

JSC "Kaspersky Laboratory"
Leningradskoye sh, 39 A, bld. 3,
Moscow, 125212

Microsoft Corporation
1 Microsoft Way, Redmond WA
98052, USA

RULING

ON THE POSTPONEMENT OF THE HEARING OF THE CASE No. 1-00-168/00-11-16

13 March 2017

Moscow

The Commission of the FAS Russia on consideration of the case No. 1-00-168/00-11-16 on violation of antimonopoly legislation comprising Chairman of the Commission, Deputy Head of the FAS Russia Golomolzin A.N.; members of the Commission: Head of Department for Regulation of Telecommunications and Information Technology of the FAS Russia Zaeva E.A.; Deputy Head of Department for Regulation of Telecommunications and Information Technology Davydova A.I.; Deputy Head of Legal Department of the FAS Russia Kuzmin V.V.; Head of Litigation Division of Legal Department of the FAS Russia Abakumova Y.I.; Head of Organizational Division of Administrative Department - Secretariat of the Head of the FAS Russia Medvedev N.N.; Adviser of Division for International Communications of Department for International Economic Cooperation of the FAS Russia Atanasian A.G. (hereafter – the Commission),

having considered the case No. 1-00-168/00-11-16 on violation of Part 1 Article 10 of the Federal Law dated July 26, 2006 No. 135-FZ "On Protection of Competition" by Microsoft (hereafter – the Defendant), expressed in non-provision by Microsoft Corporation of RTM-versions of Operational System (OS) of Windows 10 to JSC "Kaspersky Laboratory" (hereafter – the Applicant) in the timeframe necessary for adaptation of antivirus software of the third-party developers for correct work with Windows 10 OS,

ESTABLISHED:

The necessity to obtain additional evidences.

In accordance with Parts 1 and 5, Article 47 of the Law on Protection of Competition,

RULED:

1. To postpone consideration of the case No. 1-00-168/00-11-16.
2. To schedule the case No. 1-00-168/00-11-16 for hearing on April 21, 2017 at 10:00 at 11 Sadovaya-Kudrinskaya St., Moscow, 123995, D-242, GSP-3, Room No. 140.
3. Microsoft Corporation is requested to submit the following certified in an orderly manner copies of information before March 30, 2017:
 - 3.1. Explanation of what undocumented possibilities of Windows 10 exactly mean, including purpose of these possibilities.
 - 3.2. Explanation on use of Windows Defender possibilities, mentioned in paragraph 3.1. of the Ruling (with identification of specific aspects resulting from use of the possibilities, such as software work intensification, blocking (full or partial) of other software's work, etc.).
 - 3.3. Information similar to paragraph 3.2. of the Ruling in relation to third-party programs (including antivirus software).
 - 3.4. The list of situations, when Windows Defender is or may be switched on without the knowledge or consent, or without a user's sanction.
 - 3.5. Explanation of whether Windows Defender is switched on as a default in Windows 10 clean installation, while upgraded from earlier versions of Windows (7, 8, 8.1.), from earlier releases of Windows 10, depending on presence or absence of installed third-party antivirus software in a version of OS being upgraded. In case if this function differs according to Windows 10 build (home, professional, etc.), explanations on each build should be provided.
 - 3.6. Explanation on the following differences in translation of embedded Windows toasts with information that Windows Defender is turned on in case the third-part antivirus software is incompatible with Windows 10 or in case subscription to the third-part antivirus software is expiring: 'We've turned on Windows Defender' in English and 'Вы включили Защитник Windows' in Russian.
 - 3.7. All correspondence (including official one) with JSC "Kaspersky Laboratory" during the period 1 September 2016 to date, on which this Ruling was received, related to transfer of all antivirus programs of JSC "Kaspersky Laboratory" to Microsoft Corporation in order to correct errors in operation and to test compatibility with future releases of Windows 10, as well as information on results of testing.

3.8. Explanation on how, in what timeframe and based on what criteria compatibility testing of antivirus software is conducted, provided by third-party developers, including the Applicant, as well as conditions, under which the software can be recognized as completely compatible.

4. JSC "Kaspersky Laboratory" is requested to submit the following certified in an orderly manner copies of information before March 30, 2017:

4.1. Information on losses that, in the Applicant's opinion, were taken by the Applicant due to non-provision by the Defendant of RTM-versions of Windows 10 OS in the timeframe of two months (with identification of losses calculation algorithm).

4.2. Explanation of whether RTM-version of Windows 10 R2S was provided to the Applicant by the Defendant in order to conduct compatibility test and fix errors in work of antivirus software (with identification of date of provision or, in case of non-provision, other information related to the issue, e.g. work correspondence, etc.).

4.3. Information available in accordance with paragraphs 3.2-3.5, 3.8 of the Ruling.

4.4. All correspondence (including official one) with Microsoft Corporation during the period 1 September 2016 to date, on which this Ruling was received, related to transfer of all antivirus programs of JSC "Kaspersky Laboratory" to Microsoft Corporation in order to test compatibility with future releases of Windows 10, as well as information on results of testing.

4.5. Explanation on how the interaction with developers of other OS happens, related to testing and errors fixing in the work of antivirus software of the Applicant (with identification of timeframe necessary for provision of RTM-versions of OS, order of interaction, testing algorithm and conditions, under which the software can be recognized as completely compatible, as well as other important information).

4.6. Information on what features of the Applicant's antivirus software do not work (may fail to work), when incompatible antivirus software of the Applicant or the Applicant's software compatible after testing is being installed on an upgraded release of Windows 10 (or upgrade of OS to a new version).

The parties have the right to provide other documents and information, related to circumstances of the instant case.

Chairman of the Commission

A.N. Golomolzin

Members of the Commission:

E.A. Zaeva

A.I. Davydova

V.V. Kuzmin

Y.I. Abakumova

N.N. Medvedev

A.G. Atanasian

Notes:

1. Case files are available for inspection at the FAS Russia in Room 107, contact tel. 499-755-23-23, ext.: 088-387, 088-182.

2. Documents marked as "commercial secret" should be processed separately.

3. If an inspected person fails to submit or knowingly submits incorrect information and data to the federal antimonopoly body, this person shall be held liable in accordance with Part 5, Article 19.8 of the Code of the Administrative Offences of the Russian Federation.

A. Shaposhnikov

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