

Non-official translation

Google Ireland Limited

Gordon House, Barrow Street, Dublin
4, Ireland

To Google Inc. representative
N.N. Afinogenova

7 Lesnaya St., Moscow 125047
(Business Center «White Gardens»,
12 fl.)

LLC Yandex
16 Leo Tolstoy St., Moscow 119021,
Russia

DECISION

on imposition of a fine in the case of administrative offense
No. 4-19.5-1125/00-11-16

November 2, 2016

Moscow

I, deputy head of the Federal Antimonopoly Service of Russia Sergey Anatolievich Puzyrevsky, having considered the protocol and materials of the case of administrative offense No. 4-19.5-1125/00-11-16 regarding Google Ireland Limited (Gordon House, Barrow Street, Dublin 4, Ireland), in the absence of a legal representative who had been notified in the appropriate form on the place of



considering the case of administrative offense No. 4-19.5-1125/00-11-16, in the presence of defenders who were explained the rights of persons subject to proceedings of the case of administrative offense envisaged by Art. 25.1 of the Code of Administrative Offenses of the Russian Federation (hereinafter the CoAO), as well as the rights of defenders envisaged by Article 25.5 of the CoAO,

ESTABLISHED:

The FAS Russia's decision on the case No. 1-14-21/00-11-15 of September 18, 2015 (ref. Number АД/54066/15 of September 18, 2015) recognized as the violation of Part 1 of Article 10 of the Law on the Protection of Competition the Google's actions resulting in provision of counterparties - mobile device manufacturers for pre-installation on mobile devices, intended for introduction into circulation in the territory of the Russian Federation under the control of the Android OS, with the Google Play app store under the following conditions:

- mandatory pre-installation of other applications, products, services of Google together with the Google Play app store;
- mandatory pre-installation on the mobile device and / or the settings on the mobile devices of default search engine together with the Google Play store app;
- mandatory allocation of pre-installed with the Google Play app store of other Google applications strictly in certain places of the mobile device;
- the prohibition on the pre-installation of applications, products, services developed by other economic entities, including ensuring the provision of compensation from Google or other material incentives, which led and could lead to a restriction of competition.

Based on the decision of the FAS Russia issued a Ruling of dissolving violation of antitrust law (hereinafter - Ruling), according to which:

1. Google Inc. and Google Ireland Limited companies were obliged to terminate violation of Part 1 Article 10 of the Law on the Protection of Competition by 18, November 2015 which was committed by providing the contractors – producers with the mobile devices for pre-installment on mobile devices working under the control of the Android operation system, which were intended for putting into circulation on the territory of the Russian Federation with the Google Play applications' store on the following conditions:

1.1. respect of the prohibition on pre-installment of applications, products, services developed by other economic entities, including one that provides rewards or other material stimulation to the contractors – producers of the mobile devices under the control of Android operation system;

1.2. obligatory pre-installment of other Google applications, products, services in case of installment of the Google Play applications' store;

1.3. obligatory pre-installment on mobile devices and/or setting on mobile devices of the Google search engine as default together with the installment of the Google Play applications' store ;

1.4. obligatory placement of other Google applications pre-installed together with the Google Play applications' store in strictly defined locations on the mobile devices' screens;

2. Google Inc. and Google Ireland Limited are not to condition the pre-installment of the Google Play applications' store provided to the contractors – producers with the mobile devices working under the control of the Android operation system with the Google Play applications' store and intended for being put into circulation on the territory of the Russian Federation with the following requests:

2.1. about obligatory pre-installment of other Google applications, products, services;

2.2. about obligatory placement of other Google applications pre-installed together with the Google Play applications' store on the main screen or on the level below the main screen;

2.3. about obligatory pre-installment on mobile devices and/or setting on mobile devices of the Google search engine as default together with the installment of the Google Play applications' store ;

2.4. about respect of the prohibition on pre-installment of applications, products, services developed by other economic entities, including one that provides rewards or other material stimulations to contractors – producers of mobile devices under the control of the Android operation system.

3. Google Inc. and Google Ireland Limited were by 18, November 2015 obliged to complete all the necessary measures for making amendments to all the agreements/contracts in force that contain requests listed in Paragraph 1 of the present order, which have been concluded by companies Google Inc. and Google Ireland Limited or in their name with contractors – producers of mobile devices working under the control of the Android operation system and intended for being put into circulation on the territory of the Russian Federation.

4. Google Inc. is by 18, November 2015 was obliged to inform the users of the mobile devices working under the control of the Android operation system and spread across the territory of the Russian Federation about the possibility to deactivate the pre-installed Google applications, to change the search engine in the Google Chrome browser, about the possibility of installing other search widgets and other applications analogical to those included to the GMS package, as well as about the possibility to

change placement of icons on the devices' screens which should be made in the form of notification put on mobile devices' screens.

5. Google Inc. and Google Ireland Limited were obliged to report in the written form to the FAS Russia within 10 days after fulfilling the present order, with the supplement of relevant documents providing evidence in the proper form.

By the Petition from Google Inc. and Google Ireland Limited of October 19, 2015 the date of execution of the FAS Russia's Ruling was extended until December 18, 2015 (ex. No. АД/60192/15 on October 30, 2015).

Google Inc. and Google Ireland Limited filed an application in the Arbitration Court of Moscow with the claim of avoidance of the decisions and Ruling of the FAS Russia on the case No. 1-14-21/00-11-15. By the Court's determination of December, 16, 2015 on case No. A40-240628/2015 this statement was accepted to hearing.

Due to Paragraph 2 Article 52 of the Law on Protection of Competition if an arbitration court initiates proceedings on an appeal against a determination, execution of the determination of the antimonopoly body shall be suspended until the day when the judgment of the arbitration court comes into effect.

The decision of the Arbitration Court of Moscow of March 15, 2016 on the case No. A40-240628/2015, upheld the Ruling of the Ninth Arbitration Court of Appeal and August, 19, 2016 Google Inc. and Google Ireland Limited was refused in satisfaction of requirements about a recognition illegal decision and Ruling of the FAS Russia on case No. 1-14-21/00-11-15.

Thus, for the litigation period of the case No. A40-240628/2015 in a first and appeals instances, the execution of the FAS Russia's Ruling was suspended since December, 16, 2015 till August, 19, 2016.

Considering the stay of execution of the Ruling for the period of litigation the Ruling was to be fulfilled by Google Ireland Limited in the period up to August 22, 2016. Moreover Google Inc. had 10 days from this date to report to the FAS Russia of fulfillment of the Ruling, i.e. till September 1, 2016.

According to the Article 36 of the Law on Protection on Competition commercial organizations and non-commercial organizations (their officials), federal executive authorities of the Russian Federation (their officials), bodies of public authority of the Subjects of the Russian Federation (their officials), bodies of local self-government (their officials), other bodies or organizations exercising the functions of the above-mentioned bodies, as well as public extra-budgetary funds (their officials), physical persons, including individual entrepreneurs, are obliged to fulfill decisions and determinations of the antimonopoly body within the period established by such decisions and determinations.

In accordance with Paragraphs 1 and 2 Article 51 of the Law on Protection on

Competition, the determination on the case of violation of the antimonopoly legislation is subject to be fulfilled within the period specified in it. The antimonopoly body exercises control over fulfillment of its determinations. The failure to fulfill a determination on the case of violation of the antimonopoly legislation in time entails administrative liability.

On September 2, 2016 the FAS Russia received a Petition from Google Inc. and Google Ireland Limited on the extension of the term of execution of Ruling on case on violation of the Antimonopoly legislation No. 1-14-21/00-11-15 (hereinafter the Petition) which included an information of partial execution of the Ruling (No. n/a of September 2, 2016).

By the Determination on Refusal in satisfaction of the Petition of the Defendants on the Prolongation of Ruling Deadlines from September 2, 2016 the FAS Russia dismissed the Petition (No. АД/63486/16 from September 13, 2016).

The information provided by Google Inc. and Google Ireland Limited in the frame of the Petition including the report on the actions performed to execute the Ruling demonstrate that paragraph 1.1 of the FAS Russia's Ruling is executed partially. Besides, Google Inc. did not provide relevant evidence of such execution in the appropriate form.

Due to Paragraph 4 Article 51 of the Law on Protection on Competition, partial fulfillment of the determination within the established period or deviation from fulfillment or belated fulfillment of the determination is implied under the failure to fulfill determination on the case of violation of the antimonopoly legislation in time. Failure to meet the deadline for determination constitutes a violation of the antimonopoly legislation.

Thus, actions of Google Ireland Limited contain signs of violation of failure to execute on due time the lawful decision, prescription of the federal antimonopoly body, its territorial body on suspension of abuse of dominant position of a product market by an economic entity and performing the actions aimed at ensuring competition as envisaged by the antimonopoly legislation of the Russian Federation.

In accordance with Paragraph 2.2 Article 19.5 of the CoAO failure to execute on due time the lawful decision, prescription of the federal antimonopoly body, its territorial body on suspension of abuse of dominant position of a product market by an economic entity and performing the actions aimed at ensuring competition as envisaged by the antimonopoly legislation of the Russian Federation entails imposition of an administrative fine on officials in the amount of from sixteen thousand to twenty thousand roubles or disqualification for up to three years; on legal entities in the amount of from three hundred thousand to five hundred thousand roubles.

The complainant is LLC "Yandex" (16 Leo Tolstoy St., Moscow 119021, Russia,

ITN 7736207543, IECC 770401001, PNRN 1027700229193).

Location of committing the administrative offense is Moscow, Sadovaya-Kudrinskaya St., 11.

Time of committing the administrative offense is September 2, 2016.

Object of the administrative offense: public relations in the sphere of administrative order and protection of competition.

Objective side: failure to execute the prescription of the antimonopoly body.

Subject of the administrative offense: Google Ireland Limited (1600 Amphitheatre Parkway, Mountain View, California, 94043, United States of America).

Subjective side as follows from the materials of the case of administrative offense No. 4-19.5-1125/00-11-16 and the established circumstances, Google Ireland Limited had a possibility of not committing the mentioned action, however Google Ireland Limited committed it, and thus is guilty of committing the administrative offense the liability on which is provided by Part 2.2 Article 19.5 of the CoAO.

The fact of committing the administrative offense by Google Ireland Limited is supported by the Protocol on the case of administrative offense No. 4-19.5-1125/00-11-16 of 21.10.2016, as well as the other materials of the case.

The limitation period of holding Google Ireland Limited administratively liable as provided by Part 1 Article 4.5 of the CoAO for violating the antimonopoly legislation has not expired.

While taking a decision on the type and size of the administrative violation the character of the committed offense is taken into account as well as the material and financial position of the economic entity and the mitigating and aggravating circumstances.

While considering the case regarding Google Ireland Limited no aggravating circumstances were observed.

While considering the case regarding Google Ireland Limited no mitigating circumstances were observed.

Based on the above, considering the character and circumstances of the committed offense, guided by Part 2.2 Article 19.5 of the CoAO, as well as Articles 23.48, 29.9 of the CoAO,

DECIDED:

To admit Google Ireland Limited (Gordon House, Barrow Street, Dublin 4, Ireland) guilty of committing the administrative offense liability on which is envisaged by Part 2.2 Article 19.5 of the CoAO, and to impose a penalty on it in form of

administrative fine in the amount of 300,000 (three hundred thousand) roubles.

According to Part 1 Article 32.2 of the CoAO the administrative fine should be paid by the person held administratively liable no later than within sixty days after the decision enters into force or after the day of expiring the grace period envisaged by Article 31.5 of the CoAO.

In accordance with Part 5 Article 3.5 of the CoAO the sum of an administrative fine is subject to transferring to the budget in the full amount in accordance with the legislation of the Russian Federation.

In accordance with the Federal Law of December 14, 2015 No. 359-FZ "On Federal Budget for Year 2016" and the order of the Ministry of Finance of the Russian Federation of July 1, 2013 No, 65n "On Setting Directions on Procedure of Applying Budget Classification of the Russian Federation", monetary recoveries (fines) for violating the antimonopoly legislation in the sphere of competition on product markets, protection of competition on financial services markets, legislation on natural monopolies and legislation on state regulation of prices (tariffs) imposed by the federal public authorities are paid into the federal budget.

Reference details for paying the administrative fine:

Unique Identifier of Charges:

Recipient

ITN 7703516539

IECC 770301001

Interregional operational FTD

(for the FAS Russia 04951001610)

BCC 161 1 1602010 016000 140

RNCMT 45380000

Bank of the recipient

Operational department of the Bank of Russia Moscow 701

BIC 044501002

Payment account 40101810500000001901

A copy of the document proving the payment of the administrative fine, the person held administratively liable transfers to the official person issuing the decision at fax (499) 755-23-24.

Based on Part 1 Article 20.25 of the CoAO, failure to pay the administrative fine on time entails imposition of an administrative fine in the double amount of the sum of the non-paid fine.

In accordance with paragraph 3 Part 1 and Part 3 of Article 30.1 of the CoAO as well as Part 1 Article 30.3 of the CoAO and Article 23.1 of the CoAO the decision on

the case of administrative offense issued by an official person can be appealed to at higher-level organisations, to higher-level officials or at courts of appeal within 10 days after presenting or receiving a copy of the decision.

According to paragraph 1 Article 31.1 of the CoAO the decision on the case of administrative offense enters into force after expiration of the time period set for appealing the decision on the case of administrative offense, is the mentioned decision has not been appealed or protested.

A.S. Puzyrevsky

E.V. Goncharova

(499) 755-23-23 ext. 088-154