

Enhancing international cooperation in the investigation of cross-border competition cases: tools and procedures

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Introduction

1. Nowadays due to the process of globalization and liberalization of trade, economies all over the world are facing new challenges. That is also relevant for Competition Authorities. The most common and serious challenge the Competition Authorities are facing today is existence of various cross-border violations of competition law as well as new ways and tools of this kind of violations.

2. Despite of the fact that cross-border violations of competition legislation become more and more common worldwide, global competition community has limited kit of the effective tools to combat this type of infringements. Due to the lack of tools of effective international cooperation national Competition Authorities have to solve this very difficult task solely. At the same time cross-border violations have features that differ them from antimonopoly violations by national companies: frequently such infringements are exercised by large transnational companies, the headquarters of which could be located anywhere in the world and activity of such companies is naturally global. In that situation it is difficult to define national dimensions of behavior of these companies, to calculate revenues on national markets, to enforce international companies to comply with national competition standards and, in case of making decision of existence of violation, to make such undertakings execute decisions and rulings of Competition Authorities.

3. The issues described make discussion of enhancing international cooperation in investigation of cross-border cases as actual as it has never been before. Effective international cooperation with foreign Competition Authorities and International

Organizations is one of the priorities of the Federal Antimonopoly Service of the Russian Federation (the FAS Russia). Recent cases investigated in relation to large transnational companies (e.g. Google, Apple, Microsoft, liner shipping carriers) showed the necessity of an open and effective dialogue among Competition Agencies and also opened up some of the problems connected with investigation of such type of violations.

Cooperation of the FAS Russia with International Community: brief look

4. One of the key directions of international cooperation of the FAS Russia is cooperation with Competition Authorities of **Eurasian Economic Union (EAEU)** (Republic of Armenia, Republic of Belarus, Republic of Kazakhstan, Kyrgyz Republic and the Russian Federation) and Eurasian Economic Commission (EEC).

5. Since 2006 the Republic of Belarus, Republic of Kazakhstan and Russian Federation initiated the process of integration in all economic spheres, including competition policy. Later Republic of Armenia and Kyrgyz Republic joined the process of integration. During the period of 2006-2014 the legal framework for cooperation between Competition Authorities of EAEU was established. In 2012 it was developed and adopted the EAEU Model Law “On Competition” which is aimed at harmonization of competition legislation of all EAEU countries. At the same time, the most important legal act of EAEU is the Treaty of Eurasian Economic Union (hereinafter – the Treaty) which came into force on January 1, 2015. The main principle of EAEU functioning is fair competition that is stipulated in Preamble and Article 3 of the Treaty.

6. One of the key features of the Treaty regarding competition policy development in EAEU is EAEU Member-States transfer a part of their functions to EEC. In accordance with the Treaty EEC is empowered to investigate cases of violation of competition legislation on cross-border markets (within EAEU), make decisions and

impose sanctions (remedies). For that purpose Competition Authorities and EEC could exchange information (including confidential). For protecting it from disclosure the Agreement on the Protection of Confidential information and Liability for its Disclosure in the Exercise of the European Economic Commission (EEC) its Powers of Monitoring the Compliance of the Common Rules of Competition was developed.

7. In accordance with the Treaty on EAEU the Competition Authorities of the EAEU shall cooperate within the law enforcement activities by sending notifications, requests for information, inquiries and orders to conduct certain procedural activities, exchange of information, coordination of the law enforcement activities of the Member States, as well as implementation of the law enforcement activities at the request of any Member State¹.

8. The Treaty also includes provisions on cooperation between the EEC and the Competition Authorities of the Member States for monitoring compliance with the general rules of competition. EEC and Competition Authorities shall interact when authorised authorities of the Member States submit statements on violations of the general rules of competition with the Commission, when the Commission examines the statements on violations of the general rules of competition in transboundary markets, during the Commission's investigations of such violations, during examination by the Commission of cases of violation of general rules of competition in transboundary markets, as well as in other cases.

A decision to refer the statement on a violation of the general rules of competition for examination to the Commission may be taken by the Competition Authority of a Member State at any stage of its examination, conducted with account of the specific features determined by the legislation of the

¹ More information on tools and procedures on cooperation of EAEU Competition Authorities can be found in Protocol 19 to the Treaty on Eurasian Economic Union (URL: http://www.un.org/en/ga/sixth/70/docs/treaty_on_eeu.pdf)

Member State referring the statement. Upon taking such a decision, the Competition Authority of a Member State shall send a respective written application to the Commission².

9. In addition, meetings of the heads of antimonopoly authorities of the Member-Countries of EAEU and the Member of the Collegium (Minister) for competition and antimonopoly regulation of EEC (so-called “5+1” format) became traditional. These meetings aim at discussing the most important topics of antimonopoly regulation and cooperation.

10. In 2013 on the basis of EEC the Advisory Board on Competition was created aiming at further coordination and cooperation. At the same time a number of joint working groups were created (for example, joint working group on compliance of prohibition on anti-competitive agreements, joint working group on compliance of prohibition on abuse of dominant position, etc.) The participants of joint working groups are representatives of Competition Authorities of EEA countries and representatives of EEC.

11. Cooperation within **Commonwealth of Independent States (CIS)** is another example of long-term effective cooperation of Competition Agencies. With regard to competition policy in the framework of CIS the *Interstate Council for Antimonopoly Policy (ICAP)* is functioning. As a part of ICAP activity *the Headquarters for Joint Investigations of the Violations of the Antimonopoly Legislation in the CIS Countries (hereinafter referred to as the Headquarters)* was established.

² More information on tools and procedures on cooperation of EEC and EAEU Competition Authorities can be found in Protocol 19 to the Treaty on Eurasian Economic Union (URL: http://www.un.org/en/ga/sixth/70/docs/treaty_on_eeu.pdf)

12. **The ICAP** is the basic platform for interaction of the Antimonopoly Authorities of the CIS Countries. It was established in 1993 aiming at coordinating of formation by the CIS Member-Countries of the legal and organizational basis for the purposes of prevention, restriction and suppression of anticompetitive practices and unfair competition within the CIS Economic Area. The legal framework for the activity of the ICAP were established by Treaty on Implementation of the Coordinated Antimonopoly Policy dated December 23, 1993 (renewed in January 25, 2000).

13. The field of the issues discussed by the ICAP cover all spheres of the Competition Authorities' activities of the CIS Countries.

14. Nowadays, the ICAP includes representatives of 10 CIS Member-Countries –the Republic of Azerbaijan, the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, the Russian Federation, the Republic of Tajikistan, the Republic of Uzbekistan* and the Ukraine*³.

15. Sessions of the Council are held regularly – at least twice a year, and, as a rule, in the capitals of the CIS Member-Countries by turns.

16. To achieve the effective cooperation which would stimulate even deeper integration of the CIS Member-Countries the ICAP Members adopted the Regulation on Cooperation of the States in Suppression of the Monopolistic Activity and the Unfair Competition (hereinafter referred as the Regulation) which forms an integral part of the Treaty.

17. The Regulation provides for mechanisms of cooperation of the CIS Antimonopoly Authorities in investigations of violations of the antimonopoly

³ * - these countries currently do not actively participate in the meetings of the ICAP, but officially have not withdrawn from the CIS.

legislation, of participation in terminating transnational anticompetitive practices and of protection of domestic producers at international and domestic markets.

18. Following the decisions adopted in the course of its sessions, the ICAP performed the analysis of the antimonopoly legislation of the CIS Countries in order to develop the common approaches to its harmonization.

19. At the ICAP sessions, the Participants exchange opinions on recent developments in their national antimonopoly legislation and on the overall economic situation with the subsequent information exchange on the most interesting cases currently considered.

In the course of its activity, the ICAP has achieved the following results:

- decrease of antimonopoly law infringements on the international markets of the CIS Countries;
- development of competition both in the domestic markets and in external economic activities;
- elimination of barriers in the movement of goods and services within the CIS Economic Area

20. To increase the interaction between the Competition Authorities of the CIS Countries, the participants of the ICAP made the decision to conduct joint investigations of anticompetitive practices in the CIS cross-border markets. For this purpose, the **Headquarters for Joint Investigations of the Violations of the Antimonopoly Legislation in the CIS Countries** was established in 2006. In the framework of the Headquarters' activity, the Member-Countries started to conduct on the voluntary basis joint monitoring (investigations) of anticompetitive practice of companies performing on the territories of different CIS Countries.

21. The Headquarters participants' discuss the market of social importance for their countries and, based on that discussions, choose markets for analysis and further

investigation.

22. In the previous years, the Headquarters considered the markets of air transportation, telecommunications, retail, oil and oil products, pharmaceuticals and grain. Nowadays the construction of economy-class housing, production of aggregates and agricultural subsidies are in the purview of the Headquarters.

23. During the years, the Headquarters became an effective platform for interaction of Competition Authorities in investigating specific cases. It is clearly illustrated by the examples of the CIS market inquiry of air transportation sector and joint investigation of the FAS Russia and Competition Authority of Kazakhstan on the market of telecommunications.

24. The market of air transportation within the CIS was selected at an initial stage as an example of a cross-border market. Simultaneous inspections of the airlines by the Competition Authorities of the CIS Countries started in June 2007. As a result of the investigation, the CIS Countries prepared the Report on the State of Competition in the Air Transportation Markets in the CIS Countries (hereinafter referred as the Report). The Headquarters carefully examined and analyzed the international experience on protection of competition in the air transportation markets, particularly the experience of the European Union, the most typical cases on violations of the antimonopoly legislation in the market of air transportation and airport services and the intergovernmental agreements on air communication in the CIS Countries. As a result of the investigation, the Countries elaborated the Recommendations for the competition development at the air transportation market, including the proposals to maintain a non-discriminatory access to the natural monopolies' services and to develop competition in potentially competitive segments of this market related to the market of air transportation. The implementation of such proposals leads to serious development in national legislation and international regulation regarding air transportation market and has

been one of the instruments of the development of the air transportation market in the CIS Countries. As a result in the period 2008-2013 air transportation in the CIS countries increased 2.3 times. The Report was considered and adopted by Council of the Heads of the CIS Countries in May, 2014. In 2014-2016 despite of economic difficulties, there was not serious decline in air transportation in CIS.

25. Another priority market selected for conducting analysis and investigation was the market of telecommunications. In 2008, the Antimonopoly Authorities of the CIS Countries, on the platform of the Headquarters, analyzed the state of competition on the telecommunications market. Based on the analysis, the Headquarters prepared the Report proposing possible measures towards developing competition and conducting antimonopoly investigations of roaming services. The Report was presented to and approved by the Council of the Heads of the Governments of the CIS Countries in 2010. In the first six months of 2010, the antimonopoly authorities of the Republic of Kazakhstan and the Russian Federation initiated investigations on the markets of roaming services. The investigations were completed in October 2010; on the basis of the findings the FAS Russia found that three companies abused their market dominance, while the Agency of the Republic of Kazakhstan for Competition Protection arrived to the same conclusions with regard to several Kazakh companies.

26. Following up the outcome of the cases initiated by the FAS Russia and the Agency of the Republic of Kazakhstan for Competition Protection, the operators agreed to reduce the rates in inter-operator agreements between themselves and with other CIS operators. As for the cases investigated by the FAS Russia, the Russian operators reduced their rates in December 2010 by two - four times. In the past three years, the voice call rates reduced by up to 9 times, SMS – by threefold, and data transmission – by 44 times. Reducing the rates for roaming telecommunications services led to a manifold increase of the overall number of outgoing and incoming calls, SMS, and a growth of data transmission traffic. The share of the CIS in the

overall volume of international roaming services went up by 40%. In total, the operators' income increased by 20%.

27. CIS Member-Countries exchange information about the facts of opening investigations of violations of competition legislation on the regular basis. This allows to detect potential objects for monitoring by the Headquarters. This activity could result in formulation of recommendations for solving the existing problems and be avoiding making different decisions in CIS jurisdictions at the same case.

28. It is worth noting that over the years of its existence the Headquarters has established itself as an efficient body able to detect and investigate violations of the antimonopoly legislation in the cross-border markets within the CIS. This contributes to a deeper economic integration and to the elimination of barriers of the movement of goods and services in the CIS Economic Area.

29. The other focus of the FAS Russia's international activity is cooperation with BRICS countries. On May 19, 2016 in St. Petersburg, the Heads of BRICS Competition Authorities signed the Memorandum of Understanding (MoU) between BRICS Competition Authorities on Cooperation in the Field of Competition Law and Policy. The MoU stipulates creation of BRICS Coordination Committee and Working Groups on markets of high social importance.

Coordination Committee consists of high-level representatives and heads of BRICS Competition Authorities. Coordination Committee discusses the burning issues of competition development of BRICS countries, necessity of conducting joint market analysis in social important spheres and possibility to join efforts in investigating as well as makes decisions on establishing Working Groups. Up to the moment two meetings of the BRICS Coordination Committee have been held (September 2016, Moscow Region, Russia and May 2017, St. Petersburg, Russia).

For facilitating joint efforts of BRICS Competition Authorities it was initiated to establish BRICS Competition Center (on the basis of Skolkovo Innovation Center

in Moscow) which will provide research and methodology for conducting joint investigations. The presentation of the idea of the Center took place during St. Petersburg Legal Forum in May 2017.

30. Up to the moment three Working Groups have already been established within BRICS: Working Group on Food Value Chains, The Working Group for Research on the Competition Issues in the Pharmaceutical Sector and Working Group on Competition Issues in Automobile Industry. All the Working Groups are established on the voluntary basis and open for active participation and involvement of all Competition Authorities worldwide and stakeholders interested in the topic including consumers, industry representatives and academia.

31. The aim of **the Working Group on Food Value Chains** is to provide the first in depth analysis of the regulation, from a competition policy perspective, of the food industry by the BRICS countries as well as to identify the common problems in this regard and jointly elaborate a number of Recommendations. Up to the moment, the focus of the WG on Food Value Chains is on the market of seeds: participants discuss the innovative trends on this market as well as concerns of Competition Authorities on mega-mergers which are currently having place in the market of production of seeds and fertilizers. Today the WG on Food Value Chain along with Center for Development and Law Skolkovo-HSE (Moscow, Russia) is developing a Report on Competition Issues on Seed Market in BRICS.

32. **The Working Group for Research on the Competition Issues in the Pharmaceutical Sector** was created at January, 2012 jointly on the initiative of the FAS Russia and Italian Competition Authority. Today BRICS Competition Authorities take very active part in the activity of this Working Group. Up to the moment 10 meeting of the Working Group have been held.

The key aim of the Working Group is to promote development of competition environment in the pharmaceutical market and to ensure the availability of

medicines to the population.

Objectives of the Working Group are the following:

1. Sharing experience in and approaches to antimonopoly law enforcement in the pharmaceutical market;
2. Coordinating activity of the Competition Authorities (members of the Group) during investigation of the antimonopoly law infringement.

33. As for the activity in the **automobile sector**, the FAS Russia actively cooperates with Competition Commission of South Africa on the issue of investigation of cases on violation of competition legislation on auto parts markets. Competition Authorities have already conducted a number of consultations on that matter.

The FAS Russia has always been committed to the principle of soft regulation and close cooperation with all the groups of stakeholders. The FAS Russia also has vast experience in the consideration of competition issues on the automobile market. In 2013 the Association of European Business in Russia along with the FAS Russia developed Code of Conduct for Car Manufacturers, which is today a good example of effective cooperation of a competition regulator and business community⁴. The main objective of the Code is to form transparent, non-discriminatory rules of interaction between participants of the car markets and service markets.

34. Taking into consideration the modern challenge of wide-spread digital economy, the FAS Russia initiated activity of the **International Working Group for Research of Competition Issues in the Market of Telecommunications (Roaming)** which up to the moment has been transformed into the ICT Working Group⁵.

The ICT Working Group was formed upon a FAS initiative together with

⁴ More information on the Code of Conduct for Car Manufacturers can be found at the official site of the FAS Russia (URL: <http://en.fas.gov.ru/press-center/news/detail.html?id=42870>; <http://en.fas.gov.ru/press-center/news/detail.html?id=38325>; <http://en.fas.gov.ru/press-center/news/detail.html?id=43352>)

⁵ More information of activity of the ICT Working group can be found at the official web site of the FAS Russia (URL: <http://en.fas.gov.ru/press-center/news/detail.html?id=50504>).

Turkish Competition Authority in 2012. At that period, it was the “International Working Group for Research of Competition Issues in the Market of International Telecommunications (Roaming)”. Representatives of Competition Authorities and sectoral regulators from more than 30 countries took part in the meetings of the Working Group. The major objective was to enhance transparency and competition on telecommunications markets in the countries, involved in the Working Group activities, and to reduce tariffs in roaming. Thus, by the end of 2016 the objectives of the Working Group was reached successfully, and at the 7th session of the Working Group at the International Event «The Russian Competition Week» on 26 September 2016 in the Moscow region its members decided to expand the scope of activities of the Roaming Working Group to develop competition in the field of information and communications technologies (ICT). The expediency of expanding the activities of the Working Group was related to the wave of international cases against transnational digital companies on violating the antimonopoly law. To increase enforcement efficiency at both the national and international levels it is necessary to eliminate the gaps in the competition law related to “digital” market analysis, improving efficiency of cooperation between the antimonopoly bodies throughout the world, particularly, cross-border investigations, etc.

35. One more example of the successful activity of the International Working Group is **The International Working Group on Investigating Issues on Pricing at the Oil Product Markets and Methods of their Functioning** (hereinafter – Oil Working Group) which was created at the initiative of the FAS Russia and the Austrian Federal Competition Authority in October 2011. Nowadays the Oil Working Group reached its objectives and finished its activity.

The objectives of the Oil Working Group were to assist formation of pricing indices reflecting fair prices to oil and oil products formed in the market conditions and to ensure competitive pricing within the framework of organized forms of trade with oil and oil products.

The organizers of the Oil Working Group determined its main tasks, as

follows:

- exchange of experience and approaches to enforcement of competition law at the oil product markets;
- research of the pricing issues, including correlation of world prices at the international oil market and internal markets;
- exchange of experience in the field of regulation within the framework of organized forms of trade with oil and oil products (coordination of operations of tender participants).

The Oil Working Group operated through consultation and exchange of information among its members in and out of its meetings, through the organization of meetings with representatives of the public authorities, businesses, etc. Activity of the Oil Working Group resulted in preparation of the concrete suggestions for national governments on competition development on oil market.

At the end of 2013 as a result of discussions on the meetings of the Oil Working Group the electronic platform on exchange of information about infringements of competition on oil markets began to function (representatives of more than 20 countries participated in its creation). Information about methods of market monitoring, market structures and experience of investigating concrete cases are accumulated on this e-platform.

36. The FAS Russia pursues a policy of active **bilateral cooperation** with foreign Competition Authorities. Within the framework of bilateral cooperation the FAS Russia signed 55 Memorandums of Understanding and Agreements with various Competition Authorities. Through these documents competition authorities are able to exchange experience in competition law and enforcement with the help of holding consultations and meetings They are also aimed at training and strengthening professional skills of staff. Bilateral documents establish exchange of the texts of competition regulations, activities reports, and non-confidential information as ways of cooperation between Competition Authorities. Due to new challenges the FAS Russia actively develops so-called agreements of the “new generation”, which will

include, inter alia, proceedings on exchange of confidential information. Today such an agreement is developing between the FAS Russia and Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus.

37. The FAS Russia always takes active part in **international forums and meetings**. The FAS Russia participates in BRICS International Competition Conference, annual Conferences and meetings of International Competition Network (ICN), OECD Global Competition Forum and meetings of the OECD Competition Committee and meetings of the Intergovernmental Group of Experts on Competition Law and Policy UNCTAD as well as UN Conferences on Review of the UN Set on Competition.

38. Annually the FAS Russia organizes training workshops and **study visits** for representatives of foreign Competition Authorities in the Training-and-Recourse Centre of the FAS Russia in Kazan city. The aim of such events, in addition to exchanging experience on methodological and practical aspects of national competition policy and enforcement, is to open an informal dialogue between representatives. Moreover, the FAS Russia actively cooperates with OECD-GVH Regional Center for Competition (Budapest, Hungary) in conducting joint study visits and workshops. For example, in June 2017 the joint workshop on market studies was organized in Moscow and attracted attention of more than 40 representatives of Competition Authorities from different jurisdictions⁶.

Existing tools of Cooperation and Examples of Cases

39. **The requests for information** is still the most frequently-used tool of cooperation in accordance with bilateral documents. The FAS Russia addresses and receives requests of information to/from foreign Competition Authorities

⁶ More information on the FAS - OECD-GCH Workshop can be found at <http://en.fas.gov.ru/press-center/news/detail.html?id=50391>

concerning specific development of legislation and its enforcement. The most recent example in this regard is research for methods and procedures Competition Authorities use in consideration of mega-mergers in agricultural sector.

40. Due to the fact that the FAS Russia investigated cases in relation to large international companies (Google, Apple, liner shipping carriers, etc.) which currently opened by many Competition Authorities all over the world, a lot of requests for information have been received on that matter. The FAS Russia is committed to the idea of importance of exchange of objective and useful information, all the requests were appropriately replied. Also in order to inform directly international stakeholders about burning news of the FAS Russia in a timely manner, we use the tool of E-Newsletters and News Digests.

41. Moreover, in the framework of bilateral cooperation the FAS Russia hold **consultations and negotiations** with foreign Competition Authorities while investigating cross-border cases. Despite of the consultations, which are conducting now between the FAS Russia and Competition Commission of South Africa described above, consultations took place in the investigating the cartel cases along with Competition Authorities of Norway and Vietnam.

42. In October 2012, the FAS Russia initiated proceedings in relation to a number of the Russian import companies of fish from Norway to Russia on signs of violation of the Law on Protection of Competition (market-sharing cartel). The results of inspections carried out by the FAS Russia during the period from March to June, 2012 in relation to the companies delivering the Norwegian salmon and trout to the Russian Federation formed the basis for initiation of proceedings. In course of inspections it was established that for the purpose of implementation of the estimated anti-competitive agreement the companies distributed among themselves the Norwegian producers of fish, and later initiated the conclusion of the “Agreement on Strategic Partnership” with them. According to this Agreements the Norwegian

producers, except for “exclusive authorized partners,” lost the right to deliver fish for distribution in the territory of the Russian Federation for five years. The Commission of the FAS Russia found guilty a number of Russian fish companies on the subject of sharing market. The FAS Russia prescribed the companies to eliminate violations of antimonopoly legislation. For obtaining more detailed information consultations with representatives of the Competitive Authority of Norway and a number of the Norwegian companies were held.

43. In 2013 the FAS Russia found that a number of fish companies imported pangasius fish from Vietnam to the Russian Federation established market-dividing and price-fixing cartel. In that activity Vietnamese “Association of Production and Trade Enterprises on Fish Market” was involved upon signs of prohibited coordination of economic activities of market agents. The FAS Russia suspected that the Association had coordinated such activities of economic entities – competitors, which resulted in dividing the market between themselves by the volumes of purchasing pangasius. A number of consultations and negotiations between the FAS Russia and Competition Authority of Vietnam were conducted in order to obtain information and documents related to investigating a cartel on the market of supplying Vietnamese fish products to Russia. As a result, a number of companies were recognized violated Russian competition legislation and the FAS Russia imposed administrative fines on that market players over 30 mln Rub in total. FAS also found that the “Association of Production and Trading Companies on the Fish Market” violated the antimonopoly law through prohibited coordination of economic activity of economic entities. The “Association of Production and Trading Companies on the Fish Market” was also imposed a fine and then had been eliminated.

44. In 2011-2012 several negotiations between experts of the FAS Russia and Directorate General on Competition of European Commission (hereinafter - DG Comp) concerning experience of investigating cases on the market of payment

systems, pharmaceutical market and automobile market were held. During such consultations experts exchanged information on methodology of investigations, non-confidential documents and materials. DG Comp shared the texts of some specific cases investigated for the purposes of the possible use of these materials in the investigation process by the FAS Russia.

45. Moreover, in 2012 within the frameworks Memorandum of Understanding On Cooperation between the FAS Russia and Directorate General on Competition of the European Commission (hereinafter - DG Comp) the FAS Russia has received the letter requesting information from the “IRKUT” Corporation as if previously the “IRKUT” Corporation didn’t respond to the DG Comp inquiry. Receiving this information for DG Comp was very important because of merger transaction examination by United Technologies Corporation (UTC) and the Goodrich Corporation (Goodrich). The Company UTC intended to acquire Goodrich company. Taking into consideration the fact that “IRKUT” Corporation is a key player in the aero-space sector on the market, DG Comp had to take into account the “IRKUT” when examining this transaction. The FAS Russia requested this information and transferred it to DG Comp. Formal investigatory assistance requests are contained in bilateral-competition agreements of the FAS Russia (MoU with DG Comp, MOU with the Italian Competition Authority, etc.).

46. Another example is the cross-border investigation by the FAS Russia of the case on violating antimonopoly legislation (vertical agreement) in relation to “Trading House” “BelAZ”, CJSC (Russia), “Company BELAZKOMPLEKT PLUS” (Russia), CJSC, and “Belarusian Autoworks” (BELAZ), OJSC (Belarus). Within the framework of the Agreement on Common Principles and Competition Rules of 9th December 2010 (from January 1, 2015 was replaced by the Treaty of EAEU), the FAS Russia requested information on the Belorussian company from the Competition Authority of Belarus which facilitated the process of taking the decision on the case.

47. In 2015-2016 the first case on violation of competition legislation was considered by EEC along with national Competition Authorities of EAEU. On 29 July 2016, an extended session of Competition and Antimonopoly Regulation Sub-Committee, of the Consultative Committee on Competition, Antimonopoly Regulation and Public Procurement, of the Eurasian Economic Commission (EEC) chaired by a Member of EEC Collegium (Minister) on Competition and Antimonopoly Regulation, Nurlan Aldabergenov, considered materials on elements of violating the antimonopoly law by “Caterpillar”. According to “Eurasian group” (Kazakhstan), Caterpillar and its official dealers refused to supply products to the Kazakhstan market. The Committee on regulating natural monopolies and competition protection of the Ministry of national economy of the Republic of Kazakhstan forwarded materials to EEC for consideration.

The FAS Russia took part in the investigation. From 24 December 2015 to 22 March FAS inspected distributors of Caterpillar products: “Zeppelin Rusland” Ltd., “Mantrak Vostok” Ltd., “Vostochnaya tekhnika” Ltd., and “Caterpillar Eurasia” Ltd.

Dealers and “Caterpillar” reached agreements on fixing equipment sale for “Caterpillar” dealers and distributors by strictly determined territories of Russian market and EAEU common market. Distributors refuse to conclude contracts with companies located in the territories of other distributors. Breaching this rule is punishable by a “fine”.

Based on the work with EEC and FAS, “Caterpillar” made changes to the international agreements regulating distribution in EAEU and changed Letters-Certificates on dealers’ catchment areas. So the company voluntarily terminated the violation.

Challenges ahead

48. In 2015-2016 the FAS Russia investigated a number of cases in relation to large transnational corporations which exercise their activity worldwide. In particular,

these are the case against Google⁷, Apple, Microsoft (the decision has not been made yet) and liner shipping companies⁸. These investigations show that the existing frequently-used simple tools of cooperation are not enough to combat restrictive business practices of such companies. In the process of investigating cross-border cases, we identified a number of problems that need to be resolved for improving the efficiency of cooperation and reaching practical results.

49. One of the problems of international cooperation in investigating cross-border cases is existing differences in the legislation of different jurisdictions, which complicate the process of joint investigations: differences in notification procedures, differences in basic definitions, establishing in national laws, and different sanction for the same violation under different jurisdictions. It shows necessity of adoption of unified basic rules and principles of cooperation.

50. Exchange of confidential information still remains one of the important of effective cooperation between Competition Authorities in different jurisdictions. This problem consists of the aspect of the lack of trust between authorities and issues of legal technique. Fruitful informal cooperation could hardly transform into formal exchange of confidential information because of the absence of the “new level” agreements. Moreover, effective mechanism of protection of confidential information from disclosure on the territory of foreign country doesn’t exist at international level.

51. In addition to the issues of legal framework, there are many unresolved challenges concerning notification and serving of documents to foreign defendants and their translation, fine imposition on a foreign legal entity, procedure of joint

⁷ More information on Google case you can find on <http://en.fas.gov.ru/documents/documentdetails.html?id=14677>

⁸ More information on liner shipping case you can find on: <http://en.fas.gov.ru/press-center/news/detail.html?id=49003>; <http://en.fas.gov.ru/press-center/news/detail.html?id=44353>

dawn raids or inspections by request from the Competition Authority if business entities located in foreign countries.

52. All the challenges mentioned above have a global scale and affect not only the activity of the Russian Competition Authority but the activity of all the Competition Agencies. Due to rapid globalization of markets, creation of new highly innovative spheres, we could predict that the cases on violation on competition legislation, which have truly global scale, will be increasing in numbers in the upcoming years. In the context of finding common solution of such problems the FAS Russia suggests to initiate process of formulation and adoption of the international document which will include effective tools of international cooperation in combating restrictive business practices of transnational corporations as well as to foster adoption of international convention on fighting the most serious type of anticompetitive behavior which are international cartels.