels, and international cooperation in competition law enforcement.

In the course of the Conference, a meeting of the Heads of the Competition Authorities of the BRICS also took place, which has already become a traditional one. The participants of the meeting noted the main significant results of the work since the previous Conference, including the signing of the Memorandum of Understanding on Cooperation of the BRICS Competition Authorities in the Field of Competition Law and Policy in May 2016 in St. Petersburg, the establishment of the BRICS Coordination Committee for Antimonopoly Policy and the above-mentioned working groups. Also during the meeting, priority areas for cooperation of the BRICS Competition Authorities were identified for the near future, among which strengthening of

cooperation in the investigation of violations of antimonopoly legislation by transnational corporations and consideration of global transactions of economic concentration.

As a result of the Conference, the Brasilia Joint Statement of the Heads of BRICS Competition Authorities was signed, in which the special importance of antimonopoly policy and legislation in promoting economic growth and development of the BRICS countries and the role of the BRICS competition authorities in the search for solutions to the problems of global economic development was noted.

Therefore, within the framework of the previous Conference in Brazil, the Russian delegation made a presentation of the VI Conference, which will be held in September 2019 in Moscow.

In 2017, the FAS Russia launched the work to prepare for this large international event on competition policy in the BRICS format.

## **Part 5. Competition advocacy**

### **5.1. Public Council under the FAS Russia**

In 2017, the Public Council under the FAS Russia<sup>26</sup> was established<sup>27</sup>. The creation of the Public Council was conducted according to new rules developed by the Civil Chamber of the Russian Federation and the Open Government. It is formed of representatives of non-governmental non-profit organizations - 75% of candidates from the Civil Chamber and 25% - from the Expert Council under the Government of the Russian Federation. The Public Council included representatives of leading business associations, the Association of Lawyers of Russia, the Competition Experts Association, the Interregional Organization for the Protection of Minority Shareholders - a total of 20 people.

The Public Council is a permanent advisory and consultative body of public control.

The Public Council is called upon to ensure that the needs and interests of the citizens of the Russian Federation are taken into account, the rights and freedom of the citizens of the Russian Federation and the rights of public associations in the implementation of state policy in the area relevant to the sphere of the FAS Russia's activities are protected.

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<sup>26</sup> <http://os.fas.gov.ru/node/532>

<sup>27</sup> <http://en.fas.gov.ru/press-center/news/detail.html?id=52071>

The purpose of the Public Council is to exercise public control over the activities of the FAS Russia, including consideration of drafts of socially significant normative legal acts being developed, participation in monitoring the quality of provision of public services, implementation of supervisory functions, progress in anti-corruption and personnel work, evaluating the effectiveness of public procurement, reviewing the annual plans of activities of the FAS Russia and the report on their implementation, and other issues provided for by the current legislation.

## **5.2. Increasing the availability of energy infrastructure**

In 2017, the Action Plan "Increasing the access of energetic infrastructure"<sup>28</sup> was developed and approved aiming at simplification, acceleration and reduction of the cost of connecting industrial facilities and capital construction projects to electric and heat networks, creating favorable conditions for some types of consumers, including for small and medium-sized businesses<sup>29</sup>. As part of the implementation of the Plan, more than 20 regulatory acts aimed at improving the Rules for non-discriminatory access to electrical grids and the Rules for technological connection to electric grids were adopted.

## **5.3. Measures to develop effective cost management**

The FAS Russia developed the Order for calculating the maximum permissible annual change in the tariffs for public telecommunications services and public postal communication using the maximum pricing method and rules for its application (hereinafter - the Order), which provides the opportunity to profit from the effectiveness of cost management.

The aim of the method that provides the opportunity to profit from the effectiveness of cost management (inflation minus the X factor) is to subordinate the subject of natural monopolies to the rules that reproduce the discipline of the competitive market. This approach determines the reasonability of comparing the dynamics of productivity of an economic entity with the productivity of the country's economy as a whole and will reflect market incentives more precisely.

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<sup>28</sup> Established by the Order of the Government of the Russian Federation of 30.06.2012 No. 1144-p <http://gov.garant.ru/SESSION/PILOT/main.htm>

<sup>29</sup> Thanks to the implementation of the provisions of this Plan in 2017, Russia took the 10th place in the Doing Business rating on connection to electricity (in 2016 - 29th place).

Operators of communication carried out approbation of the Order. This method can be applied not only in the sphere of communication, but also in other regulated spheres.

The draft of this normative legal act passed the procedure of public discussion and anti-corruption expertise at <http://regulation.gov.ru> and was approved by the FAS Methodological Council on tariff regulation. Approval of the Order is scheduled for 2018.

#### **5.4. Tariff regulation in the fuel and energy complex**

In 2017, tariffs for gas transportation services through gas-main pipelines that were not owned by PJSC Gazprom were reviewed. The revision of these tariffs was aimed at excluding economically unjustified income of regulated organizations and reducing cross-subsidization.

Thus, for example, on the territory of some subjects of the Russian Federation, the tariff for transportation of gas through gas-main pipelines was reduced by more than 22 times.

In 2017, the FAS Russia reduced the fees for supply and marketing services provided to final consumers for a number of gas suppliers (gas supply organizations). This positive dynamics was achieved due to the equalization of the conditions of management of regulated organizations using benchmarks. This resulted in the reduction of the size of cross-subsidies between the population and other consumers. The average decrease in the cost of supply and marketing services was 15%.

#### **5.5. Exchange Committee under the FAS Russia**

In order to develop institutes of organized trading on commodity markets and registration of off-exchange transactions, the FAS Russia in cooperation with the Federal Tax Service of Russia and the Bank of Russia, signed an Agreement on cooperation in the development of commodity markets and the establishment of the Exchange Committee<sup>30</sup>. Since 2015, on a weekly basis, the FAS Russia holds meetings of the Exchange Committee.

At the Exchange Committee meetings, the current situation in the oil, oil products and gas, coal markets is analyzed, all measures are taken to develop and improve the

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<sup>30</sup> [https://fas.gov.ru/exchange\\_committees/1](https://fas.gov.ru/exchange_committees/1)

exchange trade, recommendations are given to market participants aimed at preventing possible violations of the antimonopoly legislation.

Meetings of the Exchange Committee are held with the direct participation of representatives of interested federal executive bodies, market participants, including large companies, infrastructure organizations (exchange sites) and expert organizations.

In 2017, within the framework of the Exchange Committee under the FAS Russia, sales of mineral fertilizers were launched. The Exchange Committee also focused on the development of exchange trade timber. Export sales of timber started on the exchange in the end of 2017. As a result, on the exchange trades there was sold 46% more timber than in 2016, and the number of registered participants in the timber trade in 2017 was 360 (44% more than in 2016). The predictable volume of timber sales in 2018 will be approximately 3 million cubic meters of timber (3 times more than in 2017).

## **5.6. Policy on information openness**

In order to increase the effectiveness of informing about the activities of the authority, the implementation of the principles of transparency and simplification of access to public information about the FAS Russia in 2017, a new version of the official website of the FAS Russia<sup>31</sup> was launched. The new website has become more convenient, logical and informative. News of the authority are also published on Twitter, Instagram, Facebook, Vkontakte, YouTube channel, as well as podcasts in iTunes and SoundCloud.

The journal "Russian Competition Law and Economics"<sup>32</sup> is another significant source of publicly available information and analytical articles on the topic of competition protection in the Russian Federation. Its editorial board includes representatives of the high officials of the FAS Russia, including the Head of the authority Igor Artemiev, as well as famous Russian specialists in the field of legal and political sciences.

Representatives of the FAS Russia are also members of the editorial board of the electronic and printed journal "Competition and Law" ([www.cljournal.ru](http://www.cljournal.ru)), which prepares analytical materials, including weekly reviews of the development of the practice of Russian competition law enforcement.

Moreover, since 2017, on the basis of the FAS Russia Center for Education and Methodics in Moscow, the publication of the information and analytical journal

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<sup>31</sup> <https://fas.gov.ru>

<sup>32</sup> [http://www.dex.ru/edition/zhurnal\\_rossijskoe\\_konkurentnoe\\_pravo\\_i\\_ekonomika/](http://www.dex.ru/edition/zhurnal_rossijskoe_konkurentnoe_pravo_i_ekonomika/)

"Competition Today"<sup>33</sup> has started. Its editorial board includes representatives of the FAS Russia. The journal is monthly formed electronically in the open access and is aimed at disseminating the practice of solving problems of developing competition, combating cartels and abusing a dominant position.

#### 5.6.1. Work with profile printed and electronic international publications

In 2017, we continued active cooperation with the international core journal Global Competition Review. Apart from participating in traditional GCR questionnaires, the FAS Russia prepared an article on the Russian competition law and policy for the issue of the European, Middle Eastern and African Antitrust Review 2017, and also presented materials for periodicals publications of GCR, namely the GCR Handbook of Competition Enforcement Agencies 2017 and the Handbook of Competition Economics.

As a result of the increased activity of the FAS Russia in relation to foreign media, 143 articles on the activities of the FAS Russia were published in various publications.

Besides, in 2017 GCR, PaRR and Bloomberg published English-language interviews with the Head of the FAS Russia Igor Artemiev.

The Bloomberg news agency (the first of both Russian and foreign publications) in December 2017 prepared an article on the FAS Russia's decision on the Monsanto/Bayer deal.

Moreover, PaRR covered the activities of the III International Scientific and Practical Conference "Antimonopoly Policy: Science, Practice, Education" (December 5-6, 2017, Skolkovo, Moscow).

In order to prepare for the BRICS Conference in November 2017 in Brasilia (Brazil), an electronic BRICS Competition Newsletter was prepared.

#### 5.6.2. Participation in research projects and educational events

In 2017, we continued active cooperation with the HSE - Skolkovo Institute for Law and Development. In particular, the experts of this Institute participated in the activities of the FAS Russia, which were organized in the framework of the VI International Legal Forum in St. Petersburg and the annual international event "Russian Competition Week".

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<sup>33</sup> <http://femc.fas.gov.ru/lib/ct/>

In addition, in July 2017 in Geneva, a representative of the FAS Russia delivered a lecture at the University of Applied Sciences of Zurich, Switzerland, describing the specifics of Russian antitrust law and policy. Based on the positive feedback from the participants of this course, in November 2017, the FAS Russia was invited to the seminar of the University of Zurich on the development of competition law in the EU countries and outside the EU.

The FAS Russia also actively cooperated with the University College of London, in particular, within the framework of the global food chains research conducted by the antimonopoly authorities of the BRICS countries.

The FAS Russia also participated in a study of the Columbia University on special competition policy for developing countries. Besides, the results of the study on the interaction of competition policy and the state of Professor Eleanor Fox (the University of New York), where the FAS Russia took part in 2016, were discussed during the special session "State Restrictions" in the framework of the International Competition Network (ICN) Conference in Porto (Portugal).

In addition, on December 5-6, 2017, the III International Scientific and Practical Conference "Antimonopoly Policy: Science, Practice, Education" was held, which was organized jointly with the HSE - Skolkovo Institute for Law and Development. About 300 people took part in the event, including 16 leading foreign scientists specializing in the field of competition law and economics as reporters.

Within the framework of educational activities to advocate the competition, regional seminars and meetings are held annually in all federal districts with heads and experts of the regional offices of the FAS Russia, judges and representatives of public authorities of the regions of the Russian Federation.

Educational events, workshops, lectures, round tables with participation of the FAS representatives are regularly organized at the Center for Education and Methodics in Kazan and in Moscow. Seminars comprise theoretical and practical training courses, aimed at skills upgrade and professional development of competition experts.

In order to ensure stability and institutional continuity within the framework of competition advocacy, the FAS Russia employees annually hold a professional skill competition "My Useful Initiative". The objectives of the project are: 1) development of professional competencies of the employees, retention of the best personnel through the formation of an integrated career development program, which allows for the winners and contestants to apply for senior positions in the future; 2) creation of conditions for the development and formation of an existing personnel reserve, consisting of professional employees, oriented to achieve positive results in their work; 3) formation of a "bank of ideas" and initiatives for their further implementation and dissemination of best practices in the authority.

In addition, 50 departments and centers in the field of competition law are already functioning in Russia. In many universities, the student course "Competition Law" is compulsory for students. This means that all students who receive a diploma of a lawyer already have a basic knowledge of antitrust regulation. If earlier it took more than 6 months for young specialists to adapt to work in the FAS Russia, by 2017 this period was reduced to 1 month.

## **Part 6. Resources overall**

### **6.1. Annual budget**

Financing for the maintenance of the Central Office of the Federal Antimonopoly Service and its regional offices is carried out at the expense of the funds from the federal budget.

In 2017, the FAS Russia's budget amounted to 3.4 billion rubles (44 765 300 euro).

### **6.2. Human resources**

The total number of employees of the FAS Russia as at December 31, 2017 was 3504. 1189 employees worked in the Central Office and 2315 employees worked in 84 regional offices of the FAS Russia in the regions of the Russian Federation. 2287 employees deal with law enforcement practices related to antimonopoly and tariff regulation (there is no division between them), the remaining employees deal with procurement and advertising issues.

Competitive enforcement is the main activity of 1,826 employees.

The FAS Russia does not have a clear division of duties of employees into the three specified categories. Therefore, we can give the percentage of the employees of three mentioned categories based on the data of their higher education: 51% of employees have a law degree, 33% - economics, 16% - other. At the same time, we note that this percentage also includes employees who have 2 or more higher education (legal and economics, legal and etc., economics, etc.).