

## **1. Antimonopoly regulation and intellectual property in Russia**

2. In the Russian antimonopoly legislation, issues of actions of an owner’s exclusive rights to intellectual property items are raised in the frame of:

- suppression of abuse of dominance and anticompetitive agreements;
- state control over actions and transactions of economic concentration;
- suppression of unfair competition.

3. Dominance of an economic entity cannot be determined on the basis of an entity’s exclusive rights to results of intellectual activity and a legal person’s means of individualization that are equated to exclusive rights, means of individualization of products, works and services.

4. In this connection, the Federal Law “On Protection of Competition” specifies that a prohibition on abuse of dominance doesn’t apply to actions on realization of exclusive rights on results of intellectual activity and legal person identifications equated to them, identifications of products, works and services (Part 4 Article 10).

5. Such actions fall under requirements of Part IV of the Civil Code of the Russian Federation. These requirements are devoted to legal regulation of interaction in intellectual property sphere. In particular, Article 1362 of the RF Civil Code

provides for condition for concluding a compulsory license on invention, a utility model or an industrial sample.

6. At the same time, if upon results of an analysis of state of competition conducted by the antimonopoly authority it is found that the material goods are not interchangeable in virtue of being an intellectual property subject matter. Therefore, these goods can create independent product market boundaries of the commodity market in which its owner of goods holds a dominant position. For example, qualitatively new functional characteristics and technical indicators of such goods in comparison with homogeneous goods of other producers can indicate a lack of interchangeability.

7. In this case, the antimonopoly requirements and prohibitions on abuse of dominance specified in Part 1 Article 10 of the law “On Protection of Competition” apply to actions of an economic entity holding a dominant position in the commodity market whose product boundaries include the goods produced by that economic entity and protected by patent as well.

8. By virtue of direct reference of Part 9 Article 11 of the law “On Protection of Competition”, the antimonopoly requirements and prohibitions in relation to anti-competitive agreements are not applied to agreements on granting and (or) on alienation of the right on use of results of intellectual activity or identifications of the legal person, identifications of production, works or services.

9. A procedure of conclusion of license agreements is established in the Civil Code of the Russian Federation.

10. At the same time, if such an agreement is a "vertical" one within the meaning of Item 19 Article 4 of the law “On Protection of Competition” and specifies

conditions of circulation of goods included in the subject of an agreement between the seller and the buyer (conditions of realization, acquisition, resale of goods etc.), such agreements are subject to application of the antimonopoly requirements established by Parts 2 and 4 Article 11 of the Law “On Protection of Competition”. Such antimonopoly requirements don't allow, in particular, setting of "vertical" restrictions in the form of fixing of resale price for goods, and also a prohibition for the buyer to sell goods of competitors of the seller (except for cases of sale of goods under the trademark of the seller in specific trade premises and the territory), and also other "vertical" restrictions which lead or can lead to restriction, prevention or elimination of competition.

11. In similar cases, such "vertical" agreements are also subject to legal opinion in accordance with the criteria established in Article 12 (including the principle of "de minimis" in relation to market share of counterparts), the general principles of admissibility established in Part 1 Article 13 (individual exceptions on the basis of the rule of reason) and the special General Exceptions approved by the Resolution of the Government of the Russian Federation of 16.07.2009 No. 583.

12. If a license contract is signed between competitors carrying out production and the realization of goods in the same commodity market within which these economic entities reach the agreement, in particular, on setting and fixing price (tariffs), discounts, extra charges (surcharges) and (or) margins, on market sharing, such arrangement can be qualified as a cartel that is forbidden "per se" according to Part 1 of Article 11 of the Law “On Protection of Competition”.

13. According to the Law “On Protection of Competition”, "vertical" agreements in writing (except for "vertical" agreements between the financial organizations) are allowed if these agreements are contracts of commercial concession.

13. Thus, proceeding from the provision of the law “On Protection of Competition” if the "vertical" agreement between the right holder and the user that are not financial organizations corresponds to all attributes of the contract of commercial concession and to requirements to it specified in the special chapter of Part II of the Civil Code of the Russian Federation devoted to such contracts, such a "vertical" agreement can be recognized as admissible.

14. 1) According to Chapter 7 of the law “On Protection of Competition”, granting of the rights for intellectual property items (patents or trademarks) which are intangible assets by means of their alienation from one economic entity (a right holder) to another, including the rights of use according to the license contract can demand receiving a prior consent of the antimonopoly authority in case of the whole set of the following:

- getting over the threshold values concerning the asset value or revenue of parties to the transaction and their groups of persons;
- the balance-sheet value of these intellectual property items in percentage ratio of the balance value of all assets of the person that alienate intellectual property items (intangible assets) or transfer right of their use.

15. 2) Part 2 Article 14 of the law “On Protection of Competition” specifies a prohibition on unfair competition in relation to obtaining and using of exclusive rights to means of individualization. Such actions can be in the form of:

- use of an exclusive right to means of individualization to create obstacles for exercising business by an economic competitor entity that are identically or analogously similar to the specified means of individualization in the business activity in the territory of the Russian Federation;
- use of means of individualization if that use can cause confusion of other economic competitor entity, of goods produced and realized by it as well as services rendered by it.