

Non-official translation

Google Ireland Limited

Gordon House, Barrow Street,
Dublin 4, Ireland

RULING

on prolongation of the term of administrative
investigation on the case No. 4-19.5-1681/00-09-16 on
administrative violation

January 26, 2017

Moscow

I, Deputy Head of the FAS Russia Sergey Puzyrevskiy, having considered materials of a case on administrative violation initiated by Ruling dated November 30, 2016 on a case No. 4-19.5-1681/00-09-16 in relation to Google Ireland Limited (Gordon House, Barrow Street, Dublin 4, Ireland), on signs of administrative violation, established in Part 2.2 Article 19.5 of the Code on Administrative Offenses of the Russian Federation (hereinafter – the Administrative Code),

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 in accordance with part 1 Article 10 of the Federal Law dated July 26, 2006 No. 135-FZ "On Protection of Competition" (hereinafter – Law on Protection of Competition).

Based on the Decision of the FAS Russia the Ruling was issued to Google Ireland Limited on a case No. 1-14-21/00-11-16 (Ref. number. АД/54067/15 dated September 18, 2015) 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:

11.1. 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. 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.

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 Ireland Limited 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.

The Ruling of the FAS Russia was not executed in the established period, in accordance with which Google Ireland Limited was brought to administrative liability with the Ruling on imposition of a fine on a case on administrative offense dated November 2, 2016 No. 4-19.5-1125/00-11-16.

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

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

The Determination has been sent to Google Ireland Limited on November 9, 2016 via DHL Express, Goods Consignment Note 69 0625 2592. Received by Google Ireland Limited on November 10, 2016.

The Ruling of the FAS Russia was supposed to be executed by Google Ireland Limited until November 24, 2016 and Google Ireland Limited 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 Ruling of the FAS Russia by Google Ireland Limited.

In accordance with Part 4 Article 51 of the Law on Protection of 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.

In accordance with Part 2.2 of Article 19.5 of the Code on Administrative offenses of the Russian Federation (hereinafter – the Administrative Code) the liability established for failure to meet the deadline of a legal decision or order 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.

Due to the necessity of getting additional evidence on the case on administrative offense No. 4-19.5-1681/00-09-16 and guided by Part 5 Article 28.7 of the Administrative Code,

RULED:

1. To prolong the term of administrative investigation on a case on administrative violation No.4-19.5-1681/00-09-16, initiated in relation to Google Ireland Limited, until February 28, 2017.
2. In accordance with Article 26.10 of the Administrative Code_Google Ireland Limited_should within 3 days from the date of receipt of this Ruling to submit to the FAS Russia the following information (documents and materials), appropriately notified:
 - 2.1 Copies of documents, confirming the performance of actions by Google Ireland Limited aimed at executing the Ruling of the FAS Russia.

2.2 Information on official(s) of Google Ireland Limited, who are empowered to make decision on execution of actions established in the Ruling of the FAS Russia.

3. The Google's representative in law is to come on **February __, 2017 at** _____ at the following address: Room 402-B, 11, Sadovaya-Kudrinskaya str., Moscow for provision of explanations, on the act of violation, as well as for signing the Protocol on the administrative offence, or is to send a representative with duly formalized powers to be able to participate in the administrative procedure on the case No. 4-19.5-1681/00-09-16 with all rights, provided by the Article 25.5 of the Code of Administrative Offences of the Russian Federation.

Absence within the period stipulated will be considered as refusal of the protocol signing.

In accordance with Part 1 of the Article 25.1 of the Administrative Code the person, who is the subject of the proceedings on the administrative offence case, has the right to acquaint with the materials of the case, give explanations, present evidences, make applications and ask for refusal, get juridical assistance with the aid of defence council, as well as other procession rights in accordance with the Administrative Code .

In accordance with the Part 4 Article 25.5 of the Code of Administrative Offences, the defence counsel and representative are admitted to the proceedings on the administrative offence case from the moment of the initiation of the criminal case on administrative offence.

S.A. Puzyrevskiy