

Google Inc.

1600 Amphitheatre Parkway,
Mountain View, California, 94043,
United States of America

Representatives of Google Inc.
N.N. Afinogenova

7, Lesnaya st.,
125047 Moscow
(Business center "White Gardens", 12 floor)

MINUTES

on the case No. 4-19.5-1682/00-09-16

under administrative proceeding

February 21, 2017

Moscow

The Minutes was drawn up by the Head of Administrative Proceedings Division of the Legal Department of the Federal Antimonopoly Service (hereafter – the FAS Russia) Elena V. Goncharova on the results of administrative proceedings, conducted in accordance with the Order of the Federal Antimonopoly Service dated November 30, 2016 No. 09/82656/16 on initiation of an administrative case and an administrative investigation into the case No. 4-19.5-1682/00-09-16 in relation to Google Inc. (1600 Amphitheatre Parkway, Mountain View, California, 94043, United States of America),

Event and nature of administrative offence:

Under the Decision on the case No. 1-14-21/00-11-15 (ref. No. АД/54066/15 of September 18, 2015) (hereafter – the Decision of the FAS Russia), 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, which were recognized as a violation of Part 1 Article 10 of the Federal Law dated July 26, 2006 No.135-FZ "On Protection of Competition" (hereinafter – the Law on Protection of Competition).

Based on the Decision of the FAS Russia, the Prescription for Google (ref. No. АД/54067/15 of September 18, 2015) to terminate violation of antimonopoly legislation (hereafter – the Prescription of the FAS Russia) was issued, in accordance with 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 November 18, 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 obliged by November 18, 2015 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 Prescription, which have been concluded by Google Inc. and Google Ireland Limited companies 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. was obliged by November 18, 2015 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 enforcement of the requirements, with the supplement of relevant documents providing evidence in the proper form.

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

In accordance with Paragraph 2, Article 52 of the Law on Protection of Competition, if an arbitration court initiates proceedings on an appeal against a prescription, execution of the prescription 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 Decision of the Ninth Arbitration Court of Appeal of August 19, 2016, Google Inc. and Google Ireland Limited was refused in satisfaction of requirements about recognition of the Decision and the Prescription of the FAS Russia on case No. 1-14-21/00-11-15 illegal.

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

Considering the stay of execution of the Prescription of the FAS Russia for the period of litigation the Prescription was to be fulfilled by Google Inc. 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 Prescription, 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 prescriptions of the antimonopoly body within the period established by such decisions and prescriptions.

In accordance with Parts 1 and 2, Article 51 of the Law on Protection on Competition, the prescription on the case of violation of the antimonopoly legislation is to be fulfilled within the period specified in it. The antimonopoly body exercises control over fulfillment of its prescriptions. The failure to fulfill a prescription on the case of violation of the antimonopoly legislation in time entails administrative liability.

The Prescription of the FAS Russia was not executed in the established period, in accordance with which Google Inc. was brought to administrative liability with the Decision on imposition of a fine on the case on administrative offense dated November 2, 2016 No. 4-19.5-1126/00-11-16.

Resulting from bringing Google Inc. to administrative liability for non-execution in established time of the Prescription of the FAS Russia, Commission of the FAS Russia on consideration of the case on violation of antimonopoly legislation issues a Ruling dated November 3, 2016 on establishing new period of execution of the Prescription of the FAS Russia (ref. No. АД/76862/16 dated November 3, 2016) (hereinafter – the Ruling).

Google Inc. was supposed to execute the Prescription of the FAS Russia within 14 days from the date of receipt of the Ruling of the FAS Russia and within 3 days from the moment of execution of the Prescription of the FAS Russia report in writing to the FAS Russia on its execution with all the necessary evidences enclosed.

The Ruling has been sent to Google Inc. on November 9, 2016 via DHL Express, Goods Consignment Note 69 0625 2581. It was received by Google Inc. on November 11, 2016.

The Prescription of the FAS Russia was supposed to be executed by Google Inc. until November 25, 2016 and Google Inc. had to report to the FAS Russia with evidences of execution until November 29, 2016.

As of November 30, 2016, the FAS Russia did not received a notification on execution of the Prescription of the FAS Russia by Google Inc.

In accordance with Part 4 Article 51 of the Law on Protection of Competition Partial fulfillment of the prescription within the established period or deviation from fulfillment or belated fulfillment of the prescription is implied under the failure to fulfill prescription on the case of violation of the antimonopoly legislation in time. Failure to meet the deadline for prescription constitutes a violation of the antimonopoly legislation.

In accordance with Part 2.2, Article 19.5 of the Code on Administrative offenses of the Russian Federation (hereinafter – the Administrative Code), non-fulfilment, at the established time, of a legal decision or prescription of the federal antimonopoly body or its territorial body on termination of abuse by an economic entity of the dominating position on the commodity market and on the performance of actions stipulated by the antimonopoly legislation of the Russian Federation and aimed at ensuring competition shall entail the imposition of an administrative fine.

The affected party – YANDEX LLC (119021, Moscow, Lev Tolstoy st., 16, TIN 7736207543, RRC 770401001, PSRN 1027700229193).

The place where the offence occurred — Moscow, Sadovaya-Kudrinskaya st., 11.

The date when the offence occurred – 30.11.2016.

The hearing of the case is scheduled on March 7, 2017 at 10:00 at 11 Sadovaya-Kudrinskaya st., Moscow, 123995, D-242, GSP-3, Room No. 420B.

In accordance with Part 1, Article 25.1 of the Administrative Code, a person who is on trial in connection with a case concerning an administrative offence shall be entitled to familiarize themselves with all the materials of the case, to give explanations, to present evidence, to make petitions and objections, to have the legal assistance of a defense counsel, as well as to enjoy other procedural rights in compliance with this Code.

In accordance with Part 2, Article 25.2 of the Administrative Code, the affected party shall be entitled to familiarize themselves with all the materials of the case, to give explanations, to present evidence, to make petitions and objections, to have the legal assistance of a defense counsel, as well as to enjoy other procedural rights in compliance with this Code.

Non-official translation

In accordance with Article 25.5 of the Administrative Code, a defense counsel may participate in proceedings in a case concerning an administrative offence in order to render legal assistance to the person who is on trial in connection with the case on the administrative offence, and a representative may participate therein for the purpose of rendering legal assistance to the aggrieved party. A defense counsel and a representative, allowed to participate in proceedings in a case concerning an administrative offence, shall be entitled to familiarize themselves with all the materials of the case, to present evidence, to make petitions and protests, to take part in consideration of a case, to complain against measures taken for the purpose of facilitating proceedings in the case or against a decision thereupon, as well as to exercise other procedural rights under this Code.

The explanations of a person who is on trial in connection with a case concerning an administrative offence:

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Rights and responsibilities are clarified.

The Minutes are read and understood.

Signature of a person,

who is on trial in connection with a case concerning an administrative offence (full name of a person or legal representative of legal entity, clarification of signature,

title, instrument's particulars that identify his official position. In case of refusal to sign the Minutes, mark on the refusal to sign)

Head of Administrative Proceedings Division
of the Legal Department
of the FAS Russia

Elena V. Goncharova

Copy of the Minutes is received. «__» _____ 2017

Signature of a person, who received the
Minutes under administrative
proceeding

Signature _____