

**State of competition in the Russian Federation for 2022
by the FAS Russia**

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1. State of competition in the Russian Federation

Ensuring the sustainability of socially significant commodity markets in the new economic conditions. Development of the domestic market.

1.1 Agricultural sector.

In 2022, the FAS Russia organized monitoring of prices for food products, including at the request of citizens and organizations, based on the results of which antimonopoly response measures were taken.

In order to stabilize prices on sugar, the FAS Russia, together with the Ministry of Agriculture of Russia, has prepared and sent recommendations to producers providing for the adjustment (adoption) of documents regulating the trade and distribution policy for the sale of sugar in retail organizations.

Measures of antimonopoly response in combination with measures of customs tariff and non-tariff regulation (the establishment of a ban on the export of sugar from the territory of the Russian Federation and tariff benefits for the import of raw sugar into the territory of the Russian Federation), undertaken by the Government of the Russian Federation, allowed to stabilize the situation on the Russian sugar market: to avoid a shortage of sugar in trade organizations and lower prices for this product.

In total, FAS Russia considered 17 cases and issued 70 warnings on violation of antimonopoly legislation in agriculture and food markets.

In order to form objective price indicators for agricultural products, the FAS Russia ensures that market participants provide to the stock exchange information on over-the-counter transactions with grain crops and white sugar¹.

As a result, the volume of over-the-counter transactions registered on the stock exchange made it possible in 2022 to start forming regular OTC indices by federal districts for white sugar and regional domestic OTC indices for grain crops.

At the same time, export over-the-counter indices for grain crops have been used since April 2021 to calculate export customs duties on these products. In 2022, the

¹ In accordance with «Regulations on the provision of information on contracts concluded by the parties not at organized auctions, the obligations under which provide for the transfer of ownership of goods admitted to organized auctions, as well as on maintaining a register of such contracts and providing information from the specified register» approved by Decree of the Government of Russia No. 623 of 23.07.2013.

FAS Russia continued to monitor compliance with antimonopoly legislation when providing subsidies to agricultural producers.

In particular, the FAS Russia analyzed the regulatory legal acts of the subjects of the Russian Federation².

Fulfillment of expenditure obligations of the regions of Russia to provide subsidies for reimbursement to grain producers for part of the costs of production and sale of grain crops is carried out, inter alia, at the expense of federal budget funds provided to the budgets of the subjects of the Russian Federation on co-financing terms. If provisions that may restrict competition are identified in the relevant regulatory legal acts, the FAS Russia issues warnings on the termination of violations of antimonopoly legislation.

1.2 Trade sector

Food market

In connection with the current situation with prices for socially important food products, on behalf of the Government of Russia, federal executive authorities took a set of measures aimed at reducing and suppressing unreasonable price increases for these goods.

Throughout 2022, the FAS Russia monitored the price situation in the consumer market, including for socially significant food and non-food essential goods, analyzed the reasons for the price increase for these goods and developed economic regulation measures aimed at ensuring the balance of markets. The heads of the regions instructed to conduct operational monitoring of retail prices for essential goods, medicines, medical devices and their availability in trade organizations.

The FAS Russia is monitoring the formation of prices for food products sold through retail chains. Taking into account the high social significance, the monitoring of price formation is carried out primarily for socially significant food necessities³.

² Adopted in accordance with the Decree of the Government of Russia dated 06.02.2021 No. 118 "On approval of the rules for the provision and distribution of other inter-budgetary transfers with a special purpose from the federal budget to the budgets of the regions of the Russian Federation in order to co-finance the expenditure obligations of the regions of the Russian Federation to reimburse grain producers for part of the costs of production and sale of grain crops".

³ The list of socially significant food necessities approved by the Decree of the Government of Russia No. 530 dated 15.07.2010.

According to the results of the monitoring and cooperation with retail chains, the average cumulative level of margins of 11 "federal" retail chains for "first price" goods from among 25 categories of socially significant food products decreased by 7.7% in 2022, and by 16% - since the beginning of monitoring.

Additionally, in order to increase the affordability of food products for citizens, the FAS Russia invited retail chains to show social responsibility and assume voluntary obligations to limit their own margins on individual items within each of the 25 categories of socially significant food products, as well as to ensure their availability in retail facilities in sufficient volume. Since the beginning of 2022, 7 federal retail chains have assumed voluntary obligations to limit margins to 10% for certain items of all socially significant food products and up to 5% for certain items of 4 groups of goods (bread and bakery products, dairy products, granulated sugar and the so-called "Borscht set"⁴). The practice of responsible pricing and limiting margins on socially significant goods proposed by the FAS Russia was also supported by a large number (about 90) of "regional" retail chains and many non-chain stores in 34 subjects of the Russian Federation, including new regions.

Retail chains also accept voluntary commitments as part of the consideration of transactions of economic concentration. Thus, as part of the one year extended remedy issued to JSC "Thunder", all its retail chains have set margins of up to 0% on individual items in 3 categories of perishable socially significant goods (chicken, milk and bread).

Also, following the results of consideration of the applications of LLC "Corporate Center X5", FAS Russia issued remedies, within the framework of which all the obligations assumed by X5 Group retail chains to limit margins extended to the 5 retail chains they purchased.

The spread of the practice of voluntary commitments by retail chains has had a positive effect on stabilizing the situation in the consumer goods markets in conditions of high demand for them.

The practice of responsible pricing and limiting margins on socially significant goods was supported by about 100 "regional" retail chains and a large number of non-chain stores in 34 subjects of Russia.

⁴ Borsch – Russian traditional soup, it consists of the following ingredients: cabbage, carrot, beet, onion, garlic, potato. These vegetables are included in the «Borsch set» in Russia.

The acceptance by retail chains of obligations to limit the level of margins is exclusively voluntary (with the exception of obligations established by the regulations of the FAS Russia). In addition, in April 2023, the Government of Russia adopted a resolution developed by the FAS Russia, establishing cases of the permissibility of concluding agreements by state authorities of the subjects of the Russian Federation with economic entities in order to stabilize prices for goods included in the list of certain types of socially significant food necessities, for which maximum permissible retail prices can be set.

Thanks to these changes, regional authorities are given the opportunity, if necessary, to conclude agreements with retail chains on restraining prices for socially important food products. At the same time, these agreements will be voluntary in nature and regional authorities will independently determine the need to sign such agreements and the positions of the goods in respect of which they will be concluded.

The relevant changes came into force on May 6, 2023 and will contribute to the stabilization of prices for socially important goods and increase their accessibility for citizens.

1.3 Healthcare sector

Currently, Russia has a balanced system of price regulation for medicines included in the List of Vital and Essential Medicines (hereinafter – LVEM). The system helps to prevent uncontrolled peak changes in prices for medicines in Russian pharmacies, control costs during public procurement, maintain prices for medicines at a level not exceeding the prices of these medicines in the reference countries, as well as to take into account the specifics of each region of Russia when setting prices for end consumers.

The existing system of state regulation of prices for medicines included in the LVEM was successfully applied in 2022 in the new economic conditions, while maintaining a balance of interests of all participants in the relevant commodity markets.

The FAS Russia annually conducts an economic analysis and coordinates the maximum selling prices of manufacturers for medicines included in the LVEM, thereby preventing the establishment of economically unreasonable prices for socially significant goods.

In 2022, more than 9 thousand prices were analyzed (2 times higher than the annual average since 2015, excluding a one-time revision of all prices in 2020), of which

about 8 thousand prices were agreed, which allows to actively develop the domestic market of medicines.

At the same time, in 2022, the FAS Russia sent notifications to pharmaceutical companies, based on monitoring results, which made it possible to reduce prices by an average of 15% for 86 medicines from the list of LVEM.

The additional stability to the pharmaceutical market was provided by re-registration of the marginal selling prices of manufacturers for scarce medicines included in the LVEM by an economically reasonable level⁵.

This measure is aimed at maintaining the presence of medicines in Russia by shortening the time of price re-registration procedures, lowering the threshold for the absence of medicines in the pharmacy, providing the possibility of "additional" price indexation, adapting the price re-registration procedure to sharp changes in the exchange rates of foreign currencies.

Based on the results of an economic analysis⁶, the FAS Russia agreed on the re-registration of 808 maximum selling prices of manufacturers for medicines. This will ensure the further production and supply of medicines to the Russian market.

As a result of improving the process of forming the LVEM, equivalent medicines are now also included in LVEM, which made it possible to additionally include 35 equivalent medicines in August 2022 (most of them were sold at inflated prices and were not submitted to the LVEM by manufacturers). This measure made it possible to ensure equal conditions for the circulation of such equivalent medicines in Russia.

Among medicines included in the LVEM, the most illustrative example is the popular one named "Phenazepam" in the dosage form "tablets dispersed in the oral cavity", in respect of which since 2019 citizens have received complaints about inflated prices in pharmacies, despite the fact that the same medicine in a similar tablet dosage form has been included in the LVEM for more than 10 years.

According to the results of its inclusion in the LVEM and the subsequent economic analysis of the maximum selling prices declared by the manufacturer, the FAS

⁵ In accordance with amendments, developed by the FAS Russia, to the Decree of the Government of the Russian Federation No. 444 of 23.03.2022 to the Decree of the Government of the Russian Federation No. 1771 of 31.10.2020 (hereinafter – Resolution No. 1771).

⁶ As part of the implementation of Resolution No. 1771 in April-December 2022.

Russia managed to establish them on average 38% lower than the manufacturer's sales prices in the previous year (before the medicine was assigned to the list). Taking into account the state-regulated limit values of wholesale and retail allowances for medicines included in the LVEM, the price of "Phenazepam" in pharmacies, previously varying from 420 rubles to 1,350 rubles, has become on average 2 times lower.

Also, from the end of 2022 the LVEM has been formed taking into account the generalized names of medicines in order to prevent the stimulation of the release of medicines in therapeutically insignificant new dosage forms with their subsequent sale at inflated prices.⁷

In addition, in 2022, the FAS Russia continued to participate in negotiations between the social support funds and pharmaceutical manufacturers on the supply of unregistered medicines and made it possible to reduce prices for a number of expensive medicines for the treatment of rare and chronic childhood diseases by an average of 49% and save about 7.8 billion rubles.

The FAS Russia is authorized to coordinate draft decisions of the executive authorities of the regions of the Russian Federation on the establishment of the maximum sizes of wholesale allowances and the maximum sizes of retail allowances to the actual selling prices of manufacturers for medicines included in the LVEM (hereinafter – the draft decision of the executive authority).

In 2022, the FAS Russia approved 14 draft decisions of the executive authorities in some subjects of Russia to reduce the maximum size of wholesale allowances for expensive medicines by 4% and the maximum size of retail allowances for expensive medicines by 8%.

In accordance with paragraph 3.9 of section II of the National Competition National Plan for 2021-2025⁸ the expected results of the development of competition in the healthcare sector in the markets of medicines are:

- determination of the intersubstitutability of medicines for at least 55% of medicines before 31.12.2022;
- implementation of a system of reimbursement of the cost of medicine provision: in at least 10 pilot regions – by 2023, in all regions – by 2025, provided that sufficient funds are allocated for the pilot project. As of December 21, 2022, the State Register

⁷ Based on the proposals of the FAS Russia, the Ministry of Health of Russia developed amendments to the Decree of the Government of the Russian Federation No. 871 dated 28.08.2014.

⁸ Approved by Decree of the Government of the Russian Federation No. 2424-r dated 02.09.2021.

of Medicines contains information on 15,998 trade names of medicines registered in Russia, of which 8,848 medicines (55.3%) are intersubstitutable⁹.

As for December 21, 2022 the Federal Register of citizens entitled to the provision of medicines, medical products and specialized medical nutrition products at the expense of budgetary allocations of the federal budget and budgets of the subjects of the Russian Federation has uploaded information about 24.4 million beneficiaries, whose provision is carried out at the expense of federal and regional budgets, including information about 9.8 million beneficiaries who refused receiving social services for the provision of medicines and medical products according to prescriptions¹⁰.

Currently, the Federal Register is being filled with information on prescribed and dispensed medicines, medical devices and specialized medical nutrition products, which will allow a detailed analysis of information on the actual provision of citizens with these products from various financial sources, estimate the costs of the budgets of the budgetary system of the Russian Federation, as well as propose measures to further improve the system of medicine provision, including the implementation of relevant pilot projects in certain regions of Russia.

The share of private-owned organizations is as follows: in the markets of medical services – at least 10%, including the share of SMEs – at least 80%; in the retail markets of medicines, medical products – at least 70%.

The total number of organizations in the retail markets of medicines and medical products is 20 674, of which 18 090 are privately owned, which is 87.5%¹¹.

Currently, on an ongoing basis, together with the Federal Service for Supervision of Healthcare of Russia, prices for maintenance services for magnetic resonance imaging devices (hereinafter – MRI) are monitored. At the same time, most of the MRI devices being put into operation in the Russian Federation account for four manufacturers. In 2022, in the markets of medical devices, in compliance with the decree of the Government of the Russian Federation, special attention was paid to the formation of a Catalog of goods, works and services (hereinafter – CGWS).

In 2022, the FAS Russia together with other federal executive bodies included more than 300 items of medical devices in the CGWS.

⁹ According to the Ministry of Health of Russia.

¹⁰ According to the Ministry of Health of Russia.

¹¹ According to the Ministry of Health of Russia.

Also in 2022, conditions were created to reduce prices for PCR (polymerase chain reaction) testing services in private medical organizations and for a critical rethinking of pricing approaches in public medical organizations. The Methodology for setting the price for the provision of services for conducting research to identify the causative agent of a new coronavirus infection (COVID-19) by polymerase chain reaction by medical organizations, with the exception of state and municipal organizations was developed, it is universal and can be used in any commodity market.

2. Digitalization of the Russian economy

Today digitalization of practically all spheres of life and production is an integral part of the general trend of globalization of the world economy, caused, among other things, by changes in social relations. At the state level, special attention is paid to the process of digitalization of the economy, since it is one of the main factors of the country's competitiveness. The introduction of new digital technologies into the economy is an incentive to accelerate the socio-technological development of society.

The digital economy provides new opportunities for the development of business processes, as well as determines the growth prospects of companies, industries and national economies in general.

In 2022, the share of e-commerce continued to grow actively. According to analytical companies, the volume of the retail Internet trade market in Russia amounted to 5.7 trillion rubles, which is 38% more than the same indicator in 2021. At the same time, the share of marketplaces exceeded half of all online orders in Russia.

The number of orders in 2022 increased by 64% compared to 2021 (2,800 million orders), which suggests the transition of online shopping into everyday practice.

The market volume of the largest Russian marketplaces and Russian sellers in foreign marketplaces increased by 80%, the number of orders increased by 85%.

Currently, the National Program "Digital Economy" continues to function. The purpose of the Program is to ensure the accelerated implementation of digital technologies in the economy and social sphere.

In 2022, the National Program will be supplemented by three federal projects: "Development of human resources in the IT industry", "Digital services and online services" and "Provision of Internet access through the development of satellite

communications", which should increase the effectiveness of achieving significant national indicators, including such as improving the quality and convenience of state and municipal services, availability of broadband Internet access throughout the territory of Russia and the availability of educational programs for different age groups.

With the rapid pace of digitalization, there is a high demand for technologies that provide for the introduction of artificial intelligence (AI) to provide services in the public sector, optimization, accessibility and simplicity of services for users.

Measures to support the IT industry are also continuing to be implemented. In addition, a mechanism for compensating 50% of the license cost to software manufacturers for SMEs is also in effect. Experts note the trend of gradual reorientation of software manufacturers to the domestic market, which is becoming more attractive due to import substitution and digitalization.

The Russian Government takes measures to update the existing and approve new strategic directions in the field of digital transformation of key sectors of the economy and social sphere, paying special attention, among other things, to the need to stimulate demand for domestic technological solutions and ensure technological independence from currently used foreign software.

Industrial competence centers have been formed to replace foreign industry-specific digital products and solutions, including software and hardware complexes, in key sectors of the economy and competence centers for the development of Russian system-wide and applied software necessary to replace currently used foreign analogues. According to the results of their work, more than 300 projects on import substitution of foreign software were selected, which were included in the roadmaps "New industrial software" and "New system-wide software". The Government Commission on Digital Development approved them in December 2022.

The digital economy provides new opportunities for the development of the economy and modern ways of exchanging information. Together with digital transformation in conditions of minimal transaction costs, they make markets multilateral, interconnected and global.

To solve the tasks, a set of measures for the accelerated development of the IT industry was established, providing for:

- the establishment of a zero income tax rate for accredited IT companies by December 31, 2024;
- granting tax benefits and preferences to individual IT companies;

- ensuring the provision of preferential loans to accredited IT companies at the rate of, not exceeding 3%, to ensure their current activities and the implementation of new projects;
- ensuring consolidation and stimulation of purchases of critical domestic IT developments that are carried out for state and municipal needs or by certain types of legal entities, as well as simplification of the procedure for conducting such purchases; simplification of the procedure for employment of foreigners attracted to work in accredited IT companies.

Also, until December 31, 2023, the Russian Government suspended scheduled and unscheduled inspections of IT companies, as well as other control measures, which reduced the administrative costs of the IT business and gave it the opportunity to concentrate efforts on solving the main tasks.

In the conditions of rapid digitalization, an important aspect of state policy remains ensuring the protection of the rights of citizens, small and medium-sized businesses in digital markets, and therefore, among the current priorities of the FAS Russia remains further improvement of law enforcement practice and antimonopoly regulation in digital markets, the formation of approaches to the definition of such markets, assessment of the state of competition in them.

2.1 Principles of interaction between participants in digital markets

At the same time, it seems that one of the most effective mechanisms for the development of the digital economy is a combination of state regulation and self-regulation. So, at present, there are Principles of interaction between participants in digital markets (hereinafter – Principles), which have been joined by such companies as Avito, Wildberries, Ozon, Yandex, as well as other major Russian digital platforms (aggregators).

The document is aimed at creating an institution of self-regulation, when market participants voluntarily, guided by principles, do not carry out unfair practices towards consumers, competitors and others.

These Principles include the following:

Target model for the functioning of digital markets (markets with the participation of digital platforms)

These principles apply to digital platforms that provide indirect (through the platform) or direct interaction of various user groups, in addition to the platform itself, including, but not limited to, aggregators of goods, works, services, search

engines, advertisement web-sites, advertising systems, operating systems, application stores, social networks.

Taking into account the significant advantages in organizing business and social relations provided by digital platforms, as well as their positive role in the development of the economy, improving the way of doing business and the welfare of citizens, increasing innovation, we note that in many areas digital platforms play a key role in the success of entrepreneurial activity, especially of SMEs, and also have a significant, in some cases decisive, influence on the behavior of citizens, up to the formation of preferences and actions.

In this regard, we consider it necessary to define the rules of reasonableness and integrity of the activities of digital platforms, which, on the one hand, will contribute to the formation of open, transparent, non-discriminatory conditions for doing business, and on the other hand, ensure the exercise of the constitutional rights of citizens, such as freedom to receive and disseminate information and privacy.

Description of risks and possible unfair practices of participants

Manipulating the issuance of information in their own interests, as well as in the interests of third parties that includes, deliberate distortion of information, ranking results, parameters of goods, works, services, other deliberate actions that encourage users to take actions that the user did not intend to take.

The imposition of goods, works, services that are not directly related to the activities of the platform, in the absence of the possibility for users to choose independently individual goods, works, services and which users cannot refuse without prejudice to conducting activities using the platform.

Providing advantages to own services in related (tied) product markets, including within the ecosystem, which lead (may lead) to the limitation of competition in related product markets operating with the use of a digital platform.

Unreasonable restriction of independent behavior of platform users

Inclusion into the contracts of wording that allows unlimited discretion, overly broad interpretation of the platform, absence of clear and transparent rules for considering user requests, absence of the platform's obligation to justify its own actions to limit/block users and (or) user resources.

Principles of the fair behavior

The digital platform must operate based on the principles of reasonableness, trust and within the limits established by the legislation of the Russian Federation and international treaties, to which the Russian Federation is a party.

The digital platform has no right to restrict unreasonably the creation, receipt and dissemination of information, restrict the rights of users, and determine the behavior of users.

Participants agree and understand that the requirements for users established by the platform must be uniform and ensure the achievement of the goals of the platform's functioning, the quality of service, the safety of the platform's functioning, and the safety of users' rights.

The digital platform aims to provide:

- Establishment in the public domain of transparent rules for the operation of the platform (including the ranking procedure) (without disclosing commercially sensitive information), allowing users to make a reasonable decision about using the platform, on the basis of analysis and forecasting of their own activities, taking into account the amount of data that the platform is ready to provide to the user, as well as to other users with whom there is an interaction on the platform.
- Establishment of a unified procedure for considering user requests within a reasonable time, providing sufficient information about the actions and intentions of the platform in relation to the user.
- Ensuring of a non-discriminatory attitude to services, dissemination of information, regardless of the affiliation to the platform related to it or its external surfaces.
- The establishment of rules for using the platform that do not contain unreasonable restrictions on the independent behavior of the platform user, including restriction or prohibition on ways to inform its consumers, dissemination of information and (or) advertising, independent establishment of conditions for the acquisition (receipt) of goods, works, services, including pricing.
- Use of wording in the rules for applying the platform that does not allow an overly broad interpretation, unlimited discretion of the platform owner, which may lead to unreasonable blocking, restriction of users, termination of the

contract. Informing the users on the changes in rules and contracts within a reasonable time in such a way that ensures that users receive such information.

Compliance with the Principles

Market participants are aware that the unfair behavior of digital platforms that violate the accepted Principles negatively affects the activities of all participants in digital markets, including digital platforms.

Participants understand and agree that the development of digital markets may lead to additional review, modification, clarification of the Principles.

Market Participants agree that currently the legislation of the Russian Federation has sufficiently established requirements aimed at ensuring compliance with the Principles and sanctions for violation of established requirements, primarily regulated by the Law on Protection of Competition, the Law on Protection of the Consumer Rights, the Law on Information, Information Technologies, and Information Protection.

Everyone recognizes that a violation of the Principles may contain signs of a violation of antimonopoly legislation or other applicable legislation.

Participants understand and agree that any persons administering, owning, managing, disposing and determining the functioning of the digital platform ensure compliance with the Principles.

Compliance with the Principles will ensure the formation of non-discriminatory conditions for all users in the field of information technology.

At the same time, the FAS Russia continues to exercise state control over compliance with antimonopoly legislation in digital markets, including in relation to multinational corporations represented in many countries of the world (for example, cases concerning Booking.com, Apple, Google).

In 2022, the FAS Russia considered cases on violation of antimonopoly legislation by Apple and Google in connection with the imposition on Russian developers and consumers of applications based on iOS, Android operating systems of the need to use certain payment methods of Apple and Google inside these applications, which may lead to limited competition between developers, as well as to infringement of consumers interests in terms of increasing the cost of applications for them.

In relation to Russia, the negative effect of these actions was intensified by the fact that since March 2022, Google and Apple have restricted Russian users to pay for

purchases in mobile applications through their payment systems in Google Play and App Store. In these actions the FAS Russia found a violation of paragraph 3 of part 1 of Article 10 of the Law on Protection of Competition (imposition of unfavorable terms of the contract) and in July 2021, as well as in July 2022, the FAS Russia warned Google and Apple about the need within a month to remove the ban on the use of alternative payment methods from the rules of Google Play and App Store, as well as to inform the developers of applications on iOS, Android about the removal of this ban.

Google complied with the warning of the FAS Russia in a short time, while Apple did not comply with the warning. As a result, a case on violation of antimonopoly legislation was initiated against Apple. In 2022 the FAS Russia issued a final decision, in 2023 Apple was fined in the amount of 1.1 billion rubles.

In order to fulfill the warning of the FAS Russia, Google has created on its website a section "Changes in the Google Play payment system for users from Russia and Belarus". Starting from August 2, 2022, Russian developers who charge for paid applications and digital goods inside applications from Russian and Belarusian users can use other payment methods than the Google payment system.

Such practice shows that issues related to the implementation of monopolistic activities in digital markets remain relevant. The rapid development of digital technologies leads to the emergence of new anti-competitive practices that cannot be regulated by the current antimonopoly legislation.

2.2 The «Fifth antimonopoly package»

The «Fifth antimonopoly package»¹² aimed at regulating digital markets in order to prevent and suppress their monopolization, as well as to improve monitoring of the activities of digital companies.

The adoption of the Fifth antimonopoly package was facilitated, among other things, by the extensive experience accumulated by FAS Russia in conducting successful investigations in digital markets over the past five years.

The practice of antimonopoly enforcement of FAS Russia includes many cases against digital companies (Google, Apple, Microsoft, Booking.com, etc). As part of the control over digital transactions of economic concentration, FAS Russia considered mergers in the markets of agricultural technologies (Bayer/Monsanto) and taxi services (Yandex.Taxi/Uber).

¹² The "Fifth antimonopoly package" – the FAS Russia amendments to the Law on Protection of Competition that will come into force on September 1, 2023.

The Fifth antimonopoly package was developed taking into account this practice. Its main innovations are below.

1) The concepts of "network effect" and "digital platform" are defined

The law has introduced new concepts:

- "digital platform" is a program (a set of programs) for computers on the Internet, providing transactions between sellers and buyers of certain goods;
- "network effect" is a property of commodity markets in which the consumer value of a digital platform changes depending on the change in the number of such sellers and buyers.

2) Prevention of monopolistic activity of economic entities owning a digital platform

The Fifth antimonopoly package introduces a new prohibition for owners of digital platforms to carry out actions that result in or may result in the prevention, restriction, elimination of competition and (or) infringement of the interests of other persons. The rules apply to owners of digital platforms if the following conditions are met simultaneously:

- the presence of a network effect;
- the share of transactions made between sellers and buyers via the digital platform exceeds 35% in value terms of the total volume of transactions made in the relevant commodity market;
- the revenue of such an economic entity for the last calendar year exceeds 2 billion rubles.

The above regulation will ensure the protection of market participants and consumers from the abuse of market power by digital platforms.

Together with this law, a provision is included on the right of an economic entity owning a digital platform to provide evidence that its actions (inaction) in the forms of (1) economically or technologically unjustified reduction or termination of production of goods, (2) creating discriminatory conditions, (3) creating obstacles to access to the commodity market or exit from of the commodity market to other economic entities, (4) manipulation of prices in the wholesale and (or) retail markets of electric energy (capacity) may be recognized as permissible.

3) New threshold criteria for approving transactions of economic concentration

The law has introduced a new condition for state control of transactions of economic concentration – companies will have to confirm transactions with the competition authority, the value of which exceeds 7 billion rubles.

The innovation will allow to take into account the real value of a company operating in the digital market (for example, a startup), since traditional criteria based on the amount of revenue of participants in transactions or actions of economic concentration and the value of their assets can do not reflect the real impact on the economic terms of the transaction made within the framework of economic concentration.

4) Conclusion on the circumstances of the application and face-to-face examination of the application

The Fifth antimonopoly package introduces a mechanism for concluding the circumstances of the application, which is sent to the parties to the transaction if, based on the results of consideration of the application for consent to the transaction, the competition authority concludes that the transaction and other action will lead or may lead to restriction of competition.

The said conclusion must contain provisions on the actual and other circumstances established by the competition authority, as well as the proposed conditions that may be established by the competition authority in order to ensure competition.

This change will allow the parties to the transaction to get acquainted themselves with the conclusions of the competition authority before making a decision and provide explanations regarding the circumstances set out in the conclusion.

5) Regulation of the procedure for expert examination

The law provides for the expansion of the institute of expertise. In particular, it introduces the possibility of appointing and conducting an expert examination on the initiative of the competition authority or persons participating in the case, within the framework of:

- consideration of applications for consent to the transaction, other actions subject to state control;
- consideration of a case on violation of antimonopoly legislation;
- control over the execution of orders issued based on the results of consideration of applications for approval of transactions of economic concentration.

These changes will make it possible to give the results of the expert examination a special evidentiary value, which will qualitatively distinguish such evidence from conclusions prepared at the initiative of the parties to the transaction.

3. Suppression of anti-competitive agreements as a mechanism for ensuring economic security

Anticompetitive agreements and concerted actions pose a serious threat to the economic security of the Russian Federation, cause significant harm to state budgets, and are also a factor leading to social instability. Agreements restricting competition undermine not only the foundations of a market economy, depriving goods and services of competitiveness in the long term, but also contain a corruption component and are often concluded in strategically important areas of the economy.

Currently, according to separate expert estimates, the damage from cartels only in the field of state and municipal procurement reaches 2% of GDP per year, while the average amount of damage from bid rigging reaches 20-22% of the initial contract price. In financial terms, this indicator amounts to at least hundreds of billions of rubles annually for our country.

At the same time, conducting transparent and public competitive procedures on electronic platforms operating in accordance with Federal Law No. 44-FZ dated 05.04.2013 "On the contract system in the field of procurement of goods, works, services for state and municipal needs" provides an opportunity for state and municipal customers to receive the necessary goods, works, services on favorable terms and generally has a positive impact on the economic development of the state and business.

Thus, competitive procedures are based not only on the need to solve the needs of customers as much as possible, but also on the efficient spending of budget funds. However, these goals cannot be achieved within the framework of such procedures if the participating economic entities are also part of the cartel.

Big rigging is one of the most common forms of collusion and is considered the most serious type of violation of antimonopoly legislation, for which criminal liability in Russia is established.

This segment of the economy is of priority importance for the FAS Russia, taking into account the significant share of public procurement, as well as the profit extracted by the participants of the cartel agreement.

In 2022, the FAS Russia initiated 305 cases on anti-competitive agreements and coordination of economic activities.

In total, in 2022, violations of antimonopoly legislation at auctions (bid rigging and collusion with the customer) were detected on the territory of 55 regions of Russia. 281 business entities and 31 customers were involved as defendants. Bid rigging agreements covered 2,799 purchases with a total amount of Initial Maximum Contract Price (hereinafter – IMCP) of 66.6 billion rubles.

At the same time, the repair and construction markets, including highways, the supply of medical devices, food and social catering organizations, as well as the sale of real estate, remain the leaders in the number of violations identified, and require special attention from the FAS Russia.

In the supply of medicines and medical devices in 2022, bid rigging was identified in 9 cases, as well as the facts of concluding anti-competitive agreements with customers in 2 cases for 585 purchases with a total amount of 3.1 billion rubles.

For example, in 2022, the FAS Russia identified a major cartel in the market of medical devices and medical equipment, covering 17 regions of the country. More than a dozen companies agreed not to lower the price in 30 procurement procedures for the supply of medical diagnostic devices and consumables for the detection of narcotic substances and alcohol.

In particular, based on the results of the consideration of this case, the FAS Russia established signs of a criminal offense, about which a corresponding crime report was sent to law enforcement agencies.

In the field of food supply and organization of social catering in 2022, 4 cases were initiated on the grounds of bid rigging, as well as 1 case on the signs of the conclusion of an anti-competitive agreement with the customer. Violations were detected on 41 purchases with a total amount of IMCP of 443.8 million rubles.

In one of the cases under paragraph 3 of part 1 of Article 11 of the Law on Protection of Competition, when participating in 31 purchases with the amount of IMCP of 1.7 billion rubles, the violation was expressed in the implementation of an anti-competitive agreement (cartel) aimed at dividing the commodity market by territorial principle and volume of sale, while participating in auctions for the provision of catering services for preschool age children in municipal budget preschool educational institutions of the city district in one of the regions. The organizations used a single strategy of behavior, consisting in the distribution of participation and refusal to compete when participating in the auction, in order to win the auction by a predetermined person and conclude contracts at a price close to the IMCP.

4. Digital tools for detecting bid rigging

Digitalization of the mechanism for detecting and proving bid rigging is one of the priorities of the FAS Russia, along with the suppression of cartels and other agreements restricting competition in various sectors of the economy.

The practice of detecting collusions at auctions demonstrates the increasing role of information systems, digital tools and information containing digital "traces" in proving agreements restricting competition.

Today, regulators around the world are reaching a new level in the fight against cartels, attracting the best IT specialists and developing programs that allow them to most effectively combat cartel behavior.

In order to optimize anti-cartel activities, the FAS Russia was one of the first to create and is currently developing an automated information system "Anti-Cartel", which allows for a comprehensive analysis of information and to identify signs of concluding agreements restricting competition during procurement procedures, as well as affiliation and communication between participants in public procurement.

Currently, the FAS Russia is modernizing this system. The project represents a new stage in the development of the system, the functionality of which involves daily scanning of information from a Unified Information System in the field of procurement about auctions in automatic mode using AI elements, as well as collecting statistical data on risks and detected violations by regions, industries, customers with display on an interactive map.

The task of the project is to automate the process of collecting evidence of cartel manifestations and promptly identify indicators of increased risk of their activity.

In October 2022, the FAS Russia revealed a cartel of five suppliers of equipment for railway infrastructure construction facilities. Through the capabilities of the system, an analysis of trade procedures for the development of railway infrastructure was carried out, in particular, it was revealed that when participating in the auction, companies used e-mails associated with phone numbers belonging to their competitors.

After determining the list of trades with indicators of collusion and potential participants, the FAS Russia conducted dawn raids at their addresses, as well as interacted with law enforcement agencies, which made it possible to establish a set of evidence of collusion. As part of antimonopoly investigations, information from the state information system "Independent Registrar" and the system for monitoring, analyzing and controlling purchases, customers and suppliers "Marker" are also

used, which make it possible to identify links between business entities, analyze their participation in auctions, and identify patterns in the behavior of business entities.

In addition, to obtain previously deleted information (news publication) from the site, as well as to establish the date of posting information on the Internet, specialized services are used that allow viewing archived versions of Internet pages.

For example, as part of the consideration of one of the cases initiated by the FAS Russia in 2022 on grounds of violation of paragraph 2 of part 1 of Article 11 of the Law on Protection of Competition, using the Google Maps, the interrelationships of two competing economic entities were established when they carried out economic activities by specifying in the contact details section of one of the defendants in the antimonopoly case a link to the official website of another defendant in the named case.

Currently, work is underway on the «Anti-Cartel 2.0» project to expand the functionality of the system, which will allow saving budget funds in the amount of more than 100 billion rubles a year due to the decartelization of public procurement, carrying out digital transformation of the processes of the FAS Russia, by providing 100% analysis of bidding for signs of anti-competitive agreements, and increasing the share of effective investigations by 10 times.

5. International cooperation in the field of antimonopoly regulation. Development of competition in cross-border markets

International cooperation in the field of antimonopoly regulation plays a key role in improving the effectiveness of the competition policy and practice of antimonopoly enforcement in Russia.

Today, the FAS Russia has a large "agreements portfolio", which includes both multilateral and bilateral international agreements of interstate, intergovernmental and inter-agency levels.

The existing legal framework of the FAS Russia in the field of antimonopoly regulation provides the possibility of using modern mechanisms of interaction with competition authorities of foreign countries, which allow for prompt and effective interaction when considering certain cases of violations of legislation affecting the interests of the parties and considering global transactions of economic concentration, to prevent the negative impact of actions committed outside the Russian Federation on competition on the Russian market.

In 2022, Russia together with the Republic of Belarus continued to develop the Main Directions for the implementation of the provisions of the Agreement on the establishment of the Union State for 2021-2023, taking into account the priorities of economic cooperation as well as Union State Programs¹³ aimed at the implementation of this Agreement¹⁴.

As part of this activity, last year the FAS Russia and the Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus completed the main stage of the implementation of the Union Competition Program.

On November 9, 2022, an Agreement was signed in Moscow between the Government of the Russian Federation and the Government of the Republic of Belarus on Uniform Competition Rules (hereinafter – Agreement), which entered into force on January 23, 2023.

The main purpose of the Agreement is to ensure the protection of competition on the basis of uniform rules for the free movement of goods (works, services) and the effective functioning of the commodity markets of the Union State. The Agreement defines the types of monopolistic activity and unfair competition, actions and acts of public authorities aimed at preventing, limiting and eliminating competition, subject to detection and suppression by the antimonopoly authorities of Russia and Belarus. At the same time, the Agreement provides for the application of antimonopoly legislation to economic entities of the Union State on equal terms, regardless of the organizational and legal form and place of their registration.

The developed uniform competition rules ensured the harmonization of the antimonopoly legislation of Russia and Belarus, made it possible to form a unified approach to the protection of competition in the Union State, the protection of the rights and interests of entrepreneurs and consumers of the Union State, to ensure uniform practice of the application of antimonopoly legislation, the free movement of goods, works, services and the effective functioning of the commodity markets of the states – members of the Union State, as well as formed a deeper level of integration in the field of competition policy in comparison with the Eurasian Economic Union.

Within the framework of bilateral relations with the CIS member states, memoranda on cooperation between the FAS Russia and the antimonopoly authorities of the Republic of Azerbaijan and the Republic of Uzbekistan were signed in 2022.

¹³ Union State Programs – are a set of joint measures economic integration of Russia and Belarus to strengthen security, solve major socio-economic problems, the USP include research, development, technological, production, organizational, economic and other projects.

¹⁴ Approved by Decree No. 6 of the Supreme State Council of the Union State of November 4, 2021.

The documents define the main areas of cooperation on a bilateral basis, including the exchange of information and experience in the field of antimonopoly regulation and competition development, improvement of legislation, professional development of employees, exchange of views on multilateral international cooperation in the field of competition policy.

Also last year, within the framework of cooperation with the antimonopoly authorities of foreign countries, was signed a Program on Cooperation between the Administrative Council for Economic Defense of the Federative Republic of Brazil and the FAS Russia for 2023-2024.

The Program was adopted as part of the implementation of the Agreement on Cooperation in the Sphere of Competition Policy between the Government of the Federative Republic of Brazil and the Government of the Russian Federation, signed on December 12, 2001 and provides for the use of various forms of interaction by the competition authorities of both countries to improve the effectiveness of law enforcement activities, including the exchange of information, sending notifications and requests for information, conducting consultations in the investigation of anticompetitive actions of business entities and coordinating global transactions of economic concentration, as well as organizing internships and joint events.

In addition, in March 2023, the antimonopoly authorities of Russia and Iran signed a memorandum of understanding in the field of competition policy, which establishes mechanisms and priority areas of joint work. The document will contribute to improving law enforcement, studying innovations in the competition legislation of the states, obtaining information about precedent cases and decisions, and will also contribute to the development of Russian-Iranian cooperation in general.

Also, in 2022, significant work was done to improve the legal framework within the Eurasian Economic Union (hereinafter – EAEU).

The work on the preparation of the draft Protocol on amendments to the Treaty on the EAEU has been completed. The leaders of the EAEU member states signed the Protocol¹⁵ on February 31, 2022 and the procedures necessary for the amendments to enter into force are currently being carried out.

¹⁵ The Protocol clarified the norms concerning the powers of the Eurasian Economic Commission (hereinafter – EEC) to monitor compliance with the general rules of competition in the EAEU's cross-border markets, as well as the norms related to the introduction of state price regulation by the EAEU member states.

Thanks to the work done at the expert level, amendments were made¹⁶ to the Methodology for assessing the state of competition¹⁷, according to which, when assessing the state of competition in digital markets, now the gratuitous provision of goods does not interfere with the definition of the product and geographical boundaries of the commodity market, as well as the volume the commodity market and the shares of economic entities in the commodity market.

When determining the product boundaries of the commodity market, direct and indirect "network effects"¹⁸ inherent in a particular commodity market can now be taken into account.

The amendments also provide for the EEC to conduct a full-fledged market analysis at the stage of consideration of the application and prepare an analytical conclusion with reasoned conclusions confirming the presence or absence of the EEC competence to consider a specific application.

In addition, in 2022, BRICS competition authorities continued their work in order to increase the efficiency of interaction in the implementation of law enforcement activities.

In the framework of BRICS cooperation, meetings of the heads of competition authorities of the BRICS countries, the BRICS Working Groups for the research of competition issues in socially significant markets (food, pharmaceutical, digital, automotive), the BRICS Working Group on Cartels were held, resulting in the following:

- It was decided to complete work on the Review of leniency programs in the BRICS countries in cases of cartels and the BRICS Guide to Regulation of Competition in the Digital Economy for submission to the international competitive community of these documents within the framework of the 8th International Conference on Competition under the auspices of the BRICS on October 11-13, 2023 in New Delhi (India);
- The initiative of the FAS Russia on the development of a Joint Statement on fair behavior of digital companies in the BRICS countries was supported, the adoption of which will contribute to increasing the level of self-regulation of the digital industry in the BRICS countries, as well as the formation of open,

¹⁶ By the Decision of the EEC Council No. 115 of July 15, 2022.

¹⁷ Approved by the Decision of the EEC Council No. 115 of July 15, 2022.

¹⁸ A direct network effect is a simple type of network effect when an increase in the consumption of a product increases its value. With an indirect network effect, the growth of the value of the main product leads to the emergence and growth of the value of additional products.

transparent and non-discriminatory conditions for doing business in the digital markets of the countries of the association;

- the initiative of the FAS Russia on the development and adoption of a Joint Statement by the BRICS competition authorities on the need to consolidate efforts to maintain healthy competition in significant markets was supported. The adoption of this document will be an indicator of the commitment of the BRICS competition authorities to deepen current cooperation and establish closer ties in order to coordinate antimonopoly response measures to protect the interests of consumers, support business, ensure free trade and smooth functioning of supply chains in the countries of the association. The document is planned to be adopted within the framework of the Russian Federation's chairmanship in the BRICS association in 2024.

In order to strengthen the work on practical interaction with foreign partners on law enforcement practice in 2022, an analysis of transactions that could potentially be notified to the FAS Russia and/or that could have an impact on the Russian market was carried out on a regular basis.

This work aimed at identifying transactions that, in accordance with Russian legislation, must be notified to the FAS Russia, but the application for which has not yet been received. Among such deals: Apollo/Tenneco (automotive components), Warner Microsoft/Activision Blizzard (computer games), OneWeb/Eutolast (telecommunications, satellite communications), Keppel Corp/Sembcorp Marine (oil and gas drilling rigs), Illumina/Grail (pharmaceuticals), etc.

In addition, the FAS Russia held consultations with competition authorities of foreign countries, including on the basis of waivers, when considering the following global transactions of economic concentration: Cargotec Corporation/Konecranes (lifting equipment) (consultations with South Africa), General Electric/Electrecite de France (steam power equipment for nuclear power) (consultations with France and South Africa).

Taking into account the investigation conducted in 2015 against Google, in 2021-2022, the FAS Russia continued the active work in informing foreign partners about the possible negative consequences for competition in the national markets of the respective countries from the actions of this company. In particular, based on the provisions of the Agreement between the Government of the Russian Federation and the Government of the Republic of Belarus on cooperation in the field of competition protection, Russian-Belarusian consultations were held, which allowed the parties to exchange experience in law enforcement practice. Subsequently, the

antimonopoly authority of the Republic of Belarus found Google guilty of abuse of a dominant position, in January 2022, the decision of the Belarus antimonopoly authority was upheld in court.

In addition, in 2022, the participation of the FAS Russia in the regulation of external economic activity was aimed at preventing a state of shortage of critical goods on the Russian market, rising prices, and worsening the state of competition.

The FAS Russia took part in the development of urgent measures of customs tariff and non-tariff regulation, as well as special protective and anti-dumping measures aimed at providing support to domestic producers and consumers within the framework of the activities of the Subcommittee on Customs Tariff and Non-Tariff Regulation, Protective Measures in Foreign Trade of the Government Commission for Economic Development and Integration.

Results in 2022:

- tariff and non-tariff benefits have been introduced, as well as the rates of import customs duties on the import of critically important categories of goods: food, medicines, raw materials for metallurgy and construction, components for transport, including such goods as: turboprop wide-body and narrow-body civilian passenger aircraft, certain types of civilian cargo aircraft, agricultural equipment, titanium sponge, certain types of containers, components for the production of electronic products, truck tractors and a number of others;
- tariff and non-tariff quotas, restrictions and export bans have been introduced for a number of strategic goods, such as mineral fertilizers, waste and scrap of precious metals, scrap and waste of ferrous metals, inert gases, wheat and meslin, rice, barley, corn, rye, sugar, rapeseed and soy;
- a tariff exemption has been introduced for pork and cattle meat to prevent uncontrolled price increases for meat and processed products. The reduction of duties also affected the most important socially significant goods: it averaged 10% for the import of vegetables, 5-10% for components for the production of baby food, 10-15% for construction materials.

Thanks to the anti-crisis measures taken to regulate external economic activity, it was possible to prevent an increase in prices for a wide range of goods on the Russian market, to exclude unreasonable provision of anticompetitive advantages to certain economic entities, as well as to ensure the implementation of import-substituting investment projects.