

FEDERAL ANTIMONOPOLY SERVICE

Guidelines

"On the system of internal compliance with the requirements of antimonopoly legislation"

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These guidelines are developed in connection with the adoption of the Federal Law No. 33-FZ of March 1, 2020 "On Amendments to the Federal Law "On Protection of Competition", as well as in order to implement the provisions of the Decree of the President of the Russian Federation No. 618 of December 21, 2017 "On State Competition Policy Guidelines" in terms of providing incentives for economic entities, including those with a dominant position in commodity markets, to introduce a system of internal compliance with the requirements of antimonopoly legislation.

I. TERMS AND DEFINITIONS

Law on Protection of Competition – Federal Law No. 135-FZ of July 26, 2006 "On Protection of Competition".

Antimonopoly compliance – a system of internal compliance with the requirements of antimonopoly legislation.

Antimonopoly compliance-risks – risks of violation of antimonopoly legislation related to the implementation of economic entity's activity.

The terms "antimonopoly legislation", "system of internal compliance with the requirements of antimonopoly legislation", "economic entity" are used in the meanings defined in the Law on Protection of Competition.

The terms "compliance-risk", "risk identification", "compliance-risk assessment", "risk source" are used in the meanings defined in the National Standard of the Russian

Federation GOST R 51897-2011/ISO Guide 73:2009 "Risk management. Terms and definitions".

II. SCOPE OF APPLICATION OF THE GUIDELINES

These guidelines have been prepared for the purpose of uniform application of the antimonopoly legislation in the consideration by FAS Russia of applications from economic entities to establish compliance with the internal act(s) on antimonopoly compliance, specified in the Part 2 of the Article 9.1 of the Law on Protection of Competition, or the draft internal act(s) with the requirements of the antimonopoly legislation in accordance with the Part 5 of the Article 9.1 of the Law on Protection of Competition.

The recommendations set out in these guidelines are intended to assist businesses in organizing an effective antimonopoly compliance. At the same time, the antimonopoly compliance of a particular entity may take into account the specific features of its internal structure, the number of employees, the branch of economy in which the entity carries out its activities, and other parameters.

Non-application of recommendations (in whole or in part) not related to the requirements of the Article 9.1 of the Law on Protection of Competition does not exclude conformity of the internal act(s) of the entity with the Law on Protection of Competition, as well as the effectiveness of the antimonopoly compliance.

In addition, these guidelines set out the position of FAS Russia on the implementation of certain powers of FAS Russia in the context of the organization of antimonopoly compliance by economic entities.

III. GENERAL PROVISIONS ON ORGANIZATION OF ANTIMONOPOLY COMPLIANCE

In accordance with the Part 1 of the Article 9.1 of the Law on Protection of Competition, in order to comply with the antimonopoly legislation and prevent its violation, an economic entity has the right to implement antimonopoly compliance.

Thus, the organization of antimonopoly compliance is the right of the economic entity, the decision on its organization is made by economic entity exclusively voluntarily and remains entirely at its discretion.

The main objectives of the antimonopoly compliance are (1) to ensure antimonopoly compliance when carrying out activities by economic entity and (2) to prevent violations of antimonopoly legislation in the activities of economic entity.

In the long term, the organization of antimonopoly compliance can contribute to the efficiency and success of economic entity.

In organizing antimonopoly compliance, economic entity is recommended to be guided by the following principles:

- 1) interest of the management of an economic entity in the effectiveness of the operation of the antimonopoly compliance, as well as the involvement of employees of an entity in the implementation of the provisions of the internal act on antimonopoly compliance;
- 2) regularity of risk assessment of violation of antimonopoly legislation;
- 3) continuity of the functioning of antimonopoly compliance, as well as ongoing improvement and enhancement of the effectiveness of antimonopoly compliance.

If the internal act(s) on antimonopoly compliance, software tools, educational materials and other documents of antimonopoly compliance are initially drafted in a foreign language, their translation into Russian is not required, provided that the level of knowledge of the foreign language of the employees – citizens of the Russian Federation, applying the above documents (tools) in their activities, allows them to understand the content of such documents (tools).

An economic entity may translate documents drawn up in a foreign language into Russian or another language at its discretion, for example, in terms of the fundamental provisions of the internal act(s) on antimonopoly compliance and (or) basic training materials on antimonopoly compliance.

Upon sending to FAS Russia an internal act(s) or a draft internal act(s) regulating the issues specified in the Part 2 of the Article 9.1 of the Law on Protection of Competition, an economic entity must duly translate those documents into Russian if they are drawn up in a foreign language to determine their compliance with antimonopoly legislation.

Antimonopoly compliance is based on the independently determined needs of an entity, taking into account the risks of violation of antimonopoly legislation arising in the activity of such entity. Accordingly, the recommendations contained in these guidelines may be applied taking into account the size, structure, industry specificity, the nature of the economic entity's activities and other options.

IV. INCENTIVES FOR ORGANIZING ANTIMONOPOLY COMPLIANCE

One of the fundamental principles of the state policy on the development of competition, established by the Decree of the President of the Russian Federation of December 21, 2017 "On State Competition Policy Guidelines" is the stimulation of economic entities, including those with a dominant position in commodity markets, to introduce a system of antimonopoly compliance.

Incentives for economic entity to organize antimonopoly compliance are:

- 1) Reducing the risks of violation of antimonopoly legislation and the risk of occurrence of negative consequences for an entity, in particular, collection of fines, losses, damage to reputation, expenses for legal services, invalidation of transactions, bringing officials of economic entity to administrative or criminal liability.
- 2) Increasing the length of periods between scheduled inspections of economic entities by FAS Russia from three to five years, or failure to conduct such inspections in relation to economic entity by FAS Russia. Thus, according to the Decree of the Government of the Russian Federation of March 1, 2018 No. 213 "On approval of criteria for classifying the activities of legal entities and individual entrepreneurs carrying out economic activities into risk categories in the implementation of state control over compliance with the antimonopoly legislation of the Russian Federation", functioning of the economic entity for at least one year as of the date of making the decision on assigning (changing) the risk category of the system of legal and organizational measures aimed at compliance of such economic entity with the requirements of antimonopoly legislation, provided by an internal act(s) of the economic entity or another person from among persons belonging to the same group as the economic entity, if such internal act(s) apply to the economic entity, is one of the conditions for reducing the category from medium and moderate to moderate and low, respectively.
- 3) Self-identification of violation of the antimonopoly legislation by economic entity allows it to voluntarily declare to FAS Russia the conclusion of an agreement (the implementation of concerted actions), unacceptable in accordance with the antimonopoly legislation, which is the basis for the release of the economic entity from administrative liability or to impose an administrative fine in the minimum amount for committing administrative violations, provided for by the Paragraphs 1 - 4, 6 and 7 of the Article 14.32 of the Code on Administrative Offences of the Russian Federation (Administrative Code), if the conditions of the Article 14.32 of the Administrative Code are met.

V. PROCEDURE FOR FAS RUSSIA TO DETERMINE COMPLIANCE OF INTERNAL ACTS ON ANTIMONOPOLY COMPLIANCE WITH ANTIMONOPOLY LEGISLATION

Part 5 of the Article 9.1 of the Law on Protection of Competition stipulates that economic entity is entitled to submit an internal act(s) or a draft internal act(s) regulating the issues specified in the Part 2 of the Article 9.1 of the Law on Protection of Competition to FAS Russia for determination of its compliance with antimonopoly legislation.

Such submission is exclusively voluntary and is aimed at obtaining a motivated position of FAS Russia on compliance of provisions of the internal act(s) of economic entity on antimonopoly compliance, including the presence in such act(s) of all mandatory elements provided for by the Part 2 of the Article 9.1 of the Law on Protection of Competition.

Absence of economic entity's application to FAS Russia to establish the compliance of an internal act(s) on antimonopoly compliance or a draft internal act(s) on antimonopoly compliance does not affect the assessment of the legality and effectiveness of the antimonopoly compliance organized by it in subsequent, for example, during consideration of case on violation of antimonopoly legislation or case on administrative offence.

1. Procedure for submission of internal act(s) on antimonopoly compliance to FAS Russia

Submission to establish compliance of an internal act(s) on antimonopoly compliance may be made in writing in a free form with a reference to the Part 5 of the Article 9.1 of the Law on Protection of Competition and attaching the internal act(s) on antimonopoly compliance or its draft (drafts). It is sent to FAS Russia (Central Office of FAS Russia).

2. Requirements for internal act(s) on antimonopoly compliance to be submitted to FAS Russia

The system of internal compliance with antimonopoly legislation may be contained in one or several internal acts on antimonopoly compliance (Paragraph 24 of the Article 4 of the Law on Protection of Competition). The relevant act(s) may be presented in the form of draft or already adopted local normative acts of economic entity (Part 5 of the Article 9.1 of the Law on Protection of Competition).

An internal act(s) on antimonopoly compliance submitted to FAS Russia or its draft(s) should be aimed at organizing by an economic entity of an internal system for ensuring

compliance of its activities with the requirements of antimonopoly legislation and, in accordance with the Part 2 of the Article 9.1 of the Law on Protection of Competition, should contain:

- 1) requirements to the procedure for assessing the risks of violating antimonopoly legislation, connected with the implementation of its activities by economic entity;
- 2) measures aimed at reducing the risks of violation of antimonopoly legislation by economic entity associated with the implementation of its activities;
- 3) measures aimed at the implementation by an economic entity of control over the functioning of the antimonopoly compliance;
- 4) procedure for acquainting employees of an entity with the internal act(s);
- 5) information about the official responsible for the operation of the antimonopoly compliance.

In determining the content of an internal act(s) on antimonopoly compliance, an economic entity may restrict itself to the mandatory elements, which are set out in the Part 2 of the Article 9.1 of the Law on Protection of Competition or establish additional requirements for antimonopoly compliance in such act(s). The introduction of additional requirements is the economic entity's right and remains entirely at the entity's discretion (Part 3 of the Article 9.1 of the Law on Protection of Competition).

In order to qualify antimonopoly compliance act(s) or its draft(s) as compliant with the Part 2 of the Article 9.1 of the Law on Protection of Competition, the provisions of such act (its draft) or acts (its drafts) should reflect all the elements established by the regulation.

The formal naming of an economic entity's local regulatory act as an internal act on antimonopoly compliance, in the absence of the above mandatory elements, is the basis for the conclusion that such local regulatory act does not comply with the Part 2 of the Article 9.1 of the Law on Protection of Competition.

In preparing an antimonopoly compliance act (its draft) economic entity may follow the recommendations given in Section V, Paragraph 4 of these guidelines.

If the description of any of the elements listed in the Part 2 of the Article 9.1 of the Law on Protection of Competition is contained in another internal act of an economic entity, such act shall also be submitted to FAS Russia in accordance with the Part 5 of the Article 9.1 of the Law on Protection of Competition. Examples include:

- requirements for the procedure for assessing the risks of violating the antimonopoly legislation, related to the implementation of its activities by economic entity, may be contained in the "risk map";

- measures aimed at reducing the risks of violating antimonopoly legislation can be contained in the "road map", prepared on the basis of the assessment of such risks;
- procedure of familiarization of employees of economic entity with the internal act(s) on antimonopoly compliance may be established by the order of the head of the economic entity;
- information on the official responsible for the functioning of the internal compliance system may be contained in the order appointing such an official, its draft(s), and in the job description or employment contract.

3. Consideration of the internal act(s) on antimonopoly compliance

FAS Russia shall within thirty days examine the internal act(s) specified in the Part 2 of the Article 9.1 of the Law on Protection of Competition or the draft internal act(s) sent by economic entity and provide an opinion on their compliance or non-compliance with the antimonopoly legislation. This period begins to run on the day following the day of receipt of the above documents by FAS Russia.

In the course of reviewing internal act(s) on antimonopoly compliance or its draft(s), FAS Russia shall not only establish whether an economic entity's internal act(s) on antimonopoly compliance or its draft(s) contain all mandatory elements provided for by the Part 2 of the Article 9.1 of the Law on Protection of Competition, but also check them for any provisions contradicting the antimonopoly legislation.

The review results form a reasoned conclusion of FAS Russia on the compliance or non-compliance of the internal act(s) on antimonopoly compliance or its draft(s) sent by economic entity with the requirements of antimonopoly legislation.

If the internal act(s) on antimonopoly compliance or its draft(s) contain all the mandatory elements stipulated in the Part 2 of the Article 9.1 of the Law on Protection of Competition, and the act (acts) do not contain any provisions contradicting antimonopoly legislation, FAS Russia gives an opinion on its (their) compliance with antimonopoly legislation (positive opinion).

If economic entity receives a positive opinion before the date of publication of this guidelines, this does not require FAS Russia to re-examine the internal act(s) or its draft(s) to determine its (their) compliance with the antimonopoly legislation.

If the submitted internal act(s) on antimonopoly compliance or its draft(s) do not contain any of the elements stipulated in the Part 2 of the Article 9.1 of the Law on Protection of Competition and/or if such act(s) or its draft(s) contain any provisions contradicting the antimonopoly legislation (negative conclusion), FAS Russia shall issue a conclusion about its (their) non-compliance with antimonopoly legislation.

In its negative opinion, FAS Russia indicates the following reasons: absence in the reviewed internal act(s) on antimonopoly compliance or its draft(s) of any of the elements provided for by the Part 2 of the Article 9.1 of the Law on Protection of Competition (specifying the missing element), and (or) presence of the provisions in the internal act(s) on antimonopoly compliance or its draft(s) reviewed by FAS Russia which do not meet the requirements of the antimonopoly legislation (specifying such provisions and requirements of antimonopoly legislation which the said provisions do not meet).

Economic entity has the right, after eliminating the reasons for a negative opinion, to send the internal act(s) on antimonopoly compliance or its draft(s) to FAS Russia again.

Examination of subsequently submitted by economic entity internal act(s) on antimonopoly compliance or its draft(s) shall be carried out within the period prescribed by the Part 6 of the Article 9.1 of the Law on Protection of Competition. This period begins on the day following the day of receipt of the aforementioned documents by FAS Russia.

When economic entity resubmits internal act(s) on antimonopoly compliance or its draft(s), when the said act(s) or its draft(s) are amended only in the part that previously served as grounds for a negative opinion of FAS Russia, the antimonopoly authority evaluates these documents only in that part, that is, for the provisions that were previously submitted by the economic entity in the internal act(s) or its draft(s).

If internal act(s) on antimonopoly compliance, which was already in effect in economic entity at the time it was sent to FAS Russia for review, contains provisions contradicting antimonopoly legislation, this alone cannot be the basis for antimonopoly authority to take appropriate antimonopoly response measures, unless it is found that as a result of compliance by the economic entity with such provisions of the internal act(s) there are signs of violation of antimonopoly legislation.

4. Recommendations for organizing antimonopoly compliance

1) Methodological materials

Economic entities, when developing internal act(s) on antimonopoly compliance and organization of antimonopoly compliance, may be guided (to the extent that does not contradict the Article 9.1 of the Law on Protection of Competition) among others by the following materials.

- 1) ISO 31000 Risk Management – Principles and Guidelines;
- 2) ISO 19600 Conformity Management Systems – Guidelines;
- 3) Order of the Government of the Russian Federation of October 18, 2018 No. 2258-p "On approval of guidelines for the creation and implementation by federal executive bodies of antimonopoly compliance system";

- 4) Order of FAS Russia of November 27, 2018 No. 1646/18 "On the antimonopoly compliance system in FAS Russia";
- 5) Order of the Ministry of Labor of the Russian Federation of October 9, 2018 No. 625H "On approval of the professional standard "Competition Law Specialist";
- 6) ICC Antimonopoly Compliance Toolkit
(<https://iccwbo.org/publication/iccantimonopoly-compliance-toolkit/>)

2) Publication of information in the information and telecommunications network Internet

In accordance with the Part 4 of Article 9.1 of the Law on Protection of Competition, information on the adoption (application) of the internal act(s) on antimonopoly compliance shall be published by an economic entity on its website in the information and telecommunications network Internet in Russian. In this case, it is sufficient to indicate the details of the act(s): numbers (if available), names and adoption dates. Publication of the text of the internal act(s) on antimonopoly compliance in the information and telecommunications network Internet is the right of an economic entity and remains at its discretion.

3) Extension of an internal act(s) to a group of persons of economic entity

Part 24 Article 4 of the Law on Protection of Competition implies that antimonopoly compliance measures provided for by an internal act(s) of economic entity may be extended to economic entities belonging to the same group of persons as the economic entity.

The decision to extend the effect of an internal act(s) on antimonopoly compliance to persons belonging to the same group of persons may be adopted in a format convenient for the group of persons. For example, an internal act on antimonopoly compliance of one economic entity may be adopted as a local regulatory act of another economic entity and/or a decision to join the internal act(s) on antimonopoly compliance may be taken by an authorized body of an economic entity.

In order for economic entity to apply an internal act applicable to a group of entities to which it belongs, the economic entity may use, inter alia, common software for the group of entities, methods of training on antimonopoly compliance universal for all economic entities of the group of entities, and other means.

4) Recommendations on the procedure for assessing the risks of violating antimonopoly legislation related to the implementation of its activities by an economic entity

In accordance with the Paragraph 1 of the Part 2 of the Article 9.1 of the Law on Protection of Competition, internal act(s) adopted by an economic entity to organize

antimonopoly compliance should contain requirements for the procedure of risk assessment of the antimonopoly legislation violation related to economic entity's activities.

The absence in the internal act(s) on antimonopoly compliance of requirements to the procedure for risk assessment of the violation of antimonopoly legislation in the presence of such procedure is recognized as compliance with the Paragraph 1 of the Part 1 of the Article 9.1 of the Law on Protection of Competition provided FAS Russia establishes the compliance of such procedure with the requirements of antimonopoly legislation.

The procedure of risk assessment is recommended to provide a description of risk identification and assessment processes, including activities carried out within the organization of these processes, frequency and timing of their implementation, persons involved in the organization and implementation of these activities, organization of interaction between persons involved in these activities, order of registration of the results of risk assessment and their adjustment if necessary.

Economic entities shall independently identify the requirements of antimonopoly legislation applicable to their activities taking into account, inter alia, structure, nature of activities, industry in which the economic entity carries out its activities, and other parameters.

The list of applicable requirements may be determined by economic entity in particular on the basis of antimonopoly legislation, the Treaty on the Eurasian Economic Union, applicable international law and foreign legislation, rulings adopted by FAS Russia and issued remedies, warnings and precautions.

Monitoring of applicable requirements and enforcement practices is recommended on an ongoing basis. In carrying out monitoring, it is recommended that research and analysis be conducted:

- 1) antimonopoly legislation and draft laws of antimonopoly legislation;
- 2) practice of application of antimonopoly legislation by courts and FAS Russia;
- 3) acts issued by FAS Russia in relation to economic entity.

Information obtained as a result of monitoring conducted by economic entity may be used by the economic entity to amend its internal act(s) on antimonopoly compliance, including the development and adoption of new measures to reduce the risks of violation of antimonopoly legislation by economic entity or to change internal procedures for implementation of the said measures.

Economic entities determine the compliance-risks in their operations (situations in which applicable requirements may be violated) by comparing the applicable requirements with their internal business processes.

The process of identifying compliance-risks may require an analysis of, for example, court cases and cases of violation of antimonopoly legislation; materials of enforcement practice of FAS Russia and the courts; results of audits of antimonopoly compliance conducted by FAS Russia; results of the analysis conducted by FAS Russia of the state of competition on the commodity markets in which the economic entity is a participant.

The source of compliance-risks may be local normative acts of economic entity and transactions made (planned to be made), as well as actions of the economic entity's employees in the course of their official duties. To assess actions of employees of economic entity, interviews with employees and analysis of contents of messages sent by employees of economic entity to contractors, other economic entities and authorities using the economic entity's data transfer channels and received by employees of the economic entity from the above persons using such data transmission channels.

Identified compliance-risks can be described and classified according to criteria defined by economic entity. In addition, the economic entity may analyze the causes and conditions under which compliance-risks arise.

Compliance-risks¹ can be assessed in terms of the probability of their occurrence and the severity of their consequences (fines, losses, damage to reputation, legal fees, invalidity of transactions, liability of officials, etc.). The National Standard of the Russian Federation GOST R ISO 31000-2019 "Risk Management. Principles and Guidelines", approved by the Order of the Federal Agency for Technical Regulation and Metrology of December 10, 2019 No. 1379-ст. A compliance-risk matrix (a system for visualizing the significance and probability of compliance-risks) can be used to assess compliance-risks, including with an indication of the level of compliance-risk (e.g., color or numerical).

The overall result of the compliance-risks assessment can be in a format accepted by an economic entity, for example, as a report or a risk map with a description of compliance risks, causes and conditions of its occurrence, indication of the risk level.

In the future, an economic entity can periodically reassess previously detected compliance-risks and identify and assess newly emerged compliance-risks within the terms determined by local normative legal acts.

An unscheduled assessment of compliance-risks may be required, for example, when changing business processes, entering new commodity markets or exit of an economic entity from the commodity market, changes of the organizational (management) structure or strategy (objectives, directions) of activity of an economic entity, significant changes

¹ The process covering risk identification, risk analysis and comparative risk assessment (National Standard of the Russian Federation GOST R 51897-2011/ISO Guide 73:2009 "Risk Management. Terms and Definitions").

in the market situation, legal regulation, identifying violations of the applicable requirements in the activity of an economic entity.

5) Recommendations on measures aimed at reducing the risks of violation of antimonopoly legislation by an economic entity related to the implementation of its activities

In accordance with the Paragraph 2 of the Part 2 of the Article 9.1 of the Law on Protection of Competition, internal act(s) adopted by an economic entity for implementing antimonopoly compliance shall contain measures aimed at reducing the risks of violation of antimonopoly legislation by an economic entity, related to the implementation of its activity.

After detection of antimonopoly compliance-risks, an economic entity defines necessary corrective actions (measures aimed at reducing of risks of violation of antimonopoly legislation by an economic entity related to the implementation of its activities).

Description (list) aimed at reducing the risks of violation of antimonopoly legislation by an economic entity can be in a format convenient for an entity, for example, in the form of road map with the description or compliance-risk and measures aimed at reducing it (general (permanent) measures and specific actions), identification of the official or structural unit responsible for the execution of each activity, determination of the terms for implementing measures (calendar plan for multi-staged activity), compliance rate (criteria for assessing the quality of the output), information exchange requirements and reporting, necessary resources.

Economic entity can establish objectives for compliance with applicable requirements (compliance-objectives) for a certain period. It can be defined for each compliance-objective what will be done, what resources will be required, who will be responsible for the achievement of compliance-objectives, term, procedure for evaluating results and other parameters. Examples of compliance-objectives include percentage of staff successfully trained, number of violations detected by FAS Russia or other.

The example of the leadership is especially important for the effective functioning antimonopoly compliance, when senior leadership and other leaders of an economic entity demonstrate respect for compliance and encourage an appropriate employee behavior culture.

Here are the examples of some specific measures that can be taken by economic entity to reduce the risks of violation of antimonopoly.

Preventive measures, including:

- 1) coordination with the official responsible for the functioning of antimonopoly compliance, deals (other actions) that may lead to violation of applicable requirements;
- 2) conducting a preliminary examination of the planned action (for example, establishing a pricing mechanism or making a deal within the framework of economic concentration), including with the involvement of experts who are not employees of an economic entity and have special knowledge in the relevant fields of technology, production, economics, finance;
- 3) application to the antimonopoly authority for verification of compliance with the requirements of the draft agreement (when concluding agreements not subject to state control in accordance with the Law on Protection of Competition or the Federal Law "On Natural Monopolies").

Adoption of local normative acts regulating requirements to certain types of activities (operations, procedures) of an economic entity in order to comply with the requirements of antimonopoly legislation, including:

- 1) statement of relevant applicable requirements;
- 2) clarification of applicable requirements (corresponding to the antimonopoly legislation, current court practice and practice of FAS Russia), necessary for the practical understanding of applicable requirements by responsible employees of an economic entity in the exercise of their labor functions;
- 3) description of admissible behavior patterns of employees of an economic entity in order to comply with applicable requirements, including requirements for the content of agreements, letters and internal communication of an economic entity.

Automation of processes (procedures) to avoid improper actions of executives.

Employee training on the operation of antimonopoly compliance and systematic verification of their knowledge.

The purpose of employee training is to provide the exercise of their labor functions in accordance with requirements of the antimonopoly legislation.

Methods of conducting the training of employees and assessment of its effectiveness, terms, job list and other actions are defined at the discretion of an economic entity.

The effectiveness of the training programme is enhanced if it is adapted to the labor functions, is simple and practical (best based on examples), and takes into account gaps in the employee's knowledge and experience, established as a result of the examination of knowledge, or violations of antimonopoly legislation committed by an employee.

There are several ways to train employees whose job responsibilities are related to compliance-risks:

- 1) initial education and (or) an individual consultation and introduction to the internal act(s) on antimonopoly compliance when hiring or transfer of employee to another position (if new responsibilities are connected with new compliance-risks);
- 2) targeted (unscheduled) education and (or) individual consultation in case of modification of the antimonopoly legislation, internal act(s) on antimonopoly compliance, in case of detection of violations of antimonopoly legislation;
- 3) periodic professional development (scheduled training and (or) individual consultation) within the terms determined by an economic entity, for example, at least once a year or at other intervals.

Economic entity may stipulate an examination of knowledge acquired by employee by methods and means determined by economic entity (for example, testing, solving practical problems, interview, examination).

Adoption of measures to ensure that employees comply with applicable requirements, including:

- 1) introduction of requirements to the employees behavior aimed at compliance with antimonopoly legislation in the instructions and employment contracts of employees, in the regulations on structural subdivisions of economic entity;
- 2) establishment by local normative acts of an economic entity, collective agreement, and employment contracts of provisions that:
 - failure to comply with applicable requirements is a disciplinary offence and the basis for imposing material and disciplinary liability on an employee under the labor legislation;
 - performance by an employee of an act (omission) which results in a violation of the applicable requirement is a basis for sending the employee for repeated or supplementary education in the antimonopoly legislation, conducting an examination of the employee's knowledge of antimonopoly legislation, the use of other measures aimed at preventing the employee from the repeated violation of the applicable requirements;
 - employees shall be rewarded under the Labour Law and local normative acts of an economic entity for active assistance in the functioning of the antimonopoly compliance (including identifying possible violations of applicable requirements and bringing it to the attention of the management of the economic entity, active participation in the establishment and operation of antimonopoly compliance).

6) Recommended measures aimed at the implementation by an economic entity of monitoring of the system of antimonopoly compliance

In accordance with the Paragraph 3 of the Part 2 of the Article 9.1 of the Law on Protection of Competition, an inadmissible internal act(s) adopted by an economic entity to organize antimonopoly compliance should contain measures aimed at the implementation by an economic entity of monitoring of the functioning of such a system.

This requirement of the Law on Protection of Competition implies the existence in the internal act(s) on antimonopoly compliance of provisions describing measures to control the operation of antimonopoly compliance.

In order to control the functioning of the antimonopoly compliance, an economic entity can monitor, i.e. the continuous collection, analysis and assessment of information on the effectiveness of measures to address or reduce compliance-risks and the organization of processes in general (for example, on the effectiveness of training, methods of control of business processes, division of responsibilities of employees, relevance of applicable requirements, efficiency of work with violations).

An economic entity independently determines, in particular, the procedure and forms of monitoring, its frequency, responsible persons, reporting procedure, performance indicators of antimonopoly compliance, procedure and frequency of external and internal audits (if such audits are provided for by an internal act(s) on antimonopoly compliance).

An economic entity can receive information about the functioning of antimonopoly compliance, for example, from employees (including anonymously and through the "hotline", as well as during the training and testing of knowledge of employees), buyers and suppliers, state control (supervision) bodies, auditors and other individuals.

In order to verify the accuracy of information about the violation or threat of violation by employees of applicable requirements and (or) requirements of antimonopoly compliance, investigations (internal, official, etc.) may be conducted (in accordance with the procedure established by a local normative act).

For each identified case of discrepancy, an economic entity is recommended to undertake actions to eliminate the contradiction and its consequences, identify the causes of the discrepancy and undertake actions to eliminate them, assess the results of corrective actions, if necessary, make changes to the current antimonopoly compliance.

In addition, an economic entity may submit a voluntary statement to FAS Russia about a violation of antimonopoly legislation (or its signs), identified as a result of the implementation of measures to control the functioning of antimonopoly compliance.

At the same time, an economic entity may take additional preventive measures, for example, the suspension from work of an employee who has concluded an inadmissible agreement on behalf of an economic entity (who has committed an inadmissible action on behalf of an economic entity), measures to ensure the safety of documents and

electronic media related to an inadmissible agreement (action), registration of the refusal of an economic entity to participate or further participation in the agreement (from the implementation or further implementation of agreed actions) and other measures.

The results of the monitoring of the operation of antimonopoly compliance may be recorded in periodic reports or assessed and approved in other ways in accordance with the procedures adopted by economic entity. Such reports may contain, for example, information on new applicable requirements and their influence on the activities of an entity, performance indicators for compliance-goals, detected violations, as well as undertaken measures, results of inspections carried out by FAS Russia and measures taken in relation to an economic entity, results of monitoring and audit (if any) effectiveness of the antimonopoly compliance.

These reports may be submitted to leaders of an economic entity (board of directors, supervisory board, collegial and single executive body) for decisions on changes to the antimonopoly compliance or other measures. A report on the results of the assessment of the performance of antimonopoly compliance may be submitted to leaders periodically, for example, at least once a year.

7) Recommended procedure for familiarizing employees of an economic entity with an internal act(s) on antimonopoly compliance

In accordance with the Paragraph 4 of the Part 2 of the Article 9.1 of the Law on Protection of Competition, an internal act(s) adopted by an economic entity to organize a system of antimonopoly compliance should contain the procedure for familiarizing employees of an economic entity with such an internal act(s).

The specified procedure may determine the range of employees who must be familiarized with the internal act(s) on antimonopoly compliance, as well as the procedure for registration of the results of such familiarization (in electronic form, in the accounting journal, in the form of a mark in a personal matter, etc.). An economic entity has the right to familiarize with the specified internal act(s) of the relevant employees, for example, using information technologies, including the corporate information system, through the direction of the internal act(s) on antimonopoly compliance by corporate e-mail with a notification of reading and (or) by completing the familiarization sheets using electronic signatures.

The terms, frequency and scope of familiarization of employees with the internal act(s) on antimonopoly compliance are determined by an economic entity independently. It is recommended to ensure that employees are familiarized with the internal act(s) on antimonopoly compliance when hiring. Re-familiarization of a specific employee (or a

group of employees) may be due, for example, to detection of violations of local regulations of an economic entity, amendments to these acts or training.

The obligation to familiarize employees with the internal act(s) on antimonopoly compliance may be assigned to officials responsible for the organization and functioning of antimonopoly compliance, or to the personnel service.

The obligation to comply with the internal act(s) on antimonopoly compliance adopted by economic entity, to be trained, to report violations and other obligations may be fixed in employment contracts, job descriptions, employee evaluation and incentive systems (if any).

8) Recommendations on the definition of the official responsible for the operation of antimonopoly compliance

In accordance with the Paragraph 5 of the Part 2 of the Article 9.1 of the Law on Protection of Competition, the internal act(s) adopted by the economic entity for the organization of the system of antimonopoly compliance, shall contain information on the official responsible for the operation of such a system.

The following principles are recommended in determining the authorized division (designation of an official):

- 1) accountability of the authorized division (official) directly to the management of economic entity;
- 2) sufficiency of the authority and resources necessary for the authorized division (official) to solve its tasks.

The tasks, authority and responsibilities of the authorized division (official) are determined by an economic entity independently in its local normative acts, relevant provisions may also be contained in employment contracts, job descriptions, etc.

It is recommended that the following functions be attributed to the authorized division (official):

- 1) drafting of an internal act(s) on antimonopoly compliance and preparation of suggestions for amendments;
- 2) organization of the process of detection and assessment of compliance-risks (for example, "risk map" and "risk matrix");
- 3) monitoring of applicable requirements and informing employees about changes in the requirements of antimonopoly legislation and its application;
- 4) development of measures to reduce compliance-risks (e.g., a "road map");
- 5) consultation of employees on antimonopoly compliance and internal act(s) on compliance;

- 6) training of employees in the implementation of antimonopoly legislation;
- 7) organization of conflict resolution measures with contractors, development of mediation and similar procedures;
- 8) conduct of internal investigations, organization of acceptance and consideration of appeals of employees and other persons on possible violations of applicable requirements (including anonymous messages to "hotline");
- 9) interaction with FAS Russia in case of inspections (both independently and, if necessary, with the involvement of employees of other structural departments);
- 10) communication of information on violations of antimonopoly legislation and internal act(s) on antimonopoly compliance to the management and preparation of suggestions on measures of responsibility for violations;
- 11) monitoring the achievement of compliance-objectives, monitoring the operation of the antimonopoly compliance and taking measures to eliminate its disadvantages;
- 12) participation in the harmonization of standard forms of agreements and other documents for their antimonopoly compliance.

Employees of the authorized structural department (official) can specialize in antimonopoly compliance and combine it with other labor functions. An authorized department may be structurally separated from other departments, or, on the contrary, functions of an authorized department (official) may be distributed among employees of already existing departments.

Nevertheless, it is recommended to ensure the independence of the authorized department (official), the absence of a conflict of interest, as well as the sufficiency of authority and resources to perform the functions assigned to it in accordance with the internal act on antimonopoly compliance.

The senior management of an economic entity may fulfil its role in organizing antimonopoly compliance by, for example:

- 1) defining responsibilities and authority of the departments and employees within the framework of antimonopoly compliance;
- 2) ensuring development and implementation of local normative acts, procedures and processes to achieve the objectives of antimonopoly compliance;
- 3) ensuring development and functioning of accountability mechanisms, including timely reporting of violations;
- 4) providing necessary resources to maintain and develop antimonopoly compliance;
- 5) analysis of functioning and adoption of measures to improve antimonopoly compliance;

- 6) encouraging employees to improve their qualification in the field of antimonopoly compliance through training (including professional development), in particular, on the basis of educational or other specialized organizations.

All other employees may take responsibility for operation of the antimonopoly compliance within the framework of their duties and powers determined by the employment contract, the job description and local normative acts. In case of detection of inadmissible execution of the internal act(s) on antimonopoly compliance and (or) applicable requirements, on the decision of the management of the organization, measures stipulated in the Labour Law can be applied to violators, including disciplinary sanctions.

VI. IMPLEMENTATION OF THE SPECIFIC POWERS OF FAS RUSSIA

1. Issuance of remedies by FAS Russia

Paragraph 2 of the Part 1 of the Article 23 of the Law on Protection of Competition empowers FAS Russia to issue mandatory remedies to economic entities.

In particular, FAS Russia issues remedies on the basis of the outcome of the examination of cases on violation of antimonopoly legislation (Article 50 of the Law on Protection of Competition), the results of the consideration of the application for consent to the implementation of the transaction, another action (Paragraph 4 of the Part 2 of the Article 33 of the Law on Protection of Competition), following the examination of the notification submitted according to the Article 31 of the Law on Protection of Competition (Part 10 of the Article 33 of the Law on Protection of Competition).

On the basis of the provisions of the Paragraph 1 of the Article 9.1 of the Law on Protection of Competition, the organization by an economic entity of the internal compliance with the requirements of antimonopoly legislation is the right of economic entity and is voluntary, by his own will and interest.

In connection with the above, the organization of antimonopoly compliance cannot be mandatory action in accordance with the regulation issued by FAS Russia.

At the same time, when considering an application within the framework of state control over economic concentration, prior to the ruling of FAS Russia, applicants have the right to submit to FAS Russia information on the intention to voluntarily undertake commitments to implement activities aimed at ensuring competition, including organization of a system of antimonopoly. In this case, the fulfillment by such persons of

the above obligations may be part of the regulation of FAS Russia, issued on the basis of the results of consideration of the transaction or other action.

2. Submission of documents, explanations and information

In accordance with the Article 25 of the Law on Protection of Competition, economic entities are obliged to present to the antimonopoly authority (its officials) on motivated request, in accordance with the powers vested in it, documents, explanations, information in written and oral form, including acts, contracts, certificates, business correspondence, other documents and materials made in the form of a digital record or in the form of a record on electronic media. In addition, officials of the antimonopoly authority in the course of the inspection are entitled to request documents and information required for the inspection (Article 25.4 of the Law on Protection of Competition), as well as copies of documents and electronic data carriers during the inspection (Article 25.3 of the Law on Protection of Competition).

Organization of antimonopoly compliance is a right of an economic entity and, consequently, is not an independent object of state control and inspections by FAS Russia.

Documents and information concerning the organization of antimonopoly compliance (including documents and information on the results of the risk assessment conducted by an economic entity, on the measures planned or adopted by an economic entity to reduce the risks of violation of antimonopoly legislation, on the results of internal investigations conducted by an economic entity, on the results of the control exercised by the economic entity over the functioning of antimonopoly compliance, on the assessment of the effectiveness of antimonopoly compliance by an economic entity) may be submitted to FAS Russia by economic entity, as a part of objections to the act of verification, evidence, explanations or arguments on the adoption of measures provided for in the internal act(s) on antimonopoly compliance, in case of violation of antimonopoly legislation or administrative offence.

The specified documents and information shall be assessed by FAS Russia on the same basis as other evidences in case on violation of antimonopoly legislation or in case on administrative offence, with the incorporation of relevant conclusions on the results of such assessment in the adopted acts in the procedure established by the Law on Protection of Competition or Administrative Code of the Russian Federation.

At the same time, due to the meaning of Part 1 and Part 2 of Article 45.2 of the Law on Protection of Competition, data contained in the above documents (in the absence of other evidence) cannot be the basis for a conclusion about the presence or absence of signs of violations of antimonopoly legislation, if such information is evaluative in nature (for

example, it is the opinion of employees of an economic entity or specialists engaged by an economic entity about actual, expected or planned events (subjective interpretation of facts).

3. Consideration of measures for the organization of antimonopoly compliance when addressing the issue of violation of antimonopoly legislation by an economic entity

If FAS Russia issues conclusions on antimonopoly compliance of an internal act(s) of an economic entity on antimonopoly compliance or its draft(s), the specified economic entity cannot be recognized as a violator of antimonopoly legislation, if its actions are carried out in accordance with the agreed rules of antimonopoly compliance.

At the same time, the absence of an internal act(s) on antimonopoly compliance by an economic entity, the absence of a positive conclusion of FAS Russia about such an act(s) do not exclude the right of an economic entity to submit evidences of taking all measures to comply with the antimonopoly legislation in the course of the consideration of the case.

Chairman of Presidium of FAS Russia
Head of FAS Russia

M.A. Shaskolsky