

Russian Federation¹
*“Independent Sector Regulators and
their Relationship with Competition Authorities”*
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Summary

The Federal Antimonopoly Service (FAS Russia) carries out its activities in cooperation with other federal executive bodies, the Central Bank of the Russian Federation, government bodies of subjects of the Russian Federation, local authorities, public associations and other organizations, including independent regulators in various fields.

Besides, the FAS Russia carries out the state control over the compliance with antimonopoly legislation by the federal executive bodies, state governmental authorities of the subjects of the Russian Federation, local self-government bodies or other bodies or organizations exercising the functions of the said bodies, as well as by the state off-budget funds, economic units and natural persons, in particular over the use of land, subsoil, water resources and other natural resources.

The FAS Russia and its Regional Offices can conduct antimonopoly investigations against independent sectoral regulators in the event they take actions and adopt regulatory legal acts that adversely affect competition.

***Independent Sector Regulators and their Relationship with Competition
Authorities***

Introduction

According to the Regulation of the Government of the Russian Federation of June 30, 2004 No. 331 "On Approval of the Regulations on the Federal Antimonopoly Service", the Federal Antimonopoly Service (FAS Russia) carries out its activities in cooperation with other federal executive bodies, the Central Bank of the Russian Federation, government bodies of subjects of the Russian Federation, local authorities, public associations and other organizations, including independent regulators in various fields.

¹ The document was prepared jointly with the Association of Antimonopoly Experts

Besides, another legal document that sets the necessity of cooperation between sector regulators with competition authority is the Federal Law of June 26, 2006 No. 135-FZ "On Protection of Competition". It establishes functions of the FAS Russia, inter alia the state control over the compliance with antimonopoly legislation by the federal executive bodies, state governmental authorities of the subjects of the Russian Federation, local self-government bodies or other bodies or organizations exercising the functions of the said bodies, as well as by the state off-budget funds, economic units and natural persons, in particular over the use of land, subsoil, water resources and other natural resources.

Interaction between sector regulators and the FAS Russia on financial markets

Clause 2 Article 23 of the Law on Protection of Competition provides the interaction between the FAS Russia and the Central Bank of the Russian Federation (Bank of Russia), which regulates the development of Russian financial markets, stability of their functioning, as well as the supervision and control over the implementation of financial legislation.

In order to co-regulate the implementation of antimonopoly policy in the financial markets, in accordance with the Bank of Russia, the FAS Russia and the Bank of Russia adopt regulatory legal acts that establish:

- the terms of declaring the position of a financial organization as dominant and the procedure for establishing the dominant position of a credit organization (Part 7 Article 5 of the Law on Protection of Competition);
- the rules for non-discriminatory access to the services of financial organizations, that have dominant position, in case of violation of the antimonopoly legislation;
- methodology of determination of an unjustifiably high and unjustifiably low price of a credit organization's service;
- the procedure of conducting analysis of condition of competition in order to establish dominant position of financial organization.

Moreover, the antimonopoly body together with the Bank of Russia consider the issue of the presence or absence of a violation of the Law on Protection of Competition by financial organizations, payment system operators and payment infrastructure services operators in the Russian Federation. For these purposes, representatives of the Bank of Russia are included on a parity basis in the Commissions of the antimonopoly body that are authorized to review such issues.

According to the Law on Protection of Competition, representatives of the Bank of Russia on a parity basis are included in the collegial body of the FAS Russia that reviews decisions and rulings issued by the FAS regional offices, if such decisions breach uniformity in applying the norms of the antimonopoly legislation.

The agreements of the FAS Russia and the Bank of Russia traditionally contain a provision on the exchange of information on signs of violations of the law by financial organizations to further eliminate them. Since 2010, the Bank of Russia also implemented another agreement by sending to the FAS Russia quarterly in electronic form information on the indicators of credit organizations (banks).

The FAS Russia uses this information:

- when monitoring the state of competition in the banking market, including the purpose of identifying problems existing in the market and mapping out measures to develop competition;
- when considering cases of violation of the antimonopoly legislation by banks;
- in the control of economic concentration in the banking market.

Thus, such an agreement between the FAS Russia and the Central Bank allowed to reduce the administrative workload on credit organizations, as earlier, if there was a need, the information required by the antimonopoly authority was requested from the market participants themselves.

Currently due to a new agreement the FAS Russia and the Bank of Russia are developing separate regulations for the Bank of Russia to submit quarterly information on the activities of other types of financial organizations.

In 2018, the FAS Russia and the Bank of Russia concluded an additional agreement on interaction in relation to advertising. The agreement will improve the efficiency and effectiveness of control and supervision of compliance with advertising legislation. In particular, the parties agreed to expand and include in the scope of interaction issues of control and supervision of compliance with advertising legislation. Thus, if the regulator finds violations of the legislation on advertising, it will inform the FAS Russia. In its turn, the competition authority will inform the Bank of Russia about the results of inspections of violations regarding this information.

The FAS Russia and the Bank of Russia also hold mutual consultations; bring each other into the activities and events, including conferences, workshops, meetings of expert councils; and also jointly participate in the development of draft legal acts or other information and reference materials on issues requiring the attention of financial markets.

The Exchange Committee under the FAS Russia as a cooperation platform for regulators

Currently, according to the Executive Order of the President of the Russian Federation of December 21, 2017 No. 618 "On State Competition Policy Guidelines" and the National Competition Development Plan, exchange trade is one of the priorities for economic policy. Along with industry regulators, that are

federal executive bodies, institutions for the interaction of government bodies and business representatives have a significant impact on the development of markets for goods and services in the fuel and energy complex and the chemical industry. The Exchange Committee is one of such institutes.

The FAS Russia jointly with the Federal Tax Service of Russia and the Bank of Russia signed an Agreement on Cooperation for the Development of Product Markets and the creation of the Exchange Committee² in 2015.

It is notable that the Committee is not the regulator itself, though the functions of the Exchange Committee include the formation of a platform where professional interaction is carried out between representatives of federal executive bodies, business entities that sell and (or) purchase goods at organized tenders, representatives of tendering organizers, infrastructure organizations providing logistics in the relevant commodity markets, representatives of information and analytical agencies.

The main goal of the Committee is to develop organized trade and form the mechanism of transparent pricing, which can allow to ensure the formation of fair market price for goods and enable business entities to hedge currency risks and implement long-term financial planning.

Committee meetings are open, they are held weekly with the direct participation of representatives of the FAS Russia, the Federal Tax Service, the Central Bank of Russia, large oil companies, independent participants of the oil product market, infrastructure organizations (stock exchanges) and expert organizations.

Within the framework of the Exchange Committee, specialized subcommittees were established in order to consider issues related to the formation and further development of exchange trading, the formation of the rules for its functioning, the expansion of goods nomenclature, ensuring the uniformity and regularity of offers, increasing consumer awareness of exchange instruments.

For example, there were established the Exchange Subcommittees on oil and oil products, gas, coal, timber and timber products, mineral fertilizers, agricultural products, etc.

For instance, as a result of Exchange Committee activities, an additional trading session in the Petroleum Section of SPIMEX JSC (Saint Petersburg International Mercantile Exchange) started to work and successfully operate, which eliminated the possible negative impact of transactions between oil companies on the stock price index. The duration of the trading session was reduced, which allowed to increase the liquidity of exchange trading, to ensure the uniformity and regularity of proposals, to eliminate elements of unfair trading and unjustified price increases.

² <http://en.fas.gov.ru/about/what-we-do/stakeholders-engagement/>

The example of transfer of sectoral regulator's functions to the competition authority

According to Clause 1 of the Regulations of the Federal Tariff Service, approved by the Order of the Government of the Russian Federation of June 30, 2004 No. 332, the Federal Tariff Service of the Russian Federation was a federal executive body that regulated natural monopolies and exercised functions on determining (establishing) prices (tariffs) and control over issues relating to the determination (establishment) and implication of prices (tariffs).

According to the Decree of the President of the Russian Federation of July 21, 2015 No. 373 "On some issues of state regulation and control in the field of antimonopoly and tariff regulation" the functions of the FAS Russia were expanded to tariff regulation after the abolishment of the Federal Tariff Service.

The competence of the antimonopoly authority included powers to adopt regulatory legal acts and monitor compliance with legislation in the field of natural monopolies, state regulation of prices (tariffs) for goods and services.

All functions of the Federal Tariff Service were transferred to the FAS Russia:

- exercising state control (supervision) over the establishment and (or) application of state-regulated prices (tariffs, surcharges, fees, rates), as well as compliance with standards of information disclosure;
- creation and maintenance of the Federal Information Register of Guaranteeing Suppliers and Zones of their Activities;
- creation and maintenance of the State Register of the Natural Monopoly Entities in respect of which state regulation and control are carried out.

In addition to its regular functions, the FAS Russia began to engage in tariff regulation in areas such as heat supply, transportation of oil and oil products via trunk pipelines, rail transportation, water supply and wastewater disposal.

Primary objectives of the FAS Russia as the regulator include:

- restoring consumer rights rather than only the rights of natural monopolies, particularly by involving them in tariff decision-making and Consumer Councils;
- reforming natural monopolies rather than financing them on a "cost-plus" basis in the markets for railway transportation, gas, electric power, fuel and energy complex, etc;
- predominant use of the "comparable markets" method; monitoring prices (tariffs) in aviation, gas, oil products and coal markets, including organized trading and over-the-counter trading; development and implementation of an information-

analytical system for collecting data on prices and their comparison in the field of state defence order and civil sector;

- maintaining market pricing in competitive markets rather than state regulation of prices;
- implementation of the "pressure upon costs" principle through the development of competitive procurement and competition of projects (technologies) when approving investment programs, adoption of procurement standards by natural monopolies and companies with state participation.

In addition, as part of this reform, in 2015, the FAS Russia established the Methodological Council on Tariff Regulation. It should consider orders of the Presidium of the Board of the FAS Russia and the Collegial body of the FAS Russia on setting (fixing) prices (tariffs) and (or) price ceilings for natural monopolies and other regulated organizations, as well as formulate proposals for the development of main directions of the state price (tariff) policy of regulated industry product markets.

In total, the FAS Russia carried out huge work on approaches to tariff regulation. Currently, the tariff policy of Russia is focused on consumers, not on the interests of natural monopolies.

Consideration of tariff disputes in the regions of Russia

Decree of the Government of the Russian Federation of April 30, 2018 No. 533 "On Approval of the Rules for Consideration (Settlement) of Disputes and Disagreements Related to the Establishment and (or) Application of Prices (Tariffs)" introduced new rules for the consideration of tariff disputes and disagreements.

In the pre-trial order it is possible to resolve disagreements in the field of electric power, heat supply, water supply/wastewater disposal; disputes related to the fees for technological connection to electric networks as well as to establishment and application of natural monopolies tariffs.

To consider the dispute, either party should file an application to the FAS Russia no later than three months after she knew or should have known about a violation of her rights. The FAS Russia has 10 days to decide whether to consider the case or not. Period of consideration of all disputes is 90 days.

Document secures elements of the procedure aimed at ensuring the most objective and comprehensive consideration of pre-trial disputes in the field of tariff regulation. Consideration of disputes is carried out in the presence of the applicant and the defendant, who are notified of the time the place. Parties, prior to the consideration of the dispute or in its course, have the right to file petitions, give

explanations, submit documents and other information that may be relevant for the consideration of the dispute.

In addition, according to the adopted Decree of the Government of the Russian Federation, the parties to the dispute can take part in its consideration.

Based on the results of the consideration of the pre-trial dispute, the FAS Russia makes one of the following decisions:

- to satisfy the claim (wholly or partially);
- to refuse to satisfy the claim.

In this case, if during the course of the consideration the FAS Russia identifies violations of the legislation on state regulation of tariffs (including the ones not related to the application), it comes to a decision taking into account all identified violations.

It is also worth noting that pre-trial procedure for considering disputes in the FAS Russia has a number of significant advantages, such as emergency consideration, collegiality in decision making and rendering of decisions taking into account socio-economic factors.

In addition, the FAS Russia has a wide scope of authority required for a comprehensive consideration of the pre-trial dispute and the protection of violated rights. An important aspect is that the work of the FAS Russia does not end with the adoption of a decision. The FAS Russia monitors the implementation of all decisions and rulings that have been issued and in case of non-compliance it brings offenders to justice according to the established procedure.

Review of legislation on natural monopolies and tariffs

The FAS Russia has prepared a number of initiatives to review tariff policy. Among these are the abolition of the law "On Natural Monopolies" and the introduction of new principles of modern regulation in the law "On Protection of Competition".

As a result of the review, the definition of natural monopolies will change. The given institution will be introduced into the general system of antimonopoly legislation without privileges to natural monopolies.

Only infrastructure areas, such as transfer of oil, oil products and gas through pipelines, railway lines and stations, public telecommunication services, electricity transmission, heat supply, water supply and wastewater disposal will fall under the new definition of natural monopolies

Areas where natural monopolies will disappear include ports, airports, inland waterways, ice channeling, radioactive waste disposal and postal services. The

state will have the opportunity to deregulate the monopoly depending on the specific market situation.

The FAS Russia intends to implement an ambitious reform of tariff regulation. Together with the Ministry of Economic Development of the Russian Federation, the FAS Russia introduced to the government the draft law that provides for the creation of uniform principles for tariff regulation. In particular, according to the draft law, tariffs will be imposed for a period of at least 5 years, with the possibility of their adjustment only in exceptional cases established by the Government of the Russian Federation.

The draft law improves the system of state regulation of tariffs and essentially it will become a key normative legal act regulating relations in the field of state regulation of tariffs.

At this stage, Russia does not have a single systemic normative legal act regulating relations in the field of state regulation of tariffs. The new draft law will determine basic concepts used in the field of state regulation of tariffs, as well as unified objectives and principles for all regulated areas.

The right of the competition authority to conduct investigations regarding independent sectoral regulators

It should be briefly mentioned that the FAS Russia and its Regional Offices can conduct antimonopoly investigations against independent sectoral regulators in the event they take actions and adopt regulatory legal acts that adversely affect competition.

When identifying such anticompetitive practices, the competition authority uses the warning mechanism, which is a fairly quick response to such violations and can eliminate them quite effectively.

For example, at the request of the FAS Russia, the Ministry of Health amended its legal act and eliminated discriminatory requirements for manufacturers of test systems for detecting antibodies to HIV in human serum. Such requirements unreasonably limited the possibility of participation in public procurement and, as a result, limited competition.

In another case, the FAS Russia issued a warning to the Ministry of Education and obliged to cancel the previously made changes to the Federal List of Textbooks. Such changes entailed the unjustified exclusion from the list of a large number of textbooks of individual publishers, the inability to participate in public procurement and restriction of competition.

Antimonopoly compliance by independent sectoral regulators

In accordance with the National Competition Development Plan, the Russian Government adopted the Resolution of October 18, 2018 No. 2258-p "On the

approval of Guidelines for the creation and implementation by federal executive bodies of antimonopoly compliance systems".

The Guidelines are adopted in order to form by the federal executive authorities, the executive authorities of the subjects of the Russian Federation and the local governments a unified approach to creating and implementing antimonopoly compliance systems.

The Guidelines identify the main goals, objectives and principles for the creation and implementation of antimonopoly compliance by the authorities, the content and procedure for the adoption by the authorities of a legal act on antimonopoly compliance, and the procedure for creating and operating an authorized department responsible for the development and implementation of antimonopoly compliance.

The Guidelines also establish a procedure for identifying and assessing the risks of violating the antimonopoly legislation, which is an integral part of internal control over the compliance with the antimonopoly legislation by an authority. It includes an analysis of identified violations of the antimonopoly legislation for the previous 3 years (cautions, warnings, fines, complaints, prosecutions) , analysis with the participation of representatives of the business community of existing regulatory legal acts, drafts of regulatory documents, monitoring and analysis of the practice of applying the antimonopoly legislation, development and maintenance up to date of methods of identifying internal and external risks of violating the antimonopoly legislation within or in connection with the general policy of application of antimonopoly compliance.

The Guidelines contain the "Risk Matrix", the assessment of indicators of which is used by the authority to identify individual risks and compile a risk map.

At the same time, the Guidelines contain the procedure for familiarizing employees (workers) of a governmental body with antimonopoly compliance and training them in implementing the requirements of the antimonopoly legislation and antimonopoly compliance.

In addition, the provisions of the Guidelines provide for the implementation by the Government of an assessment of the effectiveness of antimonopoly compliance, which establishes key performance indicators for the implementation of antimonopoly compliance measures for both the authorized department and the authority as a whole.

Guidelines are applied not only by the federal executive authorities, but also by the executive authorities of the subjects of the Russian Federation and the local governments. The FAS Russia regularly holds seminars for training of specialists in the field of antimonopoly compliance.

Conclusion

The FAS Russia continues to actively develop cooperation with sector regulators operating in various economic sectors of the state.

It should be noted that in order to achieve the objectives of the Strategy for the Development of Competition and Antimonopoly Regulation in the Russian Federation for the period until 2030³, approved by the Protocol of the Presidium of the FAS Russia of July 3, 2019 No. 6, as well as to implement the National Competition Development Plan⁴, the FAS Russia organizes joint workshops and conferences with other government bodies in the areas of the FAS Russia activities; harmonizes regulatory legal acts of authorities regarding issues related to competition; clarifies provisions of laws at the request of the authorities regarding the FAS Russia activities; and also invites representatives of other authorities to participate in the work of the Expert Councils under the FAS Russia in relevant areas.

There are 26 Expert Councils⁵ under the FAS Russia, that are collegial advisory bodies on key markets, such as electric power, agriculture, metallurgy, education and science, oil and oil products, chemical industry markets, etc.

Market participants, representatives of non-profit associations and regulatory authorities participate in Expert Councils. Such practice allows the FAS Russia to effectively assess relevant markets as well as it increases transparency of the decisions of the FAS Russia.

At the same time, the authority of FAS Russia to exercise antimonopoly control over independent sectoral regulators is an important measure to ensure competition.

³ Strategy for the Development of Competition and Antimonopoly Regulation in the Russian Federation for the period until 2030 (Russian version only): <https://fas.gov.ru/documents/685792>

⁴ National Competition Development Plan in the Russian Federation for 2018-2020: <http://en.fas.gov.ru/documents/documentdetails.html?id=15342>

⁵ List of the Expert Councils under the FAS Russia (Russian version only): <https://fas.gov.ru/councils>